

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge

Appellate Case No.: 2020-001335

Genevieve Stratos, ...Respondent,

v.

Charleston County Sheriff's Office and Karmatic,
LLC, ...Defendants.

of which

Karmatic, LLC, is the Appellant.

RECORD ON APPEAL

Elizabeth J. Palmer (#73680)
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ATTORNEYS FOR RESPONDENT

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CERTIFICATE OF COUNSEL

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

ROSEN HAGOOD, LLC

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/s/ Elizabeth J. Palmer
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ATTORNEYS FOR APPELLANT

April 6, 2021

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003825

Genevieve Stratos
PLAINTIFF(S)

Sheriffs Office Charleston County et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion for Temporary Injunction is Granted in part. Advertising and sale postponed. Another hearing will be held the week of September 14 to determine the issue of the date of judgment.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/04/2020 .

Sheriffs Office Charleston County

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Genevieve Stratos VS Sheriffs Office Charleston County ,
defendant, et al

Case Number: 2020CP1003825

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2020-09-04 11:57:08 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003825

Genevieve Stratos
PLAINTIFF(S)

Sheriffs Office Charleston County et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **STAYED DUE TO BANKRUPTCY**
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☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Based on the memoranda submitted and the arguments of counsel at the hearing dated 9/15/2020, Plaintiff's Motion for Injunctive Relief is hereby GRANTED. Plaintiff is instructed to post a civil bond in the amount of \$75,000 with the Clerk of Court within 10 days of the date of this Order. All other claims contained within the pleadings are still pending.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/16/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Charleston Common Pleas

Case Caption: Genevieve Stratos VS Sheriffs Office Charleston County ,
defendant, et al
Case Number: 2020CP1003825
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2020-09-16 09:42:27 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TIDELANDS BANK,)
Plaintiff,)
vs.)
SOUTHRAIL ENTERPRISES, LLC.;)
VALMAR NUNES; GENEVIEVE)
STRATOS; and MARTIN)
PROPERTIES, LLC;)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-10-139

ORDER
(DEFICIENCY DEMANDED)

Pursuant to Rule 53, of the South Carolina Rules of Civil Procedure, the above-entitled matter was referred to the undersigned for the purpose of taking testimony and making a final decision in this matter, which decision shall be appealable to Section 14-11-85 of the Code of Laws of South Carolina, 1976, as amended. Pursuant to the Order of Default and Reference dated May 7, 2010, a hearing was held on August 3, 2010, which was attended by the Plaintiff's attorney and the testimony was taken, which is herewith reported.

FINDINGS OF FACT

I, therefore, find as follows:

1. The Lis Pendens was filed on January 8, 2010.
2. The Summons and Complaint were filed on January 8, 2010.
3. Service was made upon the Defendant, Valmar Nunes, on February 25, 2010, as shown by the Affidavit of Service filed herein.
4. Service was made upon the Defendant, Martin Properties, LLC, on March 9, 2010, as shown by the Affidavit of Service filed herein.
5. Service was made upon the Defendants, Southrail Enterprises, LLC, and Genevieve Stratos, on March 19, 2010, as shown by the Affidavit of Service filed herein.
6. The Defendants, Southrail Enterprises, LLC, Valmar Nunes, Genevieve Stratos and Martin Properties, LLC, are in default as shown by the Affidavit(s) on file herein.
7. According to the Affidavit(s) filed herein, no Defendant in default is in the Military Service of the United States of America, as contemplated under The Soldier's and Sailor's Civil Relief Act of 1940, and any amendments thereto.
8. An Order of Default and Reference was filed herein, and this matter was

referred to me as Master in Equity for Charleston County for the purpose of taking testimony and making findings of fact and conclusions of law and to render a final decree with direct appeal to the South Carolina Supreme Court or the South Carolina Court of Appeals as provided by the South Carolina Appellate Court Rules and pursuant to Section 14-11-85 of the Code of Laws of South Carolina, 1976, as amended.

AS TO THE FIRST CAUSE OF ACTION
(Foreclosure of Mortgage)

9. On or about July 30, 2007, for value received, the Defendant, Southrail Enterprises, LLC., made, executed and delivered to Tidelands Bank, the Plaintiff, a Promissory Note (the "Note"), and in addition, made, executed and delivered Renewal Notes dated August 23, 2008, and January 30, 2009.

10. Simultaneously therewith, the Defendant, Southrail Enterprises, LLC., executed a Mortgage of Real Estate (the "Mortgage") wherein it pledged as collateral certain real property commonly described as Lot 13-C South Rail Road, North Charleston, South Carolina, to secure repayment of all indebtedness under the Note.

11. Thereafter, the Mortgage was recorded on August 7, 2007, in the RMC/ROD Office for Charleston, County in Book A635 at Page 232.

12. That the Mortgage secures commercial or other non-residential property and is not subject to modification under the Home Affordable Modification Program ("HMP").

13. Under the terms of the Note and Mortgage, the Defendant, Southrail Enterprises, LLC., promised to pay the Plaintiff the sum of \$300,000.00 Dollars, plus interest, costs and reasonable attorneys' fees. Other terms and conditions are stated in the Note and Mortgage, which are of record herein.

14. The Note and Mortgage provide that the mortgagor will promptly pay the principal and interest evidenced by the Note at the time and in the manner therein provided.

15. According to the terms and conditions of the Note and Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable, at the option of the holders, and the mortgagee shall have power to sell said premises according to law and this Mortgage may be foreclosed and any such expenses and fees as may be incurred including the fees of any attorney employed by the mortgagee in any litigation or proceeding affecting said premises, shall be paid by the mortgagor and secured by this

instrument. And it is further agreed that in case the debt secured by the Mortgage or any part thereof is collected by suit or action, or the Mortgage be foreclosed, or put into the hands of an attorney for collection, suit, action or foreclosure, the said mortgagor shall be chargeable with all costs of collection including reasonable attorneys fees, which charges and fees together with all costs and expenses, are hereby secured and may be recovered in any suit or action hereupon or hereunder.

16. The payments due on the Note and Mortgage, have not been made as provided for in the Note and Mortgage, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of its attorneys herein for collection.

17. With respect to attorney fees, in view of the potential liabilities inherent in a real property matter, the attendant responsibilities, and the size of the mortgage debt, I find that a reasonable attorney's fee would be \$3,000.00. The Plaintiff engaged an attorney to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the running interest. It appears that the attorney examined the title to identify all parties having or claiming any interest in the subject real estate, the preparation of certain pleadings and other documents including the following:

- a. Lis Pendens;
- b. Summons and Complaint;
- c. Affidavit(s) of Service;
- d. Acknowledgment(s) of Service;
- e. Order of Reference;
- f. Notice(s) of Hearing;
- g. Record (Transcript) of Testimony; and
- h. Proposed Master in Equity's Report and Judgment of Foreclosure and Sale.

18. Additionally, the attorney prepared and served the pleadings upon the Defendant personally or by statutory/substitute service, provided reinstatement and payoff figures and payment histories as requested or required, and scheduled and attended the hearing in this matter.

19. Future duties include forwarding copies of the Judgment to appearing counsel, obtaining bidding instructions from Plaintiff or its designee, representing Plaintiff at the sale, preparing an Order of Sale or Report on Sale and Disbursements and Order Confirming Sale, and preparing the Master in Equity's Deed and any other documents

necessary in this particular action.

20. In addition to the time invested to date, the Court anticipates a minimum of two (2) hours after the hearing. Moreover, depending upon the interest shown by the Defendant, third parties, or counsel for either and the inherent negotiations required thereby, other time may also be committed to the completion of the case.

21. In regard to the professional standing of counsel, representation of Plaintiff has been undertaken by the firm of CLAWSON & STAUBES, LLC. The attorneys primarily involved in this representation have been Kristen Nichols Voyer, R. Timothy Whisler and Stephanie A. Grunthal. They concentrate their practice in the areas of foreclosure, bankruptcy and commercial litigation.

22. The fee requested is customary for the services provided, given the professional standing of Plaintiff's counsel. Also the Plaintiff's attorneys have achieved the beneficial result of a prompt foreclosure of the mortgage.

23. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys fees secured by the Note and Mortgage are as follows:

(a) Principal due as of August 3, 2010	<u>\$299,916.30</u>
(b) Accrued Interest as of August 3, 2010	<u>\$24,461.67</u>
(c) Escrow Adjustments (debits or credits)	<u>\$0.00</u>
(d) Costs of Collection prior to hearing (Clerk of Court, Service Fee, Title Search, Special Referee)	<u>\$591.20</u>
(e) Taxes, appraisal fees, insurance, late fees, etc. not included in above	<u>\$17,054.96</u>
(f) Attorneys Fees	<u>\$3,000.00</u>
Total debt secured by the Note and Mortgage, including interest to date shown:	<u>\$345,024.13</u>

Interest for the period from the date shown in (b) above through the date of this judgment at the rate of 6.50% per annum (\$31.45 per diem) (pursuant to the terms of the Note and Mortgage) to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the legal rate of interest for judgments on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which

such interest is computed.

24. The Plaintiff does not waive, but specifically demands judgment against the Defendant, Southrail Enterprises, LLC., for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendant, Southrail Enterprises, LLC., for any deficiency in this action remaining after sale of the mortgaged premises. Since a deficiency is demanded, the bidding will remain open for a period of thirty (30) days as prescribed by law.

25. The Defendant below named claims or may claim to have some interest in or lien upon the premises covered by the Plaintiff's Mortgage, or some part thereof, by virtue of the matters and things set forth below, but any such interest in or lien upon the said premises is junior and subordinate to the lien of the Plaintiff's Mortgage or does not attach to the property which is the subject of this action, or has been paid in full and not satisfied of record, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such interest or lien will be determined at a hearing subsequent to the sale as prescribed by law. Said liens or interests are of record in the RMC Office for Clerk of Court's Office for Charleston County and are described as follows:

- (a) The Defendant, Martin Properties, LLC, by virtue of a mortgage, given by Southrail Properties, LLC, in the amount of \$300,000.00, dated July 30, 2007, and recorded August 7, 2007, in Book A635 at Page 242; and

The Plaintiff is informed and believes that the interest of the above named Defendant, if any is junior and subordinate to the lien of the Plaintiff's Mortgage.

AS TO THE SECOND CAUSE OF ACTION
(Suit on Guaranty)

26. The Defendants, Valmar Nunes and Genevieve Stratos, in order to induce Tideland Bank to loan funds evidenced by the Note and Mortgage referred to herein, executed agreements personally guaranteeing payment of all obligations of Southrail Enterprises, LLC, plus costs, fees and any other obligation due the Plaintiff under the Note and Mortgage.

27. The Guaranty Agreements guarantees payment of all obligations, are unconditional and joint and several. Notice of default has been given to Valmar Nunes and Genevieve Stratos and the same has been refused.

28. Under the terms of the Guaranty Agreements, Valmar Nunes and Genevieve Stratos are liable for the full amount due under the Note and documents evidencing the

loan agreement as set forth herein.

29. Tideland Bank is entitled to judgment against the Defendants, Valmar Nunes and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Valmar Nunes and Genevieve Stratos, for any deficiency in this action remaining after the sale of the mortgaged premises.

30. That the Plaintiff does not waive, but specifically demands judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, for any deficiency in this action remaining after the sale of the mortgaged premises. Since a deficiency is demanded, the bidding will remain open for a period of thirty (30) days as prescribed by law.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

A. The Plaintiff's Mortgage constitutes a first (1st) lien on the subject real property, subject only to the lien for unpaid Charleston County ad valorem taxes, if any, on the subject real property.

B. The Plaintiff should have judgment of foreclosure of its Mortgage.

C. The mortgaged property should be ordered sold at public auction after due advertisement. The sale shall be made subject to taxes and assessments that are due on the day of sale. That after making the required deposit the successful bidder at the sale should be required to pay interest at the legal rate of interest for judgments from the date of sale through the date of compliance.

D. The proceeds arising from such sale should be applied, first, to the costs and disbursements of this action, including attorney's fees, and next, to the payment and discharge of the amount of the Plaintiff's debt and interest or so much thereof as the proceeds will pay, and any surplus should be held pending further order of the Court.

E. If the proceeds of sale are insufficient to pay the amounts hereinbefore authorized to be paid out of said proceeds, with the interest, costs and disbursements as aforesaid, the parties hereto entitled to such deficiency have judgment therefor against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos.

Now, on motion of Plaintiff's attorney, Clawson and Staubes, LLC,

IT IS ORDERED, ADJUDGED AND DECREED, that there is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$345,024.13, representing the "Total Debt" due Plaintiff as set out in Paragraph 23, *supra*, together with interest at the rate of 6.50% per annum (\$31.45 per diem) as provided in said Note on the balance of principal from the aforesaid date to the date hereof; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the amount due in the preceding paragraph (the "Total Debt" as set forth in Paragraph 23, *supra*, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the legal rate of interest for judgments; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, on or before the date of sale of the property herein described, pay to the Plaintiff, or Plaintiff's attorney, the total amount due Plaintiff, together with the costs and disbursements of this action, including reasonable attorney's fees; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that on default of payment at or before the time herein indicated, the mortgaged premises described in the Lis Pendens and Complaint, be sold by the undersigned Master in Equity, at public auction, at the Charleston County Courthouse, in the City of Charleston, Charleston County and State aforesaid, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

a. FOR CASH: the undersigned Master in Equity will require a deposit of Five (5%) Percent on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.

b. Interest on the balance of the bid shall be paid through the day of compliance at the legal rate of interest for judgments from the date of sale through the date of compliance.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

d. Purchaser to pay for the preparation of the deed, deed stamps and costs of recording the deed; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that if Plaintiff is the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness due Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses crediting the balance of the bid on the indebtedness due Plaintiff; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that a personal or deficiency judgment is being demanded, the bidding will remain open for thirty (30) days after the date of the initial sale as provided by law in such cases; and

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the undersigned Master in Equity apply the proceeds of the sale as follows:

First, to payment of the amount of the costs and expenses of this action, including attorney's fees, and any taxable disbursements by the attorneys in the action.

Next: to the payment to the Plaintiff or Plaintiff's attorney, of the amount of the debt and interest due Plaintiff or so much thereof as the purchase money will pay on the same.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that any surplus funds shall be held pending further Order of this Court; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that if the proceeds of the sale are insufficient to pay the amounts herein above authorized to be paid out of said proceeds, with the interest, costs and expenses as aforesaid, the parties hereto entitled to such deficiency have judgment therefor against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of

Charleston County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or its assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or its assigns in such peaceable possession; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that each Defendant named herein, and all persons whosoever claiming under him, them or it be forever barred and foreclosed of all rights, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the following is a description of the premises herein ordered to be sold:

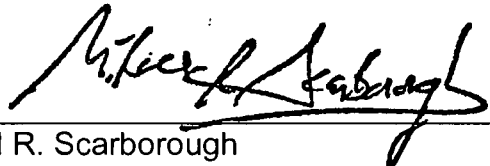
ALL that certain piece, parcel or tract of land, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, and designated as Lot 13-C, 4.71 Acres, more or less, on a plat entitled, "SUBDIVISION PLAT OF LOT 13 COLONY NORTH INDUSTRIAL TRACT TO CREATE LOTS 13-A, 13B AND 13-C OWNED BY SOUTHERN CONCRETE PRODUCTS, LLC ABOUT TO BE CONVEYED TO DEAN LOWDER, CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by 2 A D Surveying Co., Inc., dated July 11, 2002 and recorded in the RMC Office for Charleston County in Plat Book EF, at Page 732. Said Tract having such size, shape, courses, distances, buttings and boundings, as will by reference to said plat more fully will appear.

SUBJECT TO any and all easements, restrictions, rights-of-way and other matters of record.

BEING the same property conveyed to Southrail Enterprises, LLC., by deed of Martin Properties, LLC dated July 30, 2007, and recorded August 7, 2007, in the RMC/ROD Office for Charleston County in Book Y634 at Page 756.

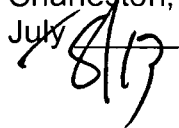
TMS No.: 484-00-00-144

AND IT IS SO ORDERED.



Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina
July 8, 2010



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TIDELANDS BANK,)
Plaintiff,)
vs.)
SOUTHRAIL ENTERPRISES, LLC.;)
VALMAR NUNES; GENEVIEVE)
STRATOS; and MARTIN)
PROPERTIES, LLC;)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-10-139

TESTIMONY

FILED
2010 AUG 16 PM 3:06
JULIE J. ARMSTRONG
CLERK OF COURT

A hearing was held August 3, 2010, at 10:00 AM, at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina 29401, which was attended by the undersigned attorney of Clawson and Staubes, LLC, Attorneys for the Plaintiff, authorized to testify by the Plaintiff by written Authorization duly filed in this action and made a part of the record herein.

1. This is an action that has been brought for the foreclosure of that certain Mortgage which was given by the Defendant, Southrail Enterprises, LLC., to Tidelands Bank dated July 30 ,2007, and recorded August 7, 2007, in the RMC/ROD Office for Charleston County, South Carolina in Book A635 at Page 232.

2. That Tidelands Bank (hereinafter "Plaintiff") is a banking institution authorized to do business in the State of South Carolina.

3. That the Defendant, Southrail Enterprises, LLC, is, upon information and belief, a limited liability company organized and operating under the laws of the State of South Carolina.

4. That the Defendants, Valmar Nunes and Genevieve Stratos, are, upon information and belief, residents of Charleston County, South Carolina, and are neither infants nor incompetent and not in the military service.

5. That the Defendant, Martin Properties, LLC, is, upon information and belief, a limited liability company organized and operating under the laws of the State of South Carolina.

6. That the subject of this action is real property located in Charleston County, South Carolina.

FIRST CAUSE OF ACTION
(Foreclosure of Mortgage)

7. That on or about July 30, 2007, for value received, the Defendant, Southrail

Enterprises, LLC., made, executed and delivered to Tideland Bank, the Plaintiff, a Promissory Note (the "Note"), and in addition, made, executed and delivered Renewal Notes dated August 23, 2008, and January 30, 2009. Copies of the Notes are attached hereto collectively as **Exhibit "A"** and are incorporated herein by reference.

8. That simultaneously therewith, the Defendant, Southrail Enterprises, LLC., executed a Mortgage of Real Estate (the "Mortgage") wherein it pledged as collateral certain real property commonly described as Lot 13-C South Rail Road, North Charleston, South Carolina, to secure repayment of all indebtedness under the Note. A copy of the Mortgage to the Plaintiff is attached hereto as **Exhibit "B"** and is incorporated herein by reference. Said real property being more particularly described as follows:

ALL that certain piece, parcel or tract of land, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, and designated as Lot 13-C, 4.71 Acres, more or less, on a plat entitled, "SUBDIVISION PLAT OF LOT 13 COLONY NORTH INDUSTRIAL TRACT TO CREATE LOTS 13-A, 13B AND 13-C OWNED BY SOUTHERN CONCRETE PRODUCTS, LLC ABOUT TO BE CONVEYED TO DEAN LOWDER, CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by 2 A D Surveying Co., Inc., dated July 11, 2002 and recorded in the RMC Office for Charleston County in Plat Book EF, at Page 732. Said Tract having such size, shape, courses, distances, buttings and boundings, as will by reference to said plat more fully will appear.

SUBJECT TO any and all easements, restrictions, rights-of-way and other matters of record.

BEING the same property conveyed to Southrail Enterprises, LLC., by deed of Martin Properties, LLC dated July 30, 2007, and recorded August 7, 2007, in the RMC/ROD Office for Charleston County in Book Y634 at Page 756.

TMS No.: 484-00-00-144.

9. That thereafter, the Mortgage was recorded on August 7, 2007, in the RMC/ROD Office for Charleston County in Book A635 at Page 232.

10. That the Mortgage secures commercial or other non-residential property and is not subject to modification under the Home Affordable Modification Program ("HMP").

11. That under the terms of the Note and Mortgage, the Defendant, Southrail Enterprises, LLC., promised to pay the Plaintiff the sum of \$300,000.00 Dollars, plus interest.

12. That the Mortgage provides that the mortgagor will promptly pay the principal

and interest evidenced by the Note at the time and in the manner therein provided.

13. That according to the terms and conditions of the Note and Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable, at the option of the holders, and the mortgagee shall have power to sell said premises according to law and this Mortgage may be foreclosed and any such expenses and fees as may be incurred including the fees of any attorney employed by the mortgagee in any litigation or proceeding affecting said premises, shall be paid by the mortgagor and secured by this instrument. And it is further agreed that in case the debt secured by the Mortgage or any part thereof is collected by suit or action, or the Mortgage be foreclosed, or put into the hands of an attorney for collection, suit, action or foreclosure, the said mortgagor shall be chargeable with all costs of collection including reasonable attorneys fees, which charges and fees together with all costs and expenses, are hereby secured and may be recovered in any suit or action hereupon or hereunder.

14. That the Defendant, Southrail Enterprises, LLC., defaulted under the terms of the Note and Mortgage, and the Plaintiff elected to declare the entire balance of the indebtedness due and payable and that there is due on the Note and Mortgage as of August 3, 2010, the sum of \$343,207.13, together with interest accruing from and after said date at the rate of 6.50% per annum (\$31.45 per diem), and also the amount to be incurred as the costs and disbursements of this action including reasonable attorney's fees.

SECOND CAUSE OF ACTION
(Suit on Guaranty)

15. The Defendants, Valmar Nunes and Genevieve Stratos, in order to induce Tideland Bank to loan funds evidenced by the Note and Mortgage referred to herein, executed agreements personally guaranteeing payment of all obligations of Southrail Enterprises, LLC, plus costs, fees and any other obligation due the Plaintiff under the Note and Mortgage. A copy of the Guaranty Agreements executed by Valmar Nunes and Genevieve Stratos are annexed hereto as **Exhibit "C"** and are incorporated herein by reference.

16. The Guaranty Agreements guarantee payment of all obligations, are unconditional and joint and several. Notice of default has been given to Valmar Nunes and Genevieve Stratos and the same has been refused.

17. Under the terms of the Guaranty Agreements, Valmar Nunes and Genevieve

Stratos are liable for the full amount due under the Note and documents evidencing the loan agreement as set forth herein.

18. Tideland Bank is entitled to judgment against the Defendants, Valmar Nunes and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Valmar Nunes and Genevieve Stratos, for any deficiency in this action remaining after the sale of the mortgaged premises.

TO ALL CAUSES OF ACTION

19. That the Plaintiff is entitled to reasonable attorney's fees for its attorneys, together with the costs and disbursements of this action.

20. The Mortgage provides that if the taxes are paid by the Mortgagee, the same may be added to the amount due and all such payments are secured thereby.

21. That the Plaintiff's Mortgage constitutes a first (1st) lien on the subject real property, subject only to the lien for unpaid Charleston County ad valorem taxes, if any, on the subject real property.

22. That it is the desire of the Plaintiff that the property be sold to satisfy the principal and interest due under the Note and Mortgage as well as the cost of this action including reasonable attorney's fees.

23. That the Plaintiff does not waive, but specifically demands judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, for any deficiency in this action remaining after sale of the mortgaged premises.

24. That the Defendant below named claims or may claim to have some interest in or lien upon the premises covered by the Plaintiff's Mortgage, or some part thereof, by virtue of the matters and things set forth below, but any such interest in or lien upon the said premises is junior and subordinate to the lien of the Plaintiff's Mortgage or does not attach to the property which is the subject of this action, or has been paid in full and not satisfied of record. Said liens or interests are of record in the RMC/ROD Office or Clerk of Court's Office for Charleston County and are described as follows:

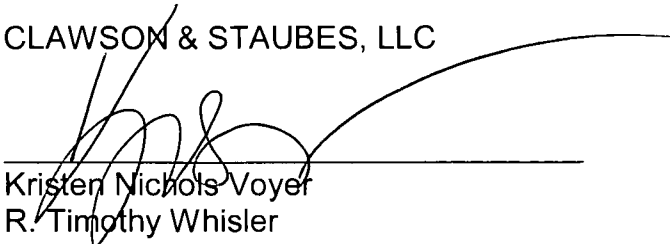
- (a) The Defendant, Martin Properties, LLC, by virtue of a mortgage, given by Southrail Properties, LLC, in the amount of \$300,000.00, dated July 30, 2007, and recorded August 7, 2007, in Book A635 at Page 242.

25. That all proper parties have been joined in this action, duly served with the Summons and Complaint, defaulted or consented to the jurisdiction of this Court and have been served with a notice of this hearing.

26. That on behalf of the Plaintiff, we demand judgment against the Defendant on all Claims for Relief as set forth above.

Your Honor, this concludes our case.

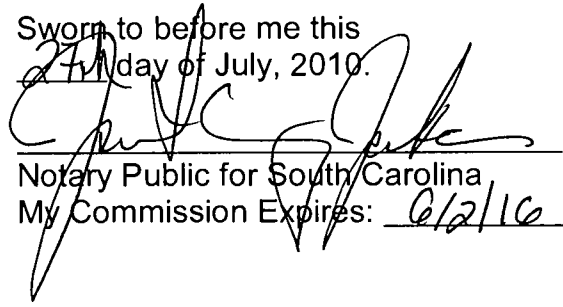
CLAWSON & STAUBES, LLC



Kristen Nichols Voyer
R. Timothy Whisler
Stephanie A. Grunthal
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
Telephone: (843) 577-2026
Facsimile: (843) 722-2867
Attorneys for Plaintiff

Charleston, South Carolina
July 27, 2010

Sworn to before me this
27th day of July, 2010.



Notary Public for South Carolina
My Commission Expires: 6/2/16

Southrail Enterprises, LLC
1810 Tennyson Row
Mount Pleasant, SC 29466

Tidelands Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

Loan Number _____
Date 07/30/2007
Maturity Date 08/02/2008
Loan Amount \$ 300,000.00
Renewal Of _____

BORROWER'S NAME AND ADDRESS
"I" includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS
"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of Three Hundred Thousand Dollars
Dollars \$ 300,000.00

☒ **Single Advance:** I will receive all of this principal sum on 07/30/2007. No additional advances are contemplated under this note.

☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____
I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

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

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

INTEREST: I agree to pay interest on the outstanding principal balance from 07/30/2007 at the rate of 8.750 %
per year until 07/31/2007.

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

☒ **Index Rate:** The future rate will be .50% above the following index rate: Wall Street Journal Prime Rate

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

☒ **Frequency and Timing:** The rate on this note may change as often as every day beginning 07/31/2007

A change in the interest rate will take effect on the same day

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

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

☒ The amount of each scheduled payment will change.

☒ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a Actual/365 basis.

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

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

☐ at a rate equal to _____

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the late amount
with a minimum of \$10.00 and a maximum of \$500.00

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____

PAYMENTS: I agree to pay this note as follows:

☒ **Interest:** I agree to pay accrued interest in 11 Monthly interest payments beginning 08/02/2007 and with the principal.

☒ **Principal:** I agree to pay the principal in one final payment of principal and interest in the amount of \$302,260.41 due on 08/02/2008.

☐ **Installments:** I agree to pay this note in _____ payments. The first payment will be in the amount of \$ _____
and will be due _____. A payment of \$ _____ will be due _____ thereafter. The final payment of the entire
unpaid balance of principal and interest will be due _____

ADDITIONAL TERMS:

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date):
FROM on Lot 13-C South Rail Road, North Charleston, SC 29420.

(The action is for your normal use. Failure to file a separate security document does not mean the agreement will not secure this note.)

PURPOSE: The purpose of this loan is Business: Purchase vacant land.

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

Genevieve Stratos
Genevieve Stratos Member

Valmar Nunes
Valmar Nunes Member

Signature for Lender

Scott M. Garcia
Scott M. Garcia

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

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

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

[illegible]

Southrail Enterprises, LLC
1810 Pennyson Row
Mount Pleasant, SC 29466

Tideland Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

Loan Number [REDACTED]
Date 08/21/2008
Maturity Date 12/02/2008
Loan Amount \$ 293,315.30
Renewal (Y) 140294900

BORROWER'S NAME AND ADDRESS
("includes each borrower above, jointly and severally.")

LENDER'S NAME AND ADDRESS
("You" means the lender, its successors and assigns.")

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of Two Hundred Ninety Three Thousand Nine Hundred Sixteen Dollars and Thirty Cents .. Dollars \$ 293,315.30

☒ **Single Advance:** I will receive all of this principal sum on 08/21/2008 .. No additional advances are contemplated under this note.
☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On I will receive the amount of \$ and future principal advances are contemplated.

Condition: The conditions for future advances are

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

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

INTEREST: I agree to pay interest on the outstanding principal balance from 08/21/2008 .. at the rate of 6.000 % per year until paid in full

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

☒ **Index Rate:** The future rate will be .50% above .. the following index rate: Wall Street Journal Prime Rate

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

☒ **Frequency and Timing:** The rate on this note may change as often as EVERY day beginning 08/22/2008 ..
A change in the interest rate will take effect on the same day

☒ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than 6.000 % or less than % each

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

☒ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a Actual/365 basis.

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

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

☒ at a rate equal to WSJ prime rate plus 5% (five percent) upon written default

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the late amount, with a minimum of \$10.00 and a maximum of \$500.00

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

☒ **Interest:** I agree to pay accrued interest, in 2 monthly interest payments beginning 10/02/2008 and with the principal.

☒ **Principal:** I agree to pay the principal in one final payment of principal and interest in the amount of \$301,395.33 due on 12/02/2008.

☐ **Installments:** I agree to pay this note in payments. The first payment will be in the amount of \$ and will be due . A payment of \$ will be due thereafter. The final payment of the entire unpaid balance of principal and interest will be due

ADDITIONAL TERMS: This is a variable rate loan and the payment amounts may change.
Mortgage in the amount of \$300,000.00 dated 7/30/2007, recorded on 8/7/2007 in Charleston County Official Records Book A635, Page 212. This note satisfies but does not satisfy Promissory Note dated 7/30/2007 for loan #140294900.

☒ **SECURITY:** This note is separately secured by describe separate document by type and date:
FREM on lot 13-C South Rail Road, North Charleston, SC 29420.

(After a notice to the borrower has been received to use a separate security document does not mean the agreement will not require this notice.)

PURPOSE: The purpose of this loan is Business; Purchase vacant land.

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

Glennville Stratos .. Member

James Nunez .. Member

Signature for Lender

Stuart M. Garcia

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Southall Enterprises, Ltd.
1010 Anthony Road
Mount Pleasant, SC 29466

Wilmington Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

Loan Number [REDACTED]
Date 01/30/2009
Maturity Date 06/02/2009
Loan Amount \$ 299,916.10
Renewal CI 140294900

BORROWER'S NAME AND ADDRESS

"I" includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS

"You" means the lender, its successors and assigns

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Two Hundred Ninety-Nine Thousand Nine Hundred Sixteen Dollars and Thirty Cents
Dollars \$ 299,916.10

☒ Single Advance: I will receive all of this principal sum on 01/30/2009. No additional advances are contemplated under this note.

☐ Multiple Advances: The principal sum shown above is the maximum amount of principal I can borrow under this note. On and future principal advances are contemplated.
I will receive the amount of \$

Conditions: The conditions for future advances are

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

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

INTEREST. I agree to pay interest on the outstanding principal balance from 01/30/2009 at the rate of 6.50000 %
per year until Paid in Full

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

☒ Index Rate: The future rate will be 1.00% above the following index rate: Wall Street Journal Prime Rate

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

☒ Frequency and Timing: The rate on this note may change as often as every day beginning 01/31/2009
A change in the interest rate will take effect on the same day

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than 6.500 % or less than %
The rate may not change more than %

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

☒ The amount of each scheduled payment will change. ☒ The amount of the final payment will change

ACCUAL METHOD: Interest will be calculated on a Actual/365 basis.

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

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

☒ at a rate equal to WSJ prime rate plus 5% (five percent) upon written default notice

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the late amount with a minimum of \$10.00 and a maximum of \$500.00

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

☒ Interest: I agree to pay accrued interest in 3 Monthly Interest payments beginning 03/02/2009 and with the principal.

☒ Principal: I agree to pay the principal in one final payment of principal and interest in the amount of \$301,572.00 due on 06/02/2009.

☐ Installments: I agree to pay this note in payments. The first payment will be in the amount of \$ will be due thereafter. The final payment of the entire unpaid balance of principal and interest will be due

ADDITIONAL TERMS: This is a variable rate loan and the payment amounts may change.

Mortgage in the amount of \$300,000.00 dated 07/30/2007, recorded on 08/7/2007 in Charleston County Official Records Book 6635, Page 732. This note renews but does not satisfy Preliminary Note dated 07/30/2007 & 08/21/2008 for loan #140294900.

☒ **SECURITY:** (This note is separately secured by (describe separate document by type and date):
PMA on lot 13-C South Ball Road, North Charleston, SC 29420.

(If a document has been submitted, the lender to be a separate document by the borrower's signature and the date of execution of the document is required)

Signature for Lender

Scott R. Griffin

PURPOSE: The purpose of this loan is Business: Purchase vacant land.

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

Genevieve Blalock

Member

Velmae Murina

Member

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

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

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

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

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

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

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

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

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

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

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

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

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

"Right to receive money from you" means:

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

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

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

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

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

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

DEFAULT: I will be in default if any one or more of the following occur:

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

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

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

(b) You may use any remedy you have under state or federal law. By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare me in default, you do not waive your right to later consider the event as a default if it continues or happens again.

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

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

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

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

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

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

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

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

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This document was prepared by (name, address, phone):

Tidelands Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

BK A 635PG2321

LLF FILE NO.: RE07-323

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE

(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 07/30/2007 and the parties and their addresses are as follows:

MORTGAGOR: Southrail Enterprises, LLC
1810 Tennyson Row
Mount Pleasant, SC 29466

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER: Tidelands Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

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

See Attached Exhibit "A"

RECORD & RETURN TO:
The Lafond Law Firm, P.A.
120 S. Magnolia Street
Summerville, SC 29483

The property is located in Charleston at Lot 13-C South
(County)

Rail Road, North Charleston, South Carolina 29420
(Address) (City) (Zip Code)

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

3. MAXIMUM OBLIGATION LIMIT. The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 300,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

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

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

Promissory Note of even date and amount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- ☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

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

- ☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- ☒ **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.
- ☐ **Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- ☐ **Additional Terms.**

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

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

Entity Name: Southrail Enterprises, LLC

Entity Name: _____

Genevieve Stratos 07/30/2007 (Seal)
(Signature) Genevieve Stratos (Date)
Member

Valmar Nunes 07/30/2007 (Seal)
(Signature) Valmar Nunes (Date)
Member

Signed, Sealed and delivered in the presence of:

Daisy L. Godfrey
(Witness) DAISY L. GODFREY

BENJAMIN A. LAFOND
(Witness) BENJAMIN A. LAFOND

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

BK A 635PG239

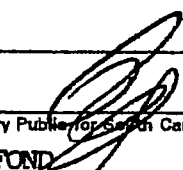
PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF DORCHESTER) ss.

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

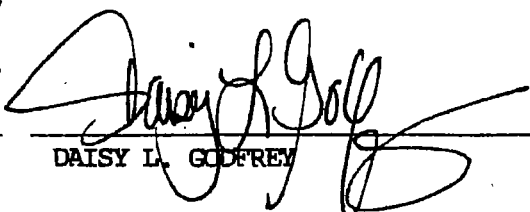
Sworn to and subscribed before me this 30th day

of July, 2007


Notary Public for South Carolina

BENJAMIN A. LAFOND

My commission expires: 12/13/09


DAISY L. GODFREY

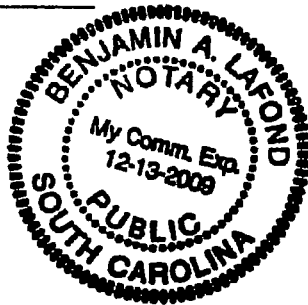


EXHIBIT "A"

9K A 635PG240

ALL that certain piece, parcel or tract of land, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, and designated as Lot 13-C, 4.71 Acres, more or less, on a plat entitled, "SUBDIVISION PLAT OF LOT 13 COLONY NORTH INDUSTRIAL TRACT TO CREATE LOTS 13-A, 13-B AND 13-C OWNED BY SOUTHERN CONCRETE PRODUCTS, LLC ABOUT TO BE CONVEYED TO DEAN LOWDER, CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by 2 A D Surveying Co., Inc., dated July 11, 2002 and recorded in the RMC Office for Charleston County in Plat Book EF, at Page 732. Said Tract having such size, shape, courses, distances, buttings and boundings, as will by reference to said plat more fully will appear.

SUBJECT TO any and all easements, restrictions, rights-of-way and other matters of record.

BEING the same property conveyed to the Mortgagor herein by deed of Martin Properties, LLC dated July 30, 2007, and recorded in the RMC Office for Charleston County simultaneously herewith.

TMS No.: 484-00-00-144

mk
BKA 635PG241

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



FILED

August 7, 2007

11:29:41 AM

BK A 635PG232

Charlie Lybrand, Register
Charleston County, SC

Filed By:

Lafond Law Firm

120 South Magnolia St
Summerville

SC 29483

Number of Pages:

10

DESCRIPTION

AMOUNT

	\$ 15.00
Postage	

TOTAL

\$ 15.00

DRAWER:

A - BJA

DO NOT STAMP BELOW THIS LINE

GUARANTY

Mt. Pleasant, South Carolina
(City) (State)

July 30, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Tidelanda Bank

(herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of Southrail Enterprises, LLC
1810 Tennessee Row Mount Pleasant, SC 29466

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

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: Promissory Note dated 07/30/2007, Loan # 140294200 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

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

The Undersigned further acknowledges and agrees with Lender that:

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

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

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

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 300,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

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

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

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

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

Valmar Nunez
Valmar Nunez

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



ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

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

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

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

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

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

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

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

GUARANTY

Mt. Pleasant
(City)

South Carolina
(State)

July 30, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Tidelands Bank

(herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of Southrail Enterprises, LLC
1810 Tommyson Row Mount Pleasant, SC 29466

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

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: Promissory Note dated 07/30/2007, Loan # 140294900 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

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

The Undersigned further acknowledges and agrees with Lender that:

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

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

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

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 300,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

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

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

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

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

Genevieve Stratos
Genevieve Stratos

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

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

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

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

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

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

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

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

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
TIDELANDS BANK,)
)
Plaintiff,)
)
vs.)
)
SOUTHRAIL ENTERPRISES, LLC.;)
)
VALMAR NUNES; GENEVIEVE)
)
STRATOS; and MARTIN)
)
PROPERTIES, LLC;)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-10-139

**ORDER FOR DEFICIENCY
JUDGMENT**

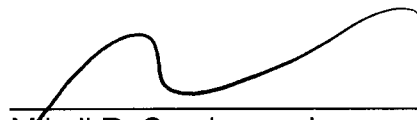
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2010 DEC -8 PM 1:36
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER came before the undersigned upon referral for foreclosure and the Plaintiff reserving its right to a deficiency judgment; and

IT APPEARING TO THE COURT that upon consideration of the Master's Order of Sale and Disbursement in the above case, and upon the Order of Foreclosure entered August 13, 2010;

IT IS ORDERED that the Plaintiff have judgment against the Defendant, Southrail Enterprises, LLC., Valmar Nunes, and Genevieve Stratos, in the sum of \$55,297.74, plus interest accruing thereon from and after November 18, 2010, at the legal rate of interest for judgments.

AND IT IS SO ORDERED.



Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina

6 day of December, 2010

DEFICIENCY CALCULATION

Total debt due Plaintiff as of August 3, 2010 (including accrued interest on outstanding loan)	\$345,024.13
+ Additional accrued interest @ 6.50% per annum (\$31.45 per diem) on outstanding loan principal (from August 3, 2010 to August 13, 2010)	<u>\$314.50</u>
= Total judgment amount as of August 13, 2010)	\$345,338.63
+ Accrued Interest on total judgment amount @ 7.25% from August 13, 2010 to November 18, 2010 (97 days) (i.e., date of 2 nd sale)	<u>\$6,653.68</u>
= Total judgment amount as of November 18, 2010	<u><u>\$351,992.31</u></u>
= Total judgment amount as of November 18, 2010	\$351,992.31
- Credit for Plaintiff's Bid Amount	\$299,916.30
+ Additional costs paid by Plaintiff to MIE	<u>\$2,500.00</u>
+ Advertising costs	<u>\$721.73</u>
= Deficiency judgment as of November 18, 2010	<u><u>\$55,297.74</u></u>

¹Interest accruing on deficiency judgment amount at legal rate of interest.

2010-01-04-01

The Supreme Court of South Carolina

RE: Interest Rate on Money Decrees and Judgments

ORDER

S.C. Code Ann. § 34-31-20 (B) (Supp. 2009) provides that the legal rate of interest on money decrees and judgments “is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points.”

The Wall Street Journal for January 2-3, 2010, the first edition after January 1, 2010, listed the prime rate as 3.25%. Therefore, for the period January 15, 2010, through January 14, 2011, the legal rate of interest for judgments and money decrees is 7.25% compounded annually.

s/Jean H. Toal
FOR THE COURT

Columbia, South Carolina
January 4, 2010

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

GENEVIEVE STRATOS,

PLAINTIFF,

V.

**CHARLESTON COUNTY SHERIFF'S
OFFICE AND KARMATIC, LLC**

DEFENDANTS.

SUMMONS

TO: DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is attached and served upon you, and to serve your Answer to said Complaint on attorneys for Plaintiff at 562 Savannah Highway, P.O. Box 31397, Charleston, SC 29417-1397, within 30 days after the service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time allowed by the South Carolina Rules of Civil Procedure, Plaintiff will apply to the Court for the relief demanded in the Complaint.

KAHN LAW FIRM, LLP

s/ Justin S. Kahn

S.C. Bar No. 65100

jskahn@kahnlawfirm.com

Ph: (843) 577-2128

Fax: (843) 577-3538

P.O. Box 31397

Charleston, SC 29417-1397

ATTORNEYS FOR PLAINTIFF

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

GENEVIEVE STRATOS,

PLAINTIFF,

V.

**CHARLESTON COUNTY SHERIFF'S
OFFICE AND KARMATIC, LLC**

DEFENDANTS.

**VERIFIED
COMPLAINT**

**TEMPORARY RESTRAINING ORDER
PRELIMINARY AND PERMANENT
INJUNCTION
DECLARATORY JUDGMENT**

Plaintiff Genevieve Stratos, complaining of Defendants, alleges:

1. Plaintiff Genevieve Stratos is a citizen and resident of Charleston County and owns property which is the subject of this matter in Charleston County.
2. The property at issue is located in Charleston County on Edisto Island and is more fully described as having TMS number 025-00-00-175 with a street address of 0 Peters Point. (Hereinafter "Edisto Property").
3. Plaintiff has reviewed this Complaint, verified its contents and knows the facts to be true or believes them to be true and has filed an accompanying affidavit in support of this Complaint which is incorporated by reference. Ex. A
4. Defendant Charleston County Sheriff's Office, including the Sheriff, its employees, agents and officers, is a governmental agency or authority within the County of Charleston tasked with various responsibilities and powers, including

enforcing valid judgments which have not expired and executing on those. S.C. Code Ann. § 23-15-20(A)(2) 23-15-100.

5. Defendant Karmatic, LLC is a limited liability corporation organized and existing under the laws of South Carolina with its principal place of business in Charleston County. (Karmatic)
6. This Court has jurisdiction over the subject matter, the Edisto Property, the parties and venue is proper.
7. This lawsuit is filed pursuant to SCRCF, 65, S.C. Code Ann. § 15-53-10, *et. seq.* (Declaratory Judgments) and the equitable powers of this Court.

FACTS ALLEGATIONS SUPPORTING CAUSES OF ACTION

8. Plaintiff incorporates the above by reference.
9. This case relates to a prior lawsuit captioned *Tidelands Bank v. Southrail Enterprises, LLC, et. al.* Civil Action No. 2010-CP-10-139. (Hereinafter 2010 Lawsuit).
10. After various filings and activity in the 2010 Lawsuit, an Order was issued and on August 16, 2010 at 9:52 a.m., a judgment was entered against Plaintiff and others. (Hereinafter “2010 Judgment”). Attached as Ex. B.
11. In pertinent part, the language in the 2010 Order states:

- a. the amount due “*shall constitute the total judgment due* the Plaintiff and shall bear interest hereafter at the legal rate of interest for judgments” Ex. B, Order p. 7
 - b. “through *the date of this judgment...*” Ex. B, Order, p. 4, ¶ 23.
12. On March 9, 2020, as to the 2010 Lawsuit, this Court held that the “judgment was entered on August 16, 2010” (*See* Order Vacating Supplemental Proceedings filed March 9, 2020, ¶ 1, p. 2. Ex. C. That Order has not been appealed. Further facts and holdings related to this matter are contained therein and are incorporated by reference as if repeated fully herein. Ex. C.
 13. By December 8, 2010, there had been a sale related to partially satisfying the 2010 Judgment. Ex. D. Order for Deficiency.
 14. A deficiency calculation showing the sale proceeds had the effect of “reducing” the amount of the 2010 Judgment to \$55,297.74. Ex. D, p. 2.
 15. The Deficiency Calculation shows that the “Total judgment as of August 13, 2010” was \$345, 338.63. Ex. D, p. 2.
 16. More than ten years have passed since the entry of the 2010 Judgment.

**CAUSES OF ACTION
TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION,
RESTRAINING ORDER**

17. The above is incorporated by reference.

18. The 2010 Judgment expired August 17, 2020 as it is more than 10 years old.
19. The ability to collect on, execute or otherwise enforce the 2010 Judgment has expired and has otherwise become stale.
20. Despite the fact that the 2010 Judgment has expired, is no longer enforceable or otherwise of no force and effect, Defendants continue to take affirmative action to collect on the stale 2010 Judgment.
21. Karmatic and its representatives, including Edward Merritt Farmer, Jr. Esq. continue to assert the expired judgment's viability and seek to have the Charleston County Sheriff's Office execute on the 2010 Judgment.
22. In response to Karmatic's repeated requests, on August 27, the Charleston County Sheriff's office created a Notice of Levy and Sheriff's Sale Notice and have otherwise taken steps to enforce the stale judgment. Attached Affidavit Ex. A, Ex. 3 thereto.
23. On information and belief, the Charleston County Sheriff's Office will begin publishing property owned by Plaintiff for sale to satisfy the 2010 Judgment and sell it on October 5, 2020 at 11:00 a.m. Ex. A, Ex. 3 thereto.
24. Plaintiff has requested that the Charleston County Sheriff's Office cease collection activities because the 2010 Judgment is stale and otherwise no longer enforceable. *See e.g.* Ex. A, Ex 7 thereto.

25. Furthermore, the Charleston County Sheriff's Office has been informed of and provided this Court's prior Order Vacating Supplemental Proceedings and been provided additional information that the Execution is defective and not in compliance with the statutory requirements. *See e.g.* Ex. A, Ex 7 thereto.
26. The Charleston County Sheriff's Office has been informed that the December 8, 2010 entry did not start a new 10-year clock or is not a "new" judgment subject to a different 10-year period of collectability or execution. *See e.g.* Ex. A, Ex 7 thereto.
27. The Charleston County Sheriff's Office has been informed that Execution is fatally defective and is not an execution as required by S.C. Code Ann. § 15-39-80 and the reasons include:
- a. The judgment is stale;
 - b. the execution was not attested to by the Clerk of Court of Charleston County as required,
 - c. the amount of the judgment is not stated,
 - d. the amount due is not stated;
 - e. the execution adds attorney's fees as part of the execution which is not authorized or stated anywhere in the December entry; and

f. the time of the docketing of the August Judgment is not stated. *See e.g.*

Ex. A, Ex 7 thereto.

28. Despite being provided this information and repeated requests to cease enforcement of the 2010 Judgment, the Charleston County Sheriff's Office seeks to and is moving forward with enforcement of the Execution and sale of the Edisto Property.
29. Further, after being sued for Aiding and Abetting Breach of Fiduciary Duty and other causes of action as set forth in the lawsuit (Ex. A, Ex. 6 thereto), Karmatic and its representative Mr. Farmer continue to press and insist that the Charleston County Sheriff's Office move forward with the action against Plaintiff and the Edisto Property.
30. This Court has already determined that as to the 2010 Judgment, that the "judgment was entered on August 16, 2010" *See* Order Vacating Supplemental Proceedings Filed March 9, 2020 Ex. C.
31. The law in South Carolina is clear that a judgment is only effective for ten years from the original date of entry thereof. S.C. Code Ann. §15-39-30.
32. Under the facts and circumstances set forth, Plaintiff has no adequate remedy at law or otherwise for the harm done and/or threatened to be done by Defendants for reasons including:

- a. The Edisto Property is unique and not replaceable;
- b. There is no other way to preserve the Edisto Property at issue until the matter has been adjudicated;
- c. There is no other way to stop the process or remedy the situation as repeated attempts to do so, including providing the Charleston County Sheriff's Office with facts and reasons set forth herein have been disregarded; and
- d. It is not equitable to allow Plaintiff's former attorney to create Defendant Karmatic, LLC to buy a judgment against his former client and then seek to execute on and collect on this judgment himself, via the LLC he created or with the aid of anyone else working with him when the very judgment was to be addressed by that attorney as part of or within the scope of his representation of Plaintiff.

33. Plaintiff will suffer irreparable harm, damage and injury by the continued actions of the Defendants which will result in the loss of the Edisto Property unless the acts and conduct of the Defendants are restrained, temporarily and permanently enjoined from attempting to collect on the stale judgment or otherwise selling the Edisto Property for the reasons set forth above.

34. Based on the above, prior court filings and entries in the 2010 Case and attachments incorporated by reference, Plaintiff can show (and has shown) that there is a likelihood of success on the merits as the 2010 Judgment is stale and the execution provided to the Charleston County Sheriff's Office is patently defective and without force in light of this Court's Order of March 9, 2020.
35. This Temporary and Permanent Restraining Order and Temporary and Permanent Injunction are necessary to preserve the *status quo* and to prevent the Defendants from continuing to attempt to sell and convert property which should not be subject to execution and/or levy, to usurp statutory requirements, to improperly extract and force Plaintiff to deliver property and/or monies to which Defendants are not entitled, to act in a manner that is illegal, fraudulent, oppressive and unfairly prejudicial to Plaintiff, and to misapply or waste the assets of Plaintiff.
36. The issuance of a Temporary and Permanent Restraining Order and Temporary and Permanent Injunction are necessary for the protection of the Plaintiff's rights during the course of this litigation, and the Plaintiff is likely to prevail on both the Complaint for Permanent Injunction and Restraining Order and the merits of the trial of this action.

37. Due to the immediate and severe financial hardship imposed by the Defendants upon the Plaintiff, Plaintiff respectfully requests this Court, within its discretion, not impose a bond in connection with the Temporary and Permanent Restraining Order and Temporary and Permanent Injunction or in the alternative set bond in the least amount possible.

**CAUSE OF ACTION
DECLARATORY JUDGMENT**

38. Plaintiff incorporates the above by reference.

39. Based on the above, the Court should declare the rights of the parties including that the Defendants have no right to pursue, collect or otherwise adversely affect Plaintiff's property, money or interest in same as to the 2010 Judgment and grant such other and further relief as is deemed just and proper.

WHEREFORE, Plaintiff prays and seeks the following equitable and other relief from the Court:

1. A temporary restraining order restraining the Defendants and their agents, servants, employees from taking steps to levy, advertise, sell or otherwise enforce the 2010 Judgment by selling the Edisto Property or any other property of Plaintiff;

2. A preliminary injunction being issued enjoining the Defendants and their agents, servants, employees from taking steps to levy, advertise, sell or otherwise enforce the 2010 Judgment by selling the Edisto Property or any other property of Plaintiff during the pendency of this action;
3. On a final hearing, permanently enjoining the Defendants and their agents, servants, employees from taking steps to levy, advertise, sell or otherwise enforce the 2010 Judgment by selling the Edisto Property or any other property of Plaintiff during the pendency of this action;
4. Plaintiff be awarded the costs, expenses and reasonable attorney's fees;
5. A declaration by the Court that the 2010 Judgment and related Orders reducing the amount of the Judgment is not enforceable against the Plaintiff; and
6. For such other and further relief as just, appropriate and equitable as the Court deems just and proper.

KAHN LAW FIRM, LLP

s/ **Justin S. Kahn**
S.C. Bar No. 65100
jskahn@kahnlawfirm.com
Ph: (843) 577-2128
Fax: (843) 577-3538
P.O. Box 31397
Charleston, SC 29417-1397

ATTORNEYS FOR PLAINTIFF

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

GENEVIEVE STRATOS,

PLAINTIFF,

V.

**CHARLESTON COUNTY SHERIFF'S
OFFICE AND KARMATIC, LLC**

DEFENDANTS.

**AFFIDAVIT
GENEVIEVE STRATOS
IN SUPPORT OF VERIFIED
COMPLAINT**

**STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)**

Personally, appeared before me Genevieve Stratos, a resident of Charleston, South Carolina, who being duly sworn, deposes and says as follows:

1. I am Genevieve Stratos, Plaintiff named in the above action. I am competent to make this affidavit and know the facts stated to be true of my own knowledge, except as to those matters stated on information and belief and as to those matters, I believe them to be true and verify them.
2. Attached to this affidavit is a prior affidavit filed with the Court on January 22, 2020 in *Karmatic, LLC v. Southrail Enterprises, LLC, et. al.* which I incorporate by reference. Ex. 1.

Ex. A

3. Attached are pictures of the Edisto Property showing some of its unique qualities and in the images is my daughter who enjoys going to and visiting the property. Ex. 2.
4. I have been contacted by the Charleston County Sheriff's Office about the Levy and impending Sheriff's Sale and plans to advertise and sell my property. Ex. 3.
5. The Edisto property is unique and irreplicable. It is a place for my daughter and I to go to spend time together outdoors and away from others. If the property is sold, money damages could not satisfy the value the property has to me and my daughter. The advertising of the property for sale would also cause additional harm and embarrassment as there is no basis to sell this property.
6. As has been stated and again reaffirmed by me, my former lawyer Michael Chase Payne, Esq. formed Karmatic, LLC. He negotiated and participated in purchasing the 2010 Judgment against me.
7. Mr. Farmer signed the execution documents with the Charleston County Sheriff's Office. A copy of part of that is attached as Ex. 4.
8. Mr. Farmer claims to have bought Karmatic from Mr. Payne. He stated "Mr. Payne then immediately sold Karmatic, LLC to me, E. Merritt

Farmer, Jr.” *See* Plaintiff’s Return to Defendant’s Motion for Reconsideration, To Vacate and/or Stay Order, Dismissal, and Alternate Relief filed Feb. 24, 2020, p. 2. Ex. 5

9. Mr. Payne was present at the hearing before this Court involving the vacating of the supplemental proceedings on February 23, 2020.
10. Before and after the Court ordered that the supplemental proceedings be vacated, I believe that Mr. Farmer and Mr. Payne have been working together to try to enforce the 2010 Judgment against me.
11. In part, this is because the agent for service of process for Karmatic, LLC was initially listed as Mr. Farmer. Additionally, the initial address for Karmatic, LLC’s office was the same address as Mr. Farmer’s office.
12. Additional factual details showing that Mr. Payne, his law firm, Karmatic, LLC and Mr. Farmer have been working together to negotiate, purchase and pursue the 2010 Judgment against me is set forth in the lawsuit filed against them which is attached as Ex. 6 to this affidavit and incorporated herein.
13. After serving the lawsuit against Mr. Payne and Mr. Farmer, I understand that the Charleston County Sheriff’s Office has continued to receive

communications from Mr. Farmer to pursue the execution and collection of the 2010 Judgment against me.

14. I have attempted through my counsel to explain to the Charleston County Sheriff's office that the 2010 Judgment is no longer enforceable and to stop the collection activity. *See Ex. 7 Email Dated August 20, 2020.*

15. Despite this, Mr. Farmer and Karmatic continue to push for the sale to go forward and the Charleston County Sheriff's Office is moving forward.

16. The sale of this unique property would cause me irreparable harm in part because it is not replaceable, the enjoyment my daughter and I get from visiting the property cannot be substituted with money and the peaceful time we enjoy there cannot be sufficiently replaced with money.

17. Further the deponent sayeth not.

Witness my hand and seal this 28th day of August 2020.


Genevieve Stratos

SWORN to before me
this 28th day of August 2020.



Notary Public for South Carolina
My Commission Expires: 11/4/2026

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**IN THE COURT OF COMMON PLEAS
CASE NO. 2010-CP-10-00139**

Karmatic, LLC,

Plaintiff,

v.

**Southrail Enterprises, LLC,
Valmar Nunes,
Genevieve Stratos, and
Martin Properties, LLC**

Defendants.

**AFFIDAVIT OF
GENEVIEVE STRATOS**

**State of South Carolina)
County of Charleston)**

Personally, appeared before me Genevieve Stratos, a resident of Charleston,
South Carolina, who being duly sworn, deposes and says as follows:

1. I am Genevieve Stratos, a defendant named in the above action. I am competent to make this affidavit and know the facts stated to be true of my own knowledge, except as to those matters stated on information and belief and as to those matters, I believe them to be true.
2. On or about August 16, 2010, a judgment was entered against me and others for about \$55,000.00 in civil action number 2010-CP-10-00139.
3. In 2011 a separate foreclosure action was commenced against me and my former husband for property and a home we owned together.

4. In 2012, another judgment was entered against me related to the home and property that was owned by me and my former husband.
5. In 2013, my former husband and I hired M. Chase Payne, Esq. and Payne Law Firm, LLC (Payne) to represent and assist us with the foreclosure action and short sale of our property and home. Payne agreed to and did represent me and my former husband in that matter.
6. As part of the representation, a paralegal in Payne's office, Kimberly Miller was provided a limited power of attorney to sign on my behalf and was otherwise involved with and performed work related to that representation.
7. In 2016, a lawsuit with civil action number 2016-CP-10-6477 was filed against M. Chase Payne and Payne Law Firm, LLC alleging among other things that as an attorney, he failed to address a judgment and otherwise failed to act properly related to his representation and sale of my home and property. Payne generally denied the allegations. The parties resolved their differences and an agreement to that effect was signed by M. Chase Payne on November 4, 2019.
8. On information and belief, that same day, on November 4, 2019, unknown to me, M. Chase Payne signed papers as a member of Karmatic, LLC, the plaintiff in this matter, to purchase the judgment in this matter. **Ex. A Non-**

Recourse Assignment of Judgment where M. Chase Payne's signature appears on page 3 under Assignee as Member of Karmatic, LLC.

9. Further, Kim Miller, the same paralegal involved in the representation of me and my former husband as discussed herein aided Karmatic, LLC and M. Chase Payne by witnessing and notarizing M. Chase Payne's signature on papers in which Karmatic, LLC was assigned the judgment at issue in this matter. **Ex. A** page 3.
10. When M. Chase Payne represented me and my former husband in the foreclosure and short sale matter, Kim Miller was working for him as a paralegal.
11. In the litigation between myself and Payne, in the discovery responses, Payne stated that Kim Miller would testify about the work she performed while Payne represented me, including the allegations in the Complaint and the defenses to be asserted by Payne.
12. On information and belief, based on the attached documents and unknown to me at the time, on October 28, 2019, M. Chase Payne formed Karmatic, LLC. **Ex. B** Articles of Organization of Karmatic, LLC filed with the South Carolina Secretary of State's Office. This was eight days before M. Chase Payne signed the agreement resolving the litigation filed by me against

Payne. As can be seen on page 4 of **Ex. B**, M. Chase Payne is listed as the sole member of Karmatic, LLC.

13. At no time did M. Chase Payne disclose to me or request my consent as his former client to seek to collect on any judgment against me, including the one asserted here. Further, I have not consented to such action.

14. The first time I learned that M. Chase Payne or Karmatic, LLC was taking action against me was when I was served with papers on the evening of January 16, 2020. The papers that were served on me are attached as **Ex. C** and consist of the following:

- a. Rule to Show Cause in Supplementary Proceedings and Order of Reference filed Jan. 14, 2020;
- b. Notice of Motion and Motion for Supplementary Proceedings and Order of Reference filed January 9, 2020 with attachments including Execution Against Property dated and filed Nov. 22, 2019 and Return of Execution by Charleston County Sheriff's Office dated Dec. 5, 2019;
- c. Order substituting Plaintiff filed Nov. 18, 2019; and
- d. Motion to Substitute Plaintiff filed Nov. 15, 2019

15. **Ex. C** consists of papers that were filed with the Court at the times stated and were not provided to me contemporaneously, by the same means and

method as provided to the Court or at the same time by U.S. Mail or otherwise.

16. Because the papers were not served on me at the time, I was deprived of notice and the opportunity to be heard by the Court concerning the various motions filed, including the Notice and Motion for Supplementary Proceedings and Order of Reference. Had I had an opportunity to be heard, I would have been able to point out to the Court that it would not be proper to issue an order because Karmatic, LLC failed to comply with S.C. Code Ann. § 15-39-310 for various reasons, including that the motion was not supported by proof required by the law, including by affidavit. Further, I could have pointed out that an attorney that represented me should not be able to form an LLC for the purposes of collecting a judgment against me as a former client, especially as it related to his representation. The action is improper for many reasons and did not warrant the issuance of an order of the Court, including a Rule to Show Cause in Supplementary Proceedings and Order of Reference.

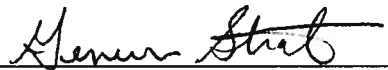
17. Further, the Order requires me to appear on a day that has long been scheduled for me to be out of state related to work and it would be extremely inconvenient, burdensome and expensive for me to miss that trip and this could have been pointed out to the Court as well had the proposed

Stratos Affidavit

order been provided to me at the same time and by the same method that it was provided to the Court or had it been otherwise timely provided to me.

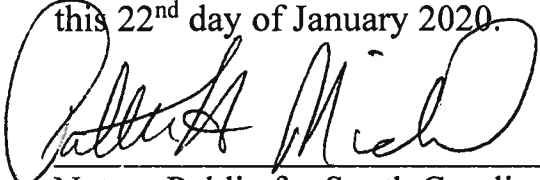
18. Further the deponent sayeth not.

Witness my hand and seal this 22nd day of January 2020.



Genevieve Stratos

SWORN to before me
this 22nd day of January 2020.



Notary Public for South Carolina
My Commission Expires: 1-21-21

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Tidelands Bank,

Plaintiff,

v.

Southrail Enterprises, LLC, Valmar
Nunes; Genevieve Stratos; Martin
Properties, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

County C/A No.: 2010-CP-10-00139

**NON-RECOURSE ASSIGNMENT
OF JUDGMENT**

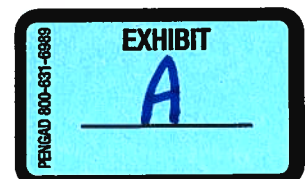
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JULIE J. JAMES
CLERK COURT

FILED

THIS NON-RECOURSE ASSIGNMENT OF JUDGMENTS (this "Assignment") is made and entered into effective as of the 4th day of November 2019 by and between **United Community Bank, Successor by Merger to Tidelands Bank** (the "Assignor") and **Karmatic, LLC** (the "Assignee").

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the payment of ONE THOUSAND DOLLARS and other good and valuable consideration from **Assignee** to **Assignor**, and other provisions stated herein, the receipt and adequacy of which consideration are acknowledged, **Assignor** does hereby sell, transfer, assign, convey and deliver unto **Assignee**, all right, title and interest of **Assignor** in, to and under the Judgment attached hereto as Exhibit "A", and made a part hereof (said documents and rights being collectively referred to herein as the "**Judgment**").

TOGETHER WITH AND INCLUDING all benefits, rights, interests, privileges, remedies, claims, actions and causes of action, set forth in or arising under the Judgment, including, without limitation the right to receive, collect and enforce the payment of the



indebtedness evidenced and secured by the Judgment, and all agreed charges from time to time owing thereunder.

TO HAVE AND TO HOLD unto **Assignee**, its successors and assigns forever.

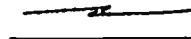
IN WITNESS WHEREOF, **Assignor** and **Assignee** have caused this instrument to be executed by their duly authorized officers, as of the day and year first above written.

SIGNED, SEALED and DELIVERED
in the presence of:

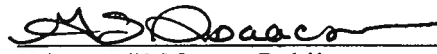


Witness #1

Assignor:

 (Seal)

By: Anthony R. Young
Title: Senior Vice President



Witness #2/Notary Public

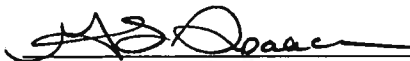
State of South Carolina

Acknowledgment

County of Charleston

I, G.S. Isaacson, a notary public for South Carolina, do hereby certify that Anthony R. Young, on behalf of Assignor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 4th day of November, 2019.

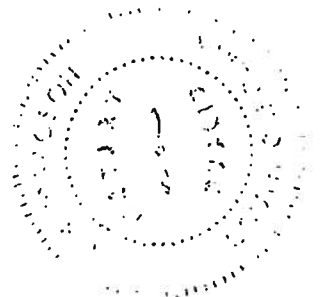


Notary Public

(Notarial Seal)

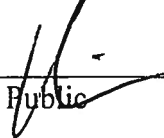
My Commission Expires:

My Commission Expires September 16, 2025



SIGNED, SEALED and DELIVERED
in the presence of:

Witness #1 

Witness #2/Notary Public 

Assignee:

 (Seal)

By: M. Chase Payne
Title: Member of Karmatic, LLC

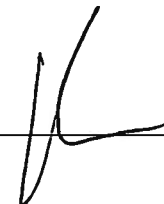
State of South Carolina

Acknowledgment

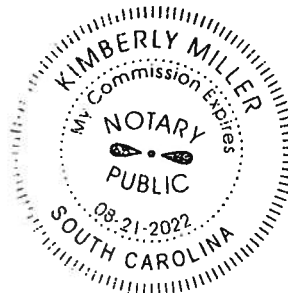
County of Berkeley

I, Kim Miller, a notary public for South Carolina, do hereby certify that
M. Chase Payne, on behalf of Assignee, personally appeared before me this day and
acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 4th day of November, 2019.

Notary Public 

My Commission Expires:



(Notarial Seal)

EXHIBIT "A"
THE JUDGMENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
TIDELANDS BANK,)
)
Plaintiff,)
)
vs.)
)
SOUTHRAIL ENTERPRISES, LLC.;)
)
VALMAR NUNES; GENEVIEVE)
)
STRATOS; and MARTIN)
)
PROPERTIES, LLC;)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2010-CP-10-139

**ORDER FOR DEFICIENCY
JUDGMENT**

FILED
2010 DEC -8 PM 1:35
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER came before the undersigned upon referral for foreclosure and the Plaintiff reserving its right to a deficiency judgment; and

IT APPEARING TO THE COURT that upon consideration of the Master's Order of Sale and Disbursement in the above case, and upon the Order of Foreclosure entered August 13, 2010;

IT IS ORDERED that the Plaintiff have judgment against the Defendant, Southrail Enterprises, LLC., Valmar Nunes, and Genevieve Stratos, in the sum of \$55,297.74, plus interest accruing thereon from and after November 18, 2010, at the legal rate of interest for judgments.

AND IT IS SO ORDERED.


Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina

6 day of December, 2010

ELECTRONICALLY FILED - 2010 Jan 22 11:35 AM - CHARLESTON - COMMON PLEAS - CASE#2010CP1000139
ELECTRONICALLY FILED - 2010 Aug 28 3:45 PM - CHARLESTON - COMMON PLEAS - CASE#2010CP1003825

DEFICIENCY CALCULATION

Total debt due Plaintiff as of August 3, 2010 (including accrued interest on outstanding loan)	\$345,024.13
+ Additional accrued interest @ 6.50% per annum (\$31.45 per diem) on outstanding loan principal (from August 3, 2010 to August 13, 2010)	<u>\$314.50</u>
= Total judgment amount as of August 13, 2010)	\$345,338.63
+ Accrued Interest on total judgment amount @ 7.25% from August 13, 2010 to November 18, 2010 (97 days) (i.e., date of 2 nd sale)	<u>\$6,653.68</u>
= Total judgment amount as of November 18, 2010	<u><u>\$351,992.31</u></u>
= Total judgment amount as of November 18, 2010	\$351,992.31
- Credit for Plaintiff's Bid Amount	\$299,916.30
+ Additional costs paid by Plaintiff to MIE	<u>\$2,500.00</u>
+ Advertising costs	<u>\$721.73</u>
= Deficiency judgment as of November 18, 2010	<u><u>\$55,297.74</u></u>

¹Interest accruing on deficiency judgment amount at legal rate of interest.

Jan 17 2020
REFERENCE ID: 458506

STATE OF SOUTH CAROLINA
SECRETARY OF STATE


SECRETARY OF STATE OF SOUTH CAROLINA

ARTICLES OF ORGANIZATION
Limited Liability Company – Domestic

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to S.C. Code of Laws Section 33-44-202 and Section 33-44-203.

1. The name of the limited liability company (Company ending must be included in name*)

Karmatic, LLC

*Note: The name of the limited liability company must contain one of the following endings: "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", "LC", or "Ltd. Co."

2. The address of the initial designated office of the limited liability company in South Carolina is
361 N. Shelmore Blvd.

(Street Address)

Mt. Pleasant, South Carolina 29464

(City, State, Zip Code)

3. The initial agent for service of process is

Edward M. Farmer

(Name)

(Signature of Agent)

And the street address in South Carolina for this initial agent for service of process is:

361 N. Shelmore Blvd.

(Street Address)

Mt. Pleasant

South Carolina 29464

(City)

(Zip Code)

4. List the name and address of each organizer. Only one organizer is required, but you may have more than one.

(a)

M. Chase Payne

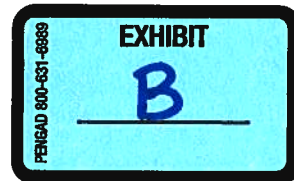
(Name)

280 Seven Farms Drive, Suite A

(Street Address)

Daniel Island, South Carolina 29492

(City, State, Zip Code)



CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Jan 17 2020

REFERENCE ID: 458506


SECRETARY OF STATE OF SOUTH CAROLINA

Karmatic, LLC

Name of Limited Liability Company

(b)

(Name)

(Street Address)

(City, State, Zip Code)

5. ☐ Check this box only if the company is to be a term company. If the company is a term company, provide the term specified. _____
6. ☐ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, include the name and address of each initial manager.

(a)

(Name)

(Street Address)

(City, State, Zip Code)

(b)

(Name)

(Street Address)

(City, State, Zip Code)

7. ☐ Check this box only if one or more of the members of the company are to be liable for its debts and obligations under Section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members. This provision is optional and does not have to be completed.

8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time _____.

ELECTRONICALLY FILED - 2020 Jan 22 11:35 AM - CHARLESTON - COMMON PLEAS - CASE#2010CP1000139
ELECTRONICALLY FILED - 2020 Aug 28 3:45 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003825

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Jan 17 2020

REFERENCE ID: 458506


SECRETARY OF STATE OF SOUTH CAROLINA

Karmatic, LLC

Name of Limited Liability Company

9. Any other provisions not consistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement may be included on a separate attachment. Please make reference to this section if you include a separate attachment.

10. Each organizer listed under number 4 must sign.

Signed as Filer: Elizabeth Wadsworth

Signature of Organizer

Date: 10/28/2019

Signature of Organizer

Date: _____

ELECTRONICALLY FILED - 2020 Jan 22 11:35 AM - CHARLESTON - COMMON PLEAS - CASE#2010CP1000139
ELECTRONICALLY FILED - 2020 Aug 28 3:45 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003825

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Business Name:

Karmatic, LLC

Jan 17 2020

REFERENCE ID: 458506


SECRETARY OF STATE OF SOUTH CAROLINA

Signature Page for a Secretary of State Business Filing

completed, scanned, and attached to any business filing where one of the following is true:

- The filing party signs the digital form on behalf of official signee.
- An attorney's signature is required. (Articles of Incorporation for Corporation and Benefit Corporation)

Official Signatures

(Officer, Incorporator, Director, Agent, Partner, etc)

Required for forms where the signee is not present upon online submission and a filing party is providing a digital signing on their behalf. If the provided space is not enough, please attach multiple pages.

Name

Signature

Date

Title / Position

Name

Signature

Date

Title / Position

Name

Signature

Date

Title / Position

Name

Signature

Date

Title / Position

Name

Signature

Date

Title / Position

Scan and Upload this document to the Business Filing System during the filing process.
File must be PDF format.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

Case No. 2010-CP-10-00139

Karmatic, LLC,

Plaintiff,

vs.

Southrail Enterprises, LLC; Valmar Nunes;
Genevieve Stratos; Martin Properties, LLC

Defendants.

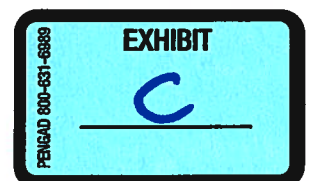
**RULE TO SHOW CAUSE
IN SUPPLEMENTARY PROCEEDINGS
AND
ORDER OF REFERENCE**

Judgment having been rendered, an execution issued, and a *nulla bona* return made to said execution, the Plaintiff having moved for an examination of Defendant Genevieve Stratos, under oath in Supplementary Proceedings, pursuant to the provisions of South Carolina Code Ann. §15-39-310, *et. seq.*; It is therefore,

ORDERED that Defendant, Genevieve Stratos, DOES APPEAR before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, South Carolina, **100 Broad Street, Courtroom 2-A, Charleston, South Carolina**, on the **7th day of February, 2020, at 10:00 A.M.** to answer under oath concerning her assets, and TO SHOW CAUSE why her property should not be applied toward satisfaction of the Judgment set out in the Plaintiff's Petition; and TO SHOW CAUSE why a Receiver of such property should not be appointed, pursuant to the provisions of South Carolina Code Ann. § 15-39-430.

IT IS FURTHER ORDERED that, pursuant to South Carolina Code Ann. §§ 14-11-90 and 15-30-390, this matter is referred to the Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County to entertain and rule upon all motions necessary to dispose of this matter, to include, but not be limited to, motions to appoint a receiver, motion to continue the matter, motions to sell all or certain property of judgment debtor in satisfaction of the Petitioner's debt, motions to dismiss, and having authority to enter a Final Order, with any appeal directly to the South Carolina Supreme Court.

IT IS FURTHER ORDERED that this Rule to Show Cause may be served on the Defendant by means of a private process server.



IT IS FURTHER ORDERED that in the meantime, the Defendants are restrained from selling, removing, hypothecating, granting a security interest in, or in any way alienating, during the pendency of this action, any of her personal property, real property, receivables on sales, or banking accounts, wherever situated, except in the usual course of trade.

YOU ARE FURTHER ORDERED TO DELIVER TO PLAINTIFF'S ATTORNEY ON OR BEFORE JANUARY 31, 2020 the following:

1. All monthly bank statements for all bank accounts [checking, savings, financial accounts, certificates of deposit, etc.] of Defendant from January 1, 2017, to the present.
2. All pay stubs of Defendant from January 1, 2017, to the present.
3. All stock certificates held by Defendant.
4. All licenses and franchise agreements in which Defendant has an interest.
5. Copies of Defendant' federal and state tax returns from 2016 to the present, including all schedules.
6. Copies of Defendant federal and state tax returns for 2018, if filed, or Request for Extension to file if not yet filed.
7. Copies of Defendant W-2 forms and all 1099 forms for 2017, 2018 and 2019.
8. All mortgages, deeds, and appraisals for all real estate that Defendant owns or has owned in whole or in part since 2015.
9. For each property that Defendant owns or has owned since 2015, provide any documents that show whether the properties have been listed for sale in the last 24 months, and if so, the listing price for each property.
10. The title and a statement of the most recent balance for any loans for all real property, automobiles, trucks, trailers, boats, ATV's, and other vehicles or accessories that Defendant owns.
11. Copies of any contract or settlement entitling Defendant to a payment of money.
12. All documents concerning any distribution from any LLC or corporation in which Defendant has an interest.
13. Copies of all operating agreements, tax returns or documents concerning distributions for any LLC in which either of the Defendant were a member or had an interest in since January 1, 2017.
14. All partnership agreements to which either of the Defendant has been a party since January 1, 2015.
15. Copies of all stock certificates held by Defendant.
16. An inventory of personal property valued at \$1,000 or more that Defendant owns.
17. All documents evidencing the transfer of property valued at over \$5,000.00, whether real or personal in nature.
18. All documents concerning any asset available to satisfy the Judgment.

IF YOU FAIL TO APPEAR AS ORDERED, YOU MAY BE HELD IN CONTEMPT OF COURT WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

Presiding Judge

January ____, 2020
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Karmatic LLC VS Southrail Enterprises Llc Etc , defendant, et al
Case Number: 2010CP1000139
Type: Order/Supplemental Proceedings Order

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2020-01-13 16:18:17 page 4 of 4

ELECTRONICALLY FILED - 2020 Jan 22 11:35 AM - CHARLESTON - COMMON PLEAS - CASE#2010CP1000139
ELECTRONICALLY FILED 2020 AUG 28 4:34:55 PM CHARLESTON - COMMON PLEAS - CASE#2010CP1000139

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-10-00139

Karmatic, LLC,

Plaintiff,

vs.

Southrail Enterprises, LLC; Valmar Nunes;
Genevieve Stratos; and Martin Properties,
LLC

Defendants.

**NOTICE OF MOTION AND MOTION
FOR SUPPLEMENTARY PROCEEDINGS
AND
ORDER OF REFERENCE**

The Plaintiff, Karmatic, LLC, (hereinafter designated as "Plaintiff") alleges:

1. The Plaintiff has duly recovered Judgment against the Defendant, Genevieve Stratos (hereinafter designated as "Defendant") as is evidenced by the Judgment Rolls of this Honorable Court, and said judgment remains unpaid. An execution against the property of the Defendant was returned by the Sheriff unsatisfied and marked *Nulla-Bona*, a copy of which is attached hereto as Exhibit "A".

2. The Plaintiff is informed and believes that the Defendant may have property and assets which they unjustly refuse to apply toward the satisfaction of the said Judgment.

3. The Plaintiff is of the opinion that it is entitled, therefore, to examine the Defendant under oath concerning any assets which they may own, in order to locate and ascertain the financial assets of the Defendants for the purpose of satisfying the Judgment obtained against the said Defendants.

4. The Plaintiff is of the opinion that it is entitled to have the Defendant required by Subpoena to produce for inspection in advance of the aforesaid examination any and all books,

ELECTRONICALLY FILED - 2020 Jan 22 11:35 AM - CHARLESTON - COMMON PLEAS - CASE#2010CP1000139
ELECTRONICALLY FILED - 2020 Aug 28 3:45 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003035

records, and documents concerning the financial status of the Defendant.

WHEREFORE, Plaintiff prays as follows:

1. For an Order requiring the Defendant, Genevieve Stratos to appear before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, at the time and place to be designated in said Order, to answer under oath questions propounded by Plaintiff;
2. For a Subpoena directing the aforesaid Defendant, Genevieve Stratos to produce for inspection in advance of the aforesaid examination all books, records and documents relating to the financial status of the Defendant; and
3. For such other and further relief as this Honorable Court may deem just and proper.

/S/ Edward M. Farmer Jr.
Edward M. Farmer, Jr., Esq. (101620)
Farmer Law Firm, LLC
361 N. Shelmore Blvd.,
Mount Pleasant, SC 29464
Phone: 843-385-3626
mfarmer@thefarmerlawfirm.com
Attorneys for Plaintiff

January 7, 2019
Mt. Pleasant, South Carolina

19-10069

EXECUTION AGAINST PROPERTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
 _____)

CASE NO. 2010-CP-10-00139

TO THE SHERIFF OF CHARLESTON COUNTY:

Judgment was rendered on the 6th day of December, 2010, in Case Number 2010-CP-10-00139 in the Charleston County Court of Common Pleas in favor of the Plaintiff Karmatic, LLC as successor in interest to United Community Bank, Successor by Merger to Tidelands Bank against Defendant Genevieve Stratos in the amount of Fifty-Five Thousand Two Hundred Ninety-Seven and 24/100 Dollars (\$55,297.74), as appears on the Judgment Roll, filed in the Office of the Clerk of Court of Charleston County Common Pleas.

AND WHEREAS, the said judgment was docketed in your County on the 8th day of December, 2010, in the sum of Fifty-Five Thousand Two Hundred Ninety-Seven and 24/100 Dollars (\$55,297.74), with interest and attorney's fees and costs until paid in full, is now actually due thereon.

THEREFORE, WE COMMAND YOU to satisfy the said judgment out of the personal property of the said judgment debtor, Genevieve Stratos, within your Charleston County, or if sufficient personal property cannot be found, then out of the real property in your County belonging to Genevieve Stratos on the date when the said judgment was so docketed, or at any time thereafter, in whose hands whomever the same may be, and duly return this execution according to law to the Clerk of Court's Office for Charleston County Court of Common Pleas.

For Karmatic, LLC
 Against Genevieve Stratos

Dated this 22nd day of
 November, 2019

/s/ Edward M. Farmer, Jr.
 Edward M. Farmer, Jr. (101620)
 Farmer Law Firm, LLC
 361 N. Shelmore Blvd
 Mount Pleasant, SC 29464
 Attorney for the Plaintiff

 Clerk of Court
 Dated this ____ day of November, 2019.

Common Pleas

Case Caption: United Community Bank Successor , plaintiff, et al VS Southrail
Enterprises Llc Etc , defendant, et al
Case Number: 2010CP1000139
Type: Execution/Issued

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of
Court, by AMR

Electronically signed on 2019-11-25 10:21:36 page 2 of 2

Office of the Sheriff



County of Charleston

Sheriff J. Al Cannon, Jr.

Service Number:
S19010069

Sheriff Number:

Attorney or Party without Attorney
FARMER LAW FIRM
ATT: KARMATIC LLC

Telephone Number:
(843) 385-3626

Court Use Only

Name and Address of Court
Charleston County
Court of Common Pleas
100 Broad St. Charleston, SC 29401

Hearing Date and Time

Case Number
2010CP1000139

Plaintiff: KARMATIC LLC
Defendant: GENEVIEVE STRATOS

Return of Execution

I, J. Al Cannon, Jr., ESQ., Sheriff of Charleston County, South Carolina; do hereby certify that I received the annexed on the 5th day of December, 2019 the following:

Judgement

An investigation was completed on the 5th day of December, 2019 within the County of Charleston, State of South Carolina. The judgement above is NULLA BONA PER ATTORNEY'S REQUEST

Attest of Certified True Copy

Carlyle J. Spivey
Notary Public State of South Carolina
My Commission Expires: 1-26-2026

I am a South Carolina Sheriff and I certify that the foregoing is true and correct.
J. Al Cannon, Jr., ESQ., Sheriff of Charleston County State of South Carolina
Date: 12/05/2019

By Deputy

Bethy Ann

Administrative Office

3691 Leeds Avenue
N. Charleston, SC 29405
~ Sheriff ~
Voice (843) 554-2230
Fax (843) 554-2243

Law Enforcement Division

3691 Leeds Avenue
N. Charleston, SC 29405
~ Patrol ~
Voice (843) 202-1700
Fax (843) 554-2234

Al Cannon Detention Center

3841 Leeds Avenue
N. Charleston, SC 29405
Voice (843) 529-7200
Fax (843) 529-7400

Judicial Center

100 Broad Street, Suite 301
Charleston, SC 29401
Voice (843) 958-2100
Fax (843) 958-2120

J. Al Cannon, Jr., Esq.
 Sheriff, Charleston County



Special Operations Department
 100 Broad Street
 Charleston, SC 29401-2206

Kaimatic, LLC
 Plaintiff

2010-CP-10-00179
 Case Number

-VS-

Genevieve Stratus
 Defendant

Pursuant to Section 23-19-10, South Carolina Code of Laws 1976, as amended, the filing fee for a Writ of Execution is \$25.00. All additional expenses incurred as a necessary part of the service including, but not limited to, towing fees, storage fees and publication fees is the responsibility of the Plaintiff or their representative. These fees are required to be deposited with the Sheriff's Office prior to the levy. In the event that the actual lawfully incurred costs exceed the deposited amount, the Plaintiff or their representative will be responsible for the balance. Should the amount be less than the deposited amount or should the levy not be accomplished then a refund will be forwarded accordingly.

The lawful responsibility of the Sheriff's Office is, by the seizure of property, to attempt to satisfy your outstanding execution against the defendant. The Sheriff's Office can only seize taxable, titled assets, i.e., vehicles, boats, planes, and real estate. Defendant's property must be in the exact name as it appears on your Judgment/Execution. Unless specifically ordered by a judge the Sheriff's Office does not levy/seize on office equipment and home furnishings simply due to the difficulty of proving ownership with these type items. The Sheriff's Office is mandated by State Statute to first begin this process by searching for personal property, i.e., vehicles, boats, etc. If this should result in a negative outcome, then we may proceed to real property, i.e., land, homes, etc. You must understand, as the plaintiff, that should the Sheriff's Office be unable to locate any property titled to the defendant or should the personal property have a lack of equity then there is nothing further that the Sheriff's Office can legally do. Should this be your case, your judgment/execution is valid for ten (10) years. We would suggest that you continue to check for property. Should property be located at a later date, you can return the execution to our office and we will be happy to attempt collection at no additional cost.

Total fees that the Plaintiff has incurred due to this execution will be automatically added to your case. Interest will also be added at the correct rate according to statute. According to Section 23-19-10, South Carolina Code of Laws 1976, as amended, the Sheriff's Office is also entitled to a commission on all monies that he collects. This is calculated at the rate of 7.5% on the first five hundred dollars (\$500.00) and 3% on the balance above that amount. This commission will only be charged if the execution is collected. It will in no way be charged to you, the plaintiff, it will be added just prior to the collection of the case and will be completely incurred by the defendant.

If our office can assist you in any way or should you need further clarification please feel free to contact the Judgments/Executions Legal Assistant at 958-2110.

I hereby agree to assume all costs lawfully incurred in connection with the service of this execution.

E. M. Farmer, Jr.
 Signature
Edward M. Farmer, Jr.
 (Print Name)
843-385-3626
 (Daytime Phone Number)
12-2-12
 Date

EXECUTION AGAINST PROPERTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)

CASE NO. 2010-CP-10-00139

TO THE SHERIFF OF CHARLESTON COUNTY:

Judgment was rendered on the 6th day of December, 2010, in Case Number 2010-CP-10-00139 in the Charleston County Court of Common Pleas in favor of the Plaintiffs Karmatic, LLC as successor in interest to United Community Bank, Successor by Merger to Tidelands Bank against Defendant Genevieve Stratos in the amount of Fifty-Five Thousand Two Hundred Ninety-Seven and 24/100 Dollars (\$55,297.74), as appears on the Judgment Roll, filed in the Office of the Clerk of Court of Charleston County Common Pleas.

AND WHEREAS, the said judgment was docketed in your County on the 8th day of December, 2010, in the sum of Fifty-Five Thousand Two Hundred Ninety-Seven and 24/100 Dollars (\$55,297.74), with interest and attorney's fees and costs until paid in full, is now actually due thereon.

THEREFORE, WE COMMAND YOU to satisfy the said judgment out of the personal property of the said judgment debtor, Genevieve Stratos, within your Charleston County, or if sufficient personal property cannot be found, then out of the real property in your County belonging to Genevieve Stratos on the date when the said judgment was so docketed, or at any time thereafter, in whose hands whomsoever the same may be, and duly return this execution according to law to the Clerk of Court's Office for Charleston County Court of Common Pleas.

For Karmatic, LLC
 Against Genevieve Stratos

Dated this 22nd day of
 November, 2019

/S/ Edward M. Farmer, Jr.
 Edward M. Farmer, Jr. (101620)
 Farmer Law Firm, LLC
 361 N. Shelmore Blvd
 Mount Pleasant, SC 29464
 Attorney for the Plaintiff

Clerk of Court
 Dated this ____ day of November, 2019.



Common Pleas

Case Caption: United Community Bank Successor , plaintiff, et al VS Southrail Enterprises Llc Etc , defendant, et al
Case Number: 2010CP1000139
Type: Execution/Issued

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of Court, by AMR

Electronically signed on 2019-11-25 10:21:36 page 2 of 2

ELECTRONICALLY FILED - 2020 Jan 22 11:35 AM - CHARLESTON - COMMON PLEAS - CASE#2010CP1000139
ELECTRONICALLY FILED - 2020 Aug 28 3:45 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003825
ELECTRONICALLY FILED - 2020 Nov 22 8:38 AM - CHARLESTON - COMMON PLEAS - CASE#2010CP1000139

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON

Tidelands Bank

Plaintiff,
 v.

Southrail Enterprises, LLC,
 Valmar Nunes, Genevieve Stratos;
 Martin Properties, LLC,
 Defendant.

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

**ORDER
 SUBSTITUTING PLAINTIFF**

CASE NO. 2010-CP-10-00139

This matter is before me upon motion of Edward M. Farmer, Jr., attorney for Karmatic, LLC, to be substituted as Plaintiff for United Community Bank, Successor by Merger to Tidelands Bank. Attorney for United Community Bank, Successor by Merger to Tidelands Bank has consented to this substitution of Plaintiff.

It is therefore Ordered:

That Karmatic, LLC, is hereby substituted as Plaintiff in this matter for United Community Bank, Successor by Merger to Tidelands Bank.

AND IT IS SO ORDERED this _____ day of December 2019 at Charleston, South Carolina.

 Presiding Ninth Circuit Judge

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NO: 2010-CP-10 -00139

Tidelands Bank,

Plaintiff(s),

v.

Southrail Enterprises, LLC, Valmar Nunes,
Genevieve Stratos; Martin Properties, LLC

Defendant(s).

MOTION TO SUBSTITUTE PLAINTIFF

NOW COMES THE SUCCESSOR IN INTEREST to United Community Bank, as Successor by Merger to Tidelands Bank, who will move before this Honorable Court by and through his undersigned counsel, within ten (10) days or as soon as this matter is scheduled for hearing for the following relief:

An Order to substitute Karmatic, LLC as Plaintiff pursuant to S.C.R.C.P. 25 which states, "In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." This motion is based on that Non-Recourse Assignment of Judgment filed in this matter on November 7, 2019. Karmatic, LLC is the current owner of all rights, claims and interest under this judgment.

I SO MOVE

/s/ Edward M. Farmer, Jr.

Edward M. Farmer, Jr., Esq. (101620)

Farmer Law Firm, LLC

361 N. Shelmore Blvd.,

Mount Pleasant, SC 29464

Phone: 843-385-3626

mfarmer@thefarmerlawfirm.com

Attorney for Karmatic, LLC

November 15, 2019
Mount Pleasant, South Carolina

We Hereby Consent:

/S/ J. Ronald Jones, Jr. signed with express permission

Ronald Jones, Jr. (Bar No. 066091)

Nexsen Pruet, LLC

205 King St, Suite 400

Charleston, SC 29401

Post Office Box 486 (29402)

T: 843.720.1740

F: 843.414.8220

Attorney for United Community Bank

As Successor by Merger to Tideland Bank



Charleston Common Pleas

Case Caption: Tidelands Bank VS Southrail Enterprises Llc Etc, defendant, et al
Case Number: 2010CP1000139
Type: Order/Substitution of Parties

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2019-11-18 11:47:51 page 2 of 2

ELECTRONICALLY FILED - 2020 Jan 22 11:35 AM - CHARLESTON - COMMON PLEAS - CASE#2010CP1000139
ELECTRONICALLY FILED - 2020 Aug 28 3:45 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003825
ELECTRONICALLY FILED - 2019 Nov 18 12:47 PM - CHARLESTON - COMMON PLEAS - CASE#2010CP1000139



Ex. 2



Office of the Sheriff



County of Charleston

Sheriff J. Al Cannon, Jr.

SHERIFF'S SALE

KARMATIC LLC

PLAINTIFF

-VS-

GENEVIEVE STRATOS

DEFENDANT

CASE NUMBER : 2010-CP-10-00139

By virtue of an Execution to me directed, in the above stated case, I will sell to the highest bidder at Public Auction, within the legal hours of sale, at 11:00 A.M. at the Charleston County Judicial Center, at 100 Broad Street, Charleston, South Carolina 29401, on Monday, the **5th day of OCTOBER A.D., 2020**, the following described property, to wit: Only the interest of the defendant in all that tract or parcel of Land, situate, lying and being in the county of Charleston South Carolina, known as and containing

025-00-00-175

0 PETERS POINT

EDISTO ISLAND SC

SUBDIVISION;-EDISTO ISLAND

LEGAL DESCRIPTION: LTD

DEED BOOK: 0.0000

PLAT BOOK: L-16 P-0355

to satisfy the aforesaid Execution and costs.

TERMS- CASH/CASHIER'S CHECK/MONEY ORDER: THIS PROPERTY WILL BE ADVERTISED IN THE CHARLESTON POST AND COURIER ON **September 7, September 14, September 21, 2020** AS PRESCRIBED BY SOUTH CAROLINA LAW.

J.AL CANNON, JR., ESQ.

Ex. 3

J. AL CANNON, JR., ESQ.

Administrative Office

3691 Leeds Avenue
N. Charleston, SC 29405
~ Sheriff ~
Voice (843) 554-2230
Fax (843) 554-2243

Law Enforcement Division

3691 Leeds Avenue
N. Charleston, SC 29405
~ Patrol ~
Voice (843) 202-1700
Fax (843) 554-2234

Al Cannon Detention Center

3841 Leeds Avenue
N. Charleston, SC 29405
Voice (843) 529-7300
Fax (843) 529-7406

Judicial Center

100 Broad Street, Suite 381
Charleston, SC 29401
Voice (843) 958-2100
Fax (843) 958-2128

Office of the Sheriff



County of Charleston

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

Sheriff J. Al Cannon, Jr.

CASE NO: 2010-CP-10-00139

KARMATIC LLC

Plaintiff,

**NOTICE
OF
LEVY**

-VS-

GENEVIEVE STRATOS

Defendant,

To Defendant above named, **PLEASE TAKE NOTICE:**

Pursuant to the authority and direction of an execution to me directed in the above entitled matter issued out of the Court of Common Pleas for the County of Charleston and State of South Carolina on the 5th Day of October, 2020, I have this day, for purpose of satisfaction of said judgment levied upon as and for the property of Defendant, the property and/or premises hereinafter described and **only the interest of the defendant:**

025-00-00175

0 PETERS POINT

EDISTO ISLAND SC

SUBDIVISION: EDISTO IS

LEGAL DESCRIPTION: LOT D

DEED:

PLAT L-16 P-0355

Unless payment

of said judgment is made within five (5) days from the date of notice, I will proceed to sell the property above described for the satisfaction of said judgments and costs.

LEVIED THIS THE _____ DAY OF _____, 2020, A.D.

J. AL CANNON, JR., ESQ.

SHERIFF OF CHARLESTON COUNTY

Administrative Office

3691 Leeds Avenue
N. Charleston, SC 29405

~ Sheriff ~

Voice (843) 554-2230
Fax (843) 554-2243

Law Enforcement Division

3691 Leeds Avenue
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Judicial Center

100 Broad Street, Suite 381
Charleston, SC 29401

Voice (843) 958-2100
Fax (843) 958-2128

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



Special Operations Department
100 Broad Street
Charleston, SC 29401-2206

Karmatic, LLC
Plaintiff

2010-CP-10-00139
Case Number

-vs-

Genevieve Stratos
Defendant

Pursuant to Section 23-19-10, South Carolina Code of Laws 1976, as amended, the filing fee for a Writ of Execution is \$25.00. All additional expenses incurred as a necessary part of the service including, but not limited to, towing fees, storage fees and publication fees is the responsibility of the Plaintiff or their representative. These fees are required to be deposited with the Sheriff's Office prior to the levy. In the event that the actual lawfully incurred costs exceed the deposited amount, the Plaintiff or their representative will be responsible for the balance. Should the amount be less than the deposited amount or should the levy not be accomplished then a refund will be forwarded accordingly.

The lawful responsibility of the Sheriff's Office is, by the seizure of property, to attempt to satisfy your outstanding execution against the defendant. The Sheriff's Office can only seize taxable, titled assets, i.e., vehicles, boats, planes, and real estate. Defendant's property must be in the exact name as it appears on your Judgment/Execution. Unless specifically ordered by a judge the Sheriff's Office does not levy/seize on office equipment and home furnishings simply due to the difficulty of proving ownership with these type items. The Sheriff's Office is mandated by State Statute to first begin this process by searching for personal property, i.e., vehicles, boats, etc. If this should result in a negative outcome, then we may proceed to real property, i.e., land, homes, etc. You must understand, as the plaintiff, that should the Sheriff's Office be unable to locate any property titled to the defendant or should the personal property have a lack of equity then there is nothing further that the Sheriff's Office can legally do. Should this be your case, your judgment/execution is valid for ten (10) years. We would suggest that you continue to check for property. Should property be located at a later date, you can return the execution to our office and we will be happy to attempt collection at no additional cost.

Total fees that the Plaintiff has incurred due to this execution will be automatically added to your case. Interest will also be added at the correct rate according to statute. According to Section 23-19-10, South Carolina Code of Laws 1976, as amended, the Sheriff's Office is also entitled to a commission on all monies that he collects. This is calculated at the rate of 7.5% on the first five hundred dollars (\$500.00) and 3% on the balance above that amount. This commission will only be charged if the execution is collected. It will in no way be charged to you, the plaintiff, it will be added just prior to the collection of the case and will be completely incurred by the defendant.

If our office can assist you in any way or should you need further clarification please feel free to contact the Judgments/Executions Legal Assistant at 958-2110.

I hereby agree to assume all costs lawfully incurred in connection with the service of this execution.

Signature E. M. Farmer, Jr. Date 2/14/2020
(Print Name) Edward M. Farmer, Jr.
843-885-3626
(Daytime Phone Number)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO: 2010-CP-10-00139
	)	
KARMATIC, LLC,	)	
	)	
Plaintiffs,	)	<u>PLAINTIFF'S RETURN TO</u>
	)	<u>DEFENDANT'S MOTION FOR</u>
-vs-	)	<u>RECONSIDERATION, TO VACATE</u>
	)	<u>AND/OR STAY ORDER, DISMISSAL,</u>
Southrail Enterprises, LLC, Valmar,	)	<u>AND ALTERNATIVE RELIEF</u>
Nunes, Genevieve Stratos, and Martin	)	
Properties, LLC	)	
Defendants.	)	
	)	

TO: DEFENDANT AND HER ATTORNEY, JUSTIN KAHN:

The Plaintiff, KARMATIC, LLC, hereby presents to the Defendant, Genevieve Stratos (hereinafter referred to as “the Defendant”), its Return to Defendant’s Motion for Reconsideration, to Vacate and/or Stay Order, Dismissal, and Alternative Relief.

Background

On January 22, 2020, Mr. Kahn filed Defendant Genevieve Stratos’ Notice and Motion for Reconsideration, to Vacate and/or Stay Order, Dismissal, and Alternative Relief and Memorandum in Support (“Defendant Motion”). Defendant asserts to the court that, pursuant to *SCR*, *Rules 59(e), 60(b)(3), and such other Rules of Law*, “A lawyer cannot collect on a judgment against his former client or create an LLC to do so.” Defendant alleges that Mr. Chase Payne improperly, unethically, and in breach of his fiduciary duty as Defendant’s former attorney did institute supplemental proceedings against Defendant in connection with a 2010 judgment in the amount of \$55,000 relating to civil action number 2010-CP-10-00139.

Plaintiff's Rebuttal to Defendant Motion

1. The Court DID NOT Aid an Attorney in Collecting a Judgment Against a Former Client When the Representation Related to the Judgment.

In 2013, Defendant Stratos did in fact hire Mr. Payne to defend a foreclosure action and complete a shortsale. Mr. Payne achieved both of these objectives. However, contrary to Mr. Kahn's argument, his scope of representation did not extend to satisfying each and every judgment that Defendant Stratos had against her. Furthermore, as stated in Defendant Stratos' Affidavit, "On or about August 16, 2010, a judgment was entered against me and others for about \$55,000 in civil action number 2010-CP-1000139."

Defendant is correct that Mr. Payne did form Karmatic, LLC on or about October 28, 2019 and that Karmatic did in turn purchase the above-referenced judgment on November 4, 2019 from United Community Bank, Successor by Merger to Tideland Bank. In turn, Mr. Payne then immediately sold Karmatic, LLC to me, E. Merritt Farmer, Jr., and to date, Mr. Payne maintains no ownership in the judgment nor any interest in the outcome of the supplemental proceedings in this matter. Mr. Payne has not represented any party in the capacity as an attorney in this matter nor does he have any financial interest in the outcome of this case. Furthermore, Mr. Payne objects to the allegations as set forth of any wrongdoing or professional misconduct alleged by Mr. Kahn or Defendant Stratos, and in addition, Mr. Payne did not use this judgment to adversely represent the interests of his former client as alleged by Mr. Kahn.

The judgment in this matter, which is admittedly a valid judgment that was lawfully obtained against Defendant, is one of public record. Mr. Payne did not learn of this judgment through his representation of Ms. Stratos but rather a simple search of online case records regarding Defendant Stratos.

2. The Court Did Not Improperly Issue an Ex Parte Order that Should be Vacated

In Defendant's Motion, Mr. Kahn argues that the Court issued an improper ex parte order without notice and required showing. Mr. Kahn goes on to state that such orders are disfavored and that all motions and proposed orders filed by me on behalf of Karmatic, LLC from November 2019 through January 2020 should have been contemporaneously provided to and served upon Defendant Stratos.

Contrary to Mr. Kahn's argument, such motions and proposed Orders were not required to be provided to and served upon Defendant Stratos. South Carolina Rules of Civil Procedure Rule 5(a) states in part, "No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default." Pursuant to this Rule, Defendant Stratos was in default for failure to appear, and therefore, Karmatic was not in violation of any rules relating to service of papers on Defendant nor did the Court improperly issue the Rule to Show Cause in Supplementary Proceedings and Order of Reference.

CONCLUSION

In conclusion, the Order was not improper and should not be vacated because the Court *did not* aid an attorney in seeking retribution from a former client, and furthermore, the Order was obtained properly as Defendant was in default, therefore obtained in accordance with SCRP Rule 5(a). Therefore, the Court's Order to refer this matter to the Master in Equity was not improper, and this matter should move forward to the Master in Equity to complete the supplemental proceedings.

s/ E. Merritt Farmer, Jr.
E. Merritt Farmer, Jr., Esq.
SC Bar No.: 101620
The Farmer Law Firm, LLC
361 N. Shelmore Blvd.
Mt. Pleasant, SC 29464
Phone: 843.385.3626
mfarmer@thefarmerlawfirm.com
Attorney for Plaintiff

January 24, 2020
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

GENEVIEVE STRATOS,

PLAINTIFF,

V.

MICHAEL CHASE PAYNE, ESQ.,
THE PAYNE LAW FIRM, LLC,
EDWARD MERRITT FARMER, JR., ESQ.,
THE FARMER LAW FIRM, LLC, AND
KARMATIC, LLC,

DEFENDANTS.

SUMMONS

TO: DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is attached and served upon you, and to serve your Answer to said Complaint on attorneys for Plaintiff at 562 Savannah Highway, P.O. Box 31397, Charleston, SC 29417-1397, within 30 days after the service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time allowed by the South Carolina Rules of Civil Procedure, Plaintiff will apply to the Court for the relief demanded in the Complaint.

KAHN LAW FIRM, LLP
s/ **Justin S. Kahn**
S.C. Bar No. 65100
jskahn@kahnlawfirm.com
Ph: (843) 577-2128
Fax: (843) 577-3538
P.O. Box 31397
Charleston, SC 29417-1397
ATTORNEYS FOR PLAINTIFF

Ex. 6

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

GENEVIEVE STRATOS,

PLAINTIFF,

v.

MICHAEL CHASE PAYNE, ESQ.,
THE PAYNE LAW FIRM, LLC,
EDWARD MERRITT FARMER, JR., ESQ.,
THE FARMER LAW FIRM, LLC, AND
KARMATIC, LLC,

DEFENDANTS.

COMPLAINT

BREACH OF FIDUCIARY DUTY
AIDING AND ABETTING BREACH OF
FIDUCIARY DUTY
MALICIOUS PROSECUTION
UNFAIR TRADE PRACTICES

JURY TRIAL DEMANDED

Plaintiff Genevieve Stratos, complaining of Defendants, alleges:

PARTIES

1. Plaintiff Genevieve Stratos (Hereinafter Stratos) is a citizen and resident of Charleston County, South Carolina.
2. On information and belief, Defendant Michael Chase Payne is a citizen and resident of Berkeley County, South Carolina and an attorney licensed to practice law in South Carolina. (Hereinafter Defendant Payne or Payne).
3. On information and belief, Defendant The Payne Law Firm, LLC is a South Carolina limited liability company that does business in Charleston County. (Hereinafter Defendant Payne Law Firm).

4. On information and belief, Defendant Edward Merritt Farmer, Jr. is a citizen and resident of Charleston County, South Carolina and licensed to practice law in South Carolina. (Hereinafter Defendant Farmer).
5. On information and belief, Defendant The Farmer Law Firm, LLC (Hereinafter Defendant Farmer Law Firm) is a limited liability company that does business in Charleston County and has its principal place of business in Charleston County at 361 N. Shelmore Blvd., Mt. Pleasant, SC.
6. On information and belief, Defendant Karmatic, LLC (Hereinafter Defendant Karmatic) is a South Carolina limited liability company with its principal place of business in Charleston County at 361 N. Shelmore Blvd., Mt. Pleasant, S.C.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this matter.
8. This Court has personal jurisdiction over all of the parties as the conduct at issue, in whole or part, took place in Charleston County and one or more of the Defendants resides, does business in or has its principal place of business in Charleston County.
9. Venue is proper in this Court as one or more of the acts alleged took place in Charleston County.

FACTUAL ALLEGATIONS

10. On August 16, 2010, a judgment was entered against Stratos and others by Tidelands Bank in Charleston County. (Hereinafter “2010 Judgment”). *See also* Order Vacating Supplemental Proceedings filed March 9, 2020 in case 2010-CP-10-00139, ¶ 1.
11. The 2010 Judgment was docketed, entered and enrolled in Charleston County against Stratos and others on August 16, 2010 at 9:52 a.m.
12. At all times pertinent, the 2010 Judgment was one of public record.

STRATOS HIRED DEFENDANT PAYNE AND PAYNE LAW FIRM IN 2013

13. In 2013, Stratos hired Defendant Payne Law Firm and Defendant Payne as her attorney to represent her in a real estate transaction involving the sale of her home and a foreclosure action brought against her.
14. At all times pertinent, Defendant Payne was an employee, agent and/or principal of and working for Defendant Payne Law Firm.
15. Defendants Payne and Payne Law firm represented Stratos, provided legal services, and charged fees for their legal services.
16. Defendants Payne and Payne Law Firm were to provide legal services for Stratos including:
- a. Representing her regarding a foreclosure action that had been brought against her involving her home;

- b. Representing her for the short sale of her home;
- c. Examining public records that would affect the validity of title to the property;
- d. Performing a title examination;
- e. Determining what, if any, judgments existed against Stratos;
- f. Addressing or dealing with Stratos's judgment holders;
- g. Ensuring Stratos's property be sold lien free;
- h. Representing Stratos at a closing of her home as part of a short sale for the foreclosure action;
- i. Determining the existence of and addressing judgments against Stratos, including the 2010 Judgment; and
- j. otherwise providing her legal services, advice and counsel concerning the foreclosure action and short sale of her home.

17. During the relevant time, the attorney-client relationship, one of trust and confidence, existed between Defendant Payne and Stratos.

18. While Defendants Payne and Payne Law Firm represented Stratos, the title examination and search of online case records and judgments in Charleston County was within the scope of representation and would have shown the 2010 Judgment against Stratos.

19.As part of Defendants Payne and Payne Law Firm’s representation of Stratos to sell real estate as part of the 2013 closing and at their direction, Kim Miller, while an employee of Defendant Payne Law Firm, and Defendant Payne were both given a limited power of attorney by Stratos on November 22, 2013.

**STRATOS BRINGS LEGAL MALPRACTICE ACTION AGAINST
DEFENDANTS PAYNE AND PAYNE LAW FIRM**

20.In 2016, Stratos commenced a legal malpractice action against Defendants Payne and Payne Law Firm arising out of Stratos’s representation.

21.As part of the legal malpractice action, discovery took place and there were negotiations to resolve the matter through November 4, 2019.

**DEFENDANT PAYNE FORMS DEFENDANT KARMATIC AND
TAKES SECRET ACTION AGAINST STRATOS**

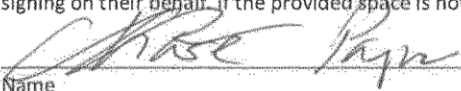
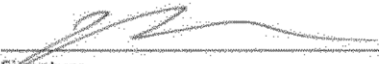
22.Unknown to Stratos, while negotiating resolving the legal malpractice action, on October 28, 2019, Defendant Payne formed Defendant Karmatic, LLC by filing articles of organization with the South Carolina Secretary of State.

23.On information and belief and unknown to Stratos, and in breach of fiduciary duties owed to Stratos, before November 4, 2019, Defendant Payne had begun planning and negotiating to purchase the 2010 Judgment against Stratos.

24.Defendant Payne created Defendant Karmatic with the purpose of purchasing the 2010 Judgment against Stratos.

25. A true and correct copy of the filed articles of organization is attached and incorporated herein. (Ex. A Karmatic, LLC Articles of Organization)

26. Defendant Payne was the only organizer and signed as the only member of Defendant Karmatic as shown below. See Ex. A.

Official Signatures	
(Officer, Incorporator, Director, Agent, Partner, etc)	
Required for forms where the signee is not present upon online submission and a filing party is providing a digital signing on their behalf. If the provided space is not enough, please attach multiple pages.	
	
Name	Date
	
Signature	Title / Position

27. The address of the initial designated office of Defendant Karmatic was 361 N. Shelmore Blvd. Mt. Pleasant, South Carolina 29464.

28. At the time, the address of Defendant Karmatic was the same address as Defendant Farmer Law Firm and Defendant Farmer's work address.

29. Karmatic's initial agent for service of process was Defendant Farmer.

30. On November 4, 2019, "Payne signed the agreement resolving the professional negligence lawsuit brought by" Stratos. See Order Vacating Supplemental Proceedings filed March 9, 2020 in case 2010-CP-10-00139 ¶ 8.

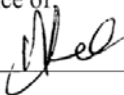
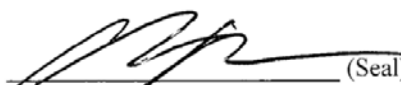
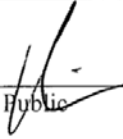
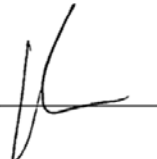
31. Paperwork ending the legal malpractice litigation against Defendants Payne and Payne Law Firm was filed with the Court November 4, 2019.

32. On information and belief, despite having represented Stratos, Defendant Payne and other employees of Defendant Payne Law Firm, including Kim Miller,

signed and witnessed papers to effectuate the purchase of the 2010 Judgment against Stratos.

33. Defendant Payne signed the documents as “Member of Karmatic, LLC”.

34. On information and belief, employees of Defendant Payne Law Firm, including Kim Miller, in breach of their fiduciary duties, signed the papers to arrange the purchase of the 2010 Judgment (as shown below) and otherwise took action adverse to Stratos at the direction and instruction of Defendant Payne. **See Exhibit B Attached.**

SIGNED, SEALED and DELIVERED in the presence of:		<u>Assignee:</u>
Witness #1 	 (Seal)	
Witness #2/Notary Public 	By: M. Chase Payne Title: Member of Karmatic, LLC	
State of South Carolina		
County of Berkeley		Acknowledgment
I, Kim Miller, a notary public for South Carolina, do hereby certify that M. Chase Payne, on behalf of Assignee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.		
Witness my hand and official seal this the 4th day of November, 2019.		
Notary Public 		(Notarial Seal)
My Commission Expires:		

35. On information and belief, at all times pertinent, Kim Miller and other employees were working for Defendants Payne and Payne Law Firm.
36. On information and belief, while working for Defendant Payne Law Firm, Kim Miller assisted and worked with Stratos as part of the 2013 closing and legal representation referenced herein.
37. Despite having previously represented Stratos in 2013, Defendants Payne and Payne Law Firm employees assisted in and/or directed the creation of Karmatic to purchase the 2010 Judgment against Stratos.
38. On information and belief, the actions of Defendants Payne and Payne Law Firm and the prior legal representation of Stratos were known to or should have been known to Defendants Farmer, Farmer Law Firm and Karmatic.
39. On information and belief, despite knowledge of Payne and Payne Law Firm's representation of Stratos, Defendants continued to act adversely to and against Stratos by attempting to collect on the 2010 Judgment.
40. On or about November 22, 2019, Defendants Farmer, Farmer Law Firm, and Karmatic created a document related to the 2010 Judgment seeking to execute against property owned by Stratos.
41. Unknown to Stratos at the time, the actions Defendants Payne, Karmatic, Farmer and Farmer Law Firm, LLC took to collect on the 2010 Judgment against Stratos included:

- a. Negotiating and buying the 2010 Judgment against Stratos;
- b. Filing a “Motion to Substitute” Karmatic for the 2010 Judgment creditor on November 15, 2019 (just nine days after Stratos dismissed her legal malpractice suit against Defendants Payne and Payne Law Firm);
- c. Creating a document entitled Execution Against Property dated November 22, 2019;
- d. Contacting the Charleston County Sheriff’s office and filling out paperwork to execute the judgment against Stratos;
- e. Signing paperwork with the Charleston County Sheriff’s Office dated December 2, 2019 seeking to collect against Stratos;
- f. Filing an *ex parte* notice of motion and motion for supplemental proceedings and order of reference misdated January 7, 2019 on January 9, 2020;
- g. Preparing and filing a rule to show cause in supplemental proceedings and order of reference; and
- h. Taking other actions to collect money and sell property of Stratos to satisfy the 2010 judgment.

42. On or about January 13, 2020, Defendants Farmer, Farmer Law Firm and Karmatic instituted or continued judicial proceedings in the form of a rule to

show cause in supplementary proceedings and order of reference against Stratos to collect on the 2010 Judgment.

43. Defendants Farmer, Farmer Law Firm and Karmatic submitted papers to the Court for the signature of a judge ordering Stratos to produce financial records, tax returns, pay stubs, stock certificates, copies of any contract or settlement entitling Stratos to a payment of money, and other financial information to Defendants Farmer, Farmer Law Firm and Karmatic by January 31, 2020.
44. As a direct and proximate result of Defendants' conduct described herein, Stratos hired and paid counsel to defend her and challenge the supplemental proceedings initiated by Defendants.
45. As a direct and proximate result of Defendants' conduct described herein, Stratos filed a motion to vacate the supplemental proceedings January 22, 2020.
46. The Court held a hearing on February 25, 2020 related to Stratos's motion to vacate the supplemental proceedings.
47. Defendants Payne and Farmer attended the hearing.
48. Following oral arguments and submissions by the parties, the Court issued an order vacating the supplemental proceedings filed March 9, 2020.
49. In part, the Court found against Defendant Karmatic as it failed to provide affidavits or other needed materials such that there was lack of probable cause to institute or continue the proceedings against Stratos.

50. The Court found “Karmatic never submitted any affidavits or other admissible proof required to support supplemental proceedings pursuant to S.C. Code Ann. § 15-39-310. Having failed to submit an affidavit, the Court finds that Karmatic has not and cannot satisfy the requirements of S.C. Code Ann. § 15-39-310...”
51. The Court found that Karmatic deprived Stratos of a meaningful opportunity to be heard and argue or alert the Court as to her position before the order was issued for supplemental proceedings.
52. The Court vacated the Rule to Show Cause in Supplementary Proceedings and Order of Reference filed January 14, 2020.
53. The proceedings terminated in Stratos’s favor.
54. No motion to reconsider was filed and the order was not appealed.
55. To the extent needed by S.C. Code Ann. § 15-36-100, an affidavit supporting this lawsuit is attached and incorporated herein. (**Exhibit C** Affidavit of Andrew S. Radeker, Esq.)

**FOR A FIRST CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY**

56. Stratos incorporates the above paragraphs by reference.
57. Defendants Payne and Payne Law Firm owed Stratos the duties of a fiduciary, including the duty of fair dealing, loyalty and good faith.

58. The relationship of an attorney with his or her client is highly fiduciary in its nature and of a very delicate, exacting and confidential character requiring a high degree of fidelity and good faith.

59. Defendants Payne and Payne Law Firm, as fiduciaries to Stratos, were required to be faithful and loyal and not act against her interests.

60. Despite having undertaken to represent Stratos, Defendants negligently, willfully and/or intentionally breached fiduciary duties owed to Stratos in one or more of the following ways:

- a. Seeking out the 2010 Judgment against Stratos;
- b. Formulating a scheme to purchase the 2010 Judgment against Stratos;
- c. Creating an LLC to purchase the 2010 Judgment in the LLC's name instead of the name of Defendant Payne against Stratos;
- d. Using staff and employees of Defendants to act against Stratos to create a corporation and purchase the 2010 Judgment against Stratos;
- e. Taking affirmative steps to collect on the 2010 Judgment against Stratos as describe herein;
- f. Seeking to take property and assets of Stratos to satisfy the 2010 Judgment; and
- g. Otherwise taking adverse action against Stratos and her interests to collect on the 2010 Judgment.

61. As a direct and proximate result of Defendants' breaching one or more fiduciary duties, Stratos has and will suffer losses, injuries and damages as set forth herein.

**FOR A SECOND CAUSE OF ACTION
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

62. Stratos incorporates the paragraphs above by reference.

63. Defendants Farmer, Farmer Law Firm and Karmatic negligently and knowingly participated in Defendants Payne and Payne Law Firm's breach of fiduciary duties.

64. The participation by Defendants Farmer, Farmer Law Firm and Karmatic includes but is not limited to the following actions despite its knowledge of the improper conduct described:

- a. Allowing Defendant Karmatic to use the office of Defendants Farmer and Farmer Law Firm as the business address of Karmatic;
- b. Allowing Defendant Farmer to act as the agent for service of process for Karmatic;
- c. Creating and filing papers seeking to execute against Stratos's property;
- d. That Karmatic was created by Defendant Payne even though he and Defendant Payne Law Firm previously represented Stratos, to purchase and collect on the 2010 Judgment against Stratos and nonetheless seeking to enforce the 2010 Judgment against Stratos;

e. Defendant Farmer purchasing Karmatic from Payne as part of the scheme to collect on the 2010 Judgment against Stratos; and

f. Otherwise acting in ways to aid and abet Defendant Payne and Payne Law Firm to breach the fiduciary duties owed to Stratos.

65. As a direct and proximate result of Defendants Farmer, Farmer Law Firm and Karmatic's conduct, Stratos has and continues to suffer losses, injuries and damages as set forth herein.

**FOR A THIRD CAUSE OF ACTION
MALICIOUS PROSECUTION**

66. Stratos incorporates the paragraphs above by reference.

67. By or at the direction of Defendants Payne, Farmer, Farmer Law Firm and Karmatic, proceedings against Stratos were instituted or continued to collect on the 2010 Judgment.

68. The proceedings terminated in Stratos's favor.

69. With malice and lack of probable cause, Defendants Payne, Farmer, Farmer Law Firm and Karmatic instituted such proceedings.

70. As a direct and proximate result of Defendants' conduct described herein, Stratos has and continues to suffer losses, injuries and damages.

**FOR A FOURTH CAUSE OF ACTION
S.C. UNFAIR TRADE PRACTICES ACT**

71. All preceding paragraphs are incorporated by reference.

72. Defendants' conduct described herein constitutes unfair and deceptive trade practices and is a violation of the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10, *et seq.* (SCUTPA).

73. Defendants' conduct was intentional and willful, in that Defendants unfairly and/or deceptively and repeatedly took unfair and/or deceptive actions and attempted to collect money from Stratos.

74. Defendants' conduct is capable of repetition and has been repeated.

75. Defendants' conduct affects the public interest.

76. As a direct result of Defendants' unfair and deceptive trade practices in violation of SCUTPA, Stratos suffered damage and is entitled to damages, including treble damages and reasonable attorneys' fees and costs pursuant to SCUTPA and S.C. Code § 39-5-140.

WHEREFORE, Stratos prays for judgment against each defendant for such amount of actual and punitive damages, prejudgment interest, attorney's fees, for the costs and disbursement of this action and for such other and further relief as this Court may deem just and proper.

KAHN LAW FIRM, LLP
s/ **Justin S. Kahn**
S.C. Bar No. 65100
jskahn@kahnlawfirm.com
Ph: (843) 577-2128
Fax: (843) 577-3538
P.O. Box 31397
Charleston, SC 29417-1397
ATTORNEYS FOR PLAINTIFF

Jan 17 2020
REFERENCE ID: 458506

STATE OF SOUTH CAROLINA
SECRETARY OF STATE


SECRETARY OF STATE OF SOUTH CAROLINA

ARTICLES OF ORGANIZATION
Limited Liability Company – Domestic

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to S.C. Code of Laws Section 33-44-202 and Section 33-44-203.

1. The name of the limited liability company (Company ending must be included in name*)

Karmatic, LLC

*Note: The name of the limited liability company must contain one of the following endings: "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", "LC", or "Ltd. Co."

2. The address of the initial designated office of the limited liability company in South Carolina is
361 N. Shelmore Blvd.

(Street Address)

Mt. Pleasant, South Carolina 29464

(City, State, Zip Code)

3. The initial agent for service of process is

Edward M. Farmer

(Name)

(Signature of Agent)

And the street address in South Carolina for this initial agent for service of process is:
361 N. Shelmore Blvd.

(Street Address)

Mt. Pleasant South Carolina 29464

(City) (Zip Code)

4. List the name and address of each organizer. Only one organizer is required, but you may have more than one.

- (a) M. Chase Payne

(Name)

280 Seven Farms Drive, Suite A

(Street Address)

Daniel Island, South Carolina 29492

(City, State, Zip Code)

EX A

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Jan 17 2020

REFERENCE ID: 458506


SECRETARY OF STATE OF SOUTH CAROLINA

Karmatic, LLC

Name of Limited Liability Company

(b)

(Name)

(Street Address)

(City, State, Zip Code)

5. ☐ Check this box only if the company is to be a term company. If the company is a term company, provide the term specified. _____
6. ☐ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, include the name and address of each initial manager.

(a)

(Name)

(Street Address)

(City, State, Zip Code)

(b)

(Name)

(Street Address)

(City, State, Zip Code)

7. ☐ Check this box only if one or more of the members of the company are to be liable for its debts and obligations under Section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members. This provision is optional and does not have to be completed.

8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time _____.

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Jan 17 2020

REFERENCE ID: 458506



SECRETARY OF STATE OF SOUTH CAROLINA

Karmatic, LLC

Name of Limited Liability Company

9. Any other provisions not consistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement may be included on a separate attachment. Please make reference to this section if you include a separate attachment.

10. Each organizer listed under number 4 must sign.

Signed as Filer: Elizabeth Wadsworth

Signature of Organizer

Date: 10/28/2019

Signature of Organizer

Date: _____

CERTIFIED TO BE A TRUE AND CORRECT COPY

AS TAKEN FROM AND COMPARED WITH THE

ORIGINAL ON FILE IN THIS OFFICE

Business Name:

Karmatic, LLC

Jan 17 2020

REFERENCE ID: 458506

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Signature Page for a Secretary of State Business Filing

Signature completed, scanned, and attached to any business filing where one of the following is true:

- The filing party signs the digital form on behalf of official signee.
- An attorney's signature is required. (Articles of Incorporation for Corporation and Benefit Corporation)

Official Signatures

(Officer, Incorporator, Director, Agent, Partner, etc)

Required for forms where the signee is not present upon online submission and a filing party is providing a digital signing on their behalf. If the provided space is not enough, please attach multiple pages.

Name

Signature

Date

Title / Position

Name

Signature

Date

Title / Position

Name

Signature

Date

Title / Position

Name

Signature

Date

Title / Position

Name

Signature

Date

Title / Position

Scan and Upload this document to the Business Filing System during the filing process.
File must be PDF format.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Tidelands Bank,

Plaintiff,

v.

Southrail Enterprises, LLC, Valmar
Nunes; Genevieve Stratos; Martin
Properties, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

County C/A No.: 2010-CP-10-00139

**NON-RECOURSE ASSIGNMENT
OF JUDGMENT**2019 NOV -7 PM 1:51
FILED
JULIE J. WYNSTON
CLERK OF COURT

THIS NON-RECOURSE ASSIGNMENT OF JUDGMENTS (this "Assignment") is made and entered into effective as of the 4th day of November 2019 by and between **United Community Bank, Successor by Merger to Tidelands Bank** (the "Assignor") and **Karmatic, LLC** (the "Assignee").

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the payment of ONE THOUSAND DOLLARS and other good and valuable consideration from **Assignee** to **Assignor**, and other provisions stated herein, the receipt and adequacy of which consideration are acknowledged, **Assignor** does hereby sell, transfer, assign, convey and deliver unto **Assignee**, all right, title and interest of **Assignor** in, to and under the Judgment attached hereto as Exhibit "A", and made a part hereof (said documents and rights being collectively referred to herein as the "**Judgment**").

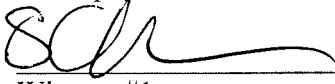
TOGETHER WITH AND INCLUDING all benefits, rights, interests, privileges, remedies, claims, actions and causes of action, set forth in or arising under the Judgment, including, without limitation the right to receive, collect and enforce the payment of the

indebtedness evidenced and secured by the Judgment, and all agreed charges from time to time owing thereunder.

TO HAVE AND TO HOLD unto **Assignee**, its successors and assigns forever.

IN WITNESS WHEREOF, **Assignor** and **Assignee** have caused this instrument to be executed by their duly authorized officers, as of the day and year first above written.

SIGNED, SEALED and DELIVERED
in the presence of:

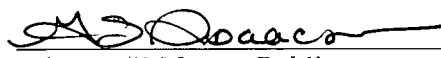


Witness #1

Assignor:



(Seal)
By: Anthony R. Young
Title: Senior Vice President



Witness #2/Notary Public

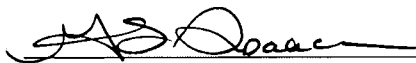
State of South Carolina

Acknowledgment

County of Charleston

I, G.S. Isaacson, a notary public for South Carolina, do hereby certify that Anthony R. Young, on behalf of Assignor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 4th day of November, 2019.

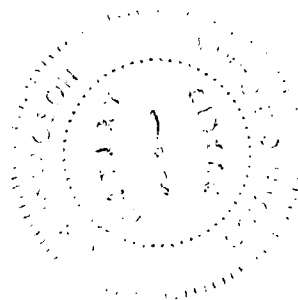


Notary Public

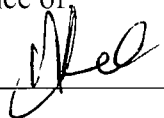
(Notarial Seal)

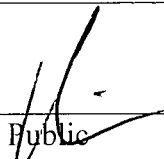
My Commission Expires:

My Commission Expires September 16, 2025



SIGNED, SEALED and DELIVERED
in the presence of:

Witness #1 

Witness #2/Notary Public 

Assignee:

 (Seal)

By: M. Chase Payne
Title: Member of Karmatic, LLC

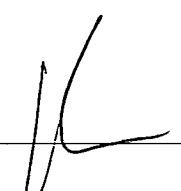
State of South Carolina

Acknowledgment

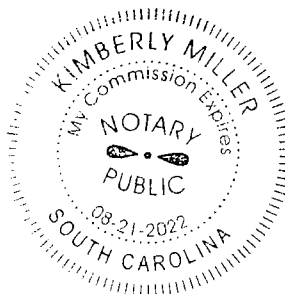
County of Berkeley

I, Kim Miller, a notary public for South Carolina, do hereby certify that
M. Chase Payne, on behalf of Assignee, personally appeared before me this day and
acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 4th day of November, 2019.

Notary Public 

My Commission Expires:



(Notarial Seal)

EXHIBIT "A"

THE JUDGMENT

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO.: 2010-CP-10-139

TIDELANDS BANK,)

Plaintiff,)

vs.)

**ORDER FOR DEFICIENCY
JUDGMENT**

SOUTHRAIL ENTERPRISES, LLC.;)

VALMAR NUNES; GENEVIEVE)

STRATOS; and MARTIN)

PROPERTIES, LLC;)

Defendants.)

THIS MATTER came before the undersigned upon referral for foreclosure and the Plaintiff reserving its right to a deficiency judgment; and

IT APPEARING TO THE COURT that upon consideration of the Master's Order of Sale and Disbursement in the above case, and upon the Order of Foreclosure entered August 13, 2010;

IT IS ORDERED that the Plaintiff have judgment against the Defendant, Southrail Enterprises, LLC., Valmar Nunes, and Genevieve Stratos, in the sum of \$55,297.74, plus interest accruing thereon from and after November 18, 2010, at the legal rate of interest for judgments.

AND IT IS SO ORDERED.


 Mikell R. Scarborough
 Master in Equity for Charleston County

Charleston, South Carolina

 day of December, 2010

DEFICIENCY CALCULATION

Total debt due Plaintiff as of August 3, 2010 (including accrued interest on outstanding loan)	\$345,024.13
+ Additional accrued interest @ 6.50% per annum (\$31.45 per diem) on outstanding loan principal (from August 3, 2010 to August 13, 2010)	<u>\$314.50</u>
= Total judgment amount as of August 13, 2010)	\$345,338.63
+ Accrued Interest on total judgment amount @ 7.25% from August 13, 2010 to November 18, 2010 (97 days) (i.e., date of 2 nd sale)	<u>\$6,653.68</u>
= Total judgment amount as of November 18, 2010	<u><u>\$351,992.31</u></u>
= Total judgment amount as of November 18, 2010	\$351,992.31
- Credit for Plaintiff's Bid Amount	\$299,916.30
+ Additional costs paid by Plaintiff to MIE	<u>\$2,500.00</u>
+ Advertising costs	<u>\$721.73</u>
= Deficiency judgment as of November 18, 2010	<u><u>\$55,297.74</u></u>

¹Interest accruing on deficiency judgment amount at legal rate of interest.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

GENEVIEVE STRATOS,

PLAINTIFF,

v.

MICHAEL CHASE PAYNE, ESQ.,
THE PAYNE LAW FIRM, LLC,
EDWARD MERRITT FARMER, JR., ESQ.,
THE FARMER LAW FIRM, LLC, AND
KARMATIC, LLC,

DEFENDANTS.

AFFIDAVIT OF ANDREW S. RADEKER

PURSUANT TO S.C. CODE ANN. § 15-36-100

COUNTY OF RICHLAND)
STATE OF SOUTH CAROLINA)

I, Andrew S. Radeker, first being duly sworn (in accordance with the Trial Courts Coronavirus Management Order), depose and say as follows:

1. I am an attorney at the law firm of Harrison, Radeker & Smith, P.A. in Columbia, South Carolina.
2. I am an attorney in good standing and have been licensed to practice law in South Carolina by the South Carolina Supreme Court since November of 2005. I am also admitted to practice before the United States District Court of South Carolina and the Court of Appeals for the Fourth Circuit.
3. I have practiced as an attorney since 2005, and, as an attorney, my experience includes:
 - a. Handling mortgage foreclosure cases for homeowners and debtors as well as creditors and lenders;
 - b. Title examination and litigation involving liens on real property;
 - c. Civil litigation and appeals; and

EX C

- d. Consumer protection cases.
4. I am a past real estate section chair of the South Carolina Association for Justice and one of the co-authors of the South Carolina Foreclosure Law Manual, Third Edition, published by the South Carolina Bar CLE Division.
5. In connection with reaching my opinion in this matter, the documents or materials I have reviewed include:
- a. Public Index of Charleston County Case 2010 CP 10 00139;
 - b. Nov. 2, 2017 Deposition of M. Chase Payne and exhibits thereto;
 - c. Motion to Substitute Plaintiff in civil action number 2010 CP 10 00139;
 - d. Stratos Notice and Motion For Reconsideration, To Vacate and/or Stay Order, Dismissal, and Alternative Relief and Memorandum in Support with Supporting Affidavit by Genevieve Stratos;
 - e. Affidavit of Genevieve Stratos dated January 22, 2020 with attachments including:
 - i. Non-Recourse Assignment of Judgment signed by M. Chase Payne as Member of Karmatic, LLC
 - ii. Articles of Organization of Karmatic, LLC filed with the South Carolina Secretary of State's Office filed October 28, 2019;
 - iii. Rule to Show Cause in Supplementary Proceedings and Order of Reference Filed January 14, 2020 in civil action number 2010 CP 10 00139;
 - iv. Execution Against Property and other papers;
 - f. Plaintiff's Return to Defendant's Motion for Reconsideration, To Vacate and/or Stay Order, Dismissal and Alternative Relieve dated January 24, 2020;

- g. Order Vacating Supplemental Proceedings in civil action number 2010 CP 10 00139 filed March 9, 2020; and
 - h. The draft of the summons and complaint to be filed in this matter.
6. Based on my background, training and experience, and review of various documents and materials, most probably, to a reasonable degree of certainty in the legal field, I have at least the opinions that M. Chase Payne and The Payne Law Firm, LLC breached the applicable standard of care of an attorney and fiduciary duties owed to their former client Genevieve Stratos, including, but not necessarily limited to, in the following ways:
- a. Assisting in and/or creating a limited liability company to buy a judgment against the former client when the attorney was required to address that very judgment as part of the scope of his representation of that client; *See e.g.* Rule 1.9 Duties to Former Clients; and
 - b. Otherwise breaching duties of fidelity and loyalty owed to the former client.
7. Based on the information I have about this matter, it is my opinion, to a reasonable degree of certainty in the legal field, that, as a direct and proximate result of one or more of these breaches of the standard of care and fiduciary duties, Genevieve Stratos suffered damage.
8. The opinions I have are based on the information, documents and materials provided to me at this time, and they are subject to expansion or modification based on additional evidence or information which may be provided to me.

Further Affiant sayeth not.

I CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILLFULLY FALSE, I AM SUBJECT TO PUNISHMENT BY CONTEMPT.

FURTHER AFFIANT SAYETH NOT.

Respectfully submitted,

/s/ Andrew S. Radeker

Andrew S. Radeker

S.C. Bar No. 73743

August 18, 2020



From: Justin Kahn jskahn@kahnlawfirm.com
Subject: Re: case no 20-1786
Date: August 20, 2020 at 7:04 AM
To: Chris Craven ccraven@charlestoncounty.org
Cc: Edward L. Knisley Jr. EKnisley@charlestoncounty.org, Pattie H Michel pmichel@kahnlawfirm.com
Bcc: Mary L. Arnold sammie@maryarnoldlaw.com

Sgt. Craven

I appreciate your prompt response. Please consider the following and determine that the Charleston County Sheriff's Office attempt to enforce the execution does not properly exist under the unique facts present:

- The Judgment was entered on Aug. 16, 2010 at 9:52 a.m. It has admittedly expired. Thus, the ability to collect on it has expired because it is stale. Below shows the information from the Charleston County Court web site showing the time of entry for the August 16, 2010 Judgment.

Stratos, Genevieve	Judgment / Judgment	Judgment	08 / 16 / 2010 - 09:52

- The December 2010 entry you reference only states that the August 2010 Judgment was decreased because money from a sale related to the August Judgment was applied. The December 2010 entry decreasing the amount due from the August 2010 Judgment is not a "new" or different judgment that survives for 10 years apart or on its own from the August Judgment. When looking at the entry on the same website, it confirms this reduction of the August 2010 Judgment by stating "Order for Deficiency Judgment **Reducing AMT.**" It does not show a time entry like the August Judgment because it is not a separate or new judgment. See below.

ORDER FOR DEFICIENCY JUDGMENT REDUCING AMT	Judgment	12 / 08 / 2010 - 00:00	12 / 08 / 2010 - 00:00

- As to the execution document itself, the document is fatally defective and is not an execution as required by S.C. Code Ann. § 15-39-80. The reasons for this include:
 - the execution was not attested to by the Clerk of Court of Charleston County as required,
 - the amount of the judgment is not stated,
 - the amount due is not stated;
 - the execution adds attorney's fees as part of the execution which is not stated anywhere in the December entry; and
 - the time of the docketing of the August Judgment is not stated.

Under these circumstances, I again request that the Charleston County Sheriff's Office agree to not move forward with or seek to enforce the "Execution." To do so would cause my client unnecessary and additional harm.

Please consider the above, consult with Mr. Knisely and let me know if you have any questions.

Thanks so much.

Justin S. Kahn
 Kahn Law Firm, LLP
 PO Box 31397
 Charleston, SC 29417

p. 843.577.2128
 f. 843.577.3538
www.kahnlawfirm.com

Ex. 7

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)
TIDELANDS BANK,)
Plaintiff,)
vs.)
SOUTHRAIL ENTERPRISES, LLC.;)
VALMAR NUNES; GENEVIEVE)
STRATOS; and MARTIN)
PROPERTIES, LLC;)
Defendants.)

FILED
2010 AUG 10 PM 3:06
CLERK OF COURT
J. ARMSTRONG
ORDER
(DEFICIENCY DEMANDED)

Pursuant to Rule 53, of the South Carolina Rules of Civil Procedure, the above-entitled matter was referred to the undersigned for the purpose of taking testimony and making a final decision in this matter, which decision shall be appealable to Section 14-11-85 of the Code of Laws of South Carolina, 1976, as amended. Pursuant to the Order of Default and Reference dated May 7, 2010, a hearing was held on August 3, 2010, which was attended by the Plaintiff's attorney and the testimony was taken, which is herewith reported.

FINDINGS OF FACT

I, therefore, find as follows:

1. The Lis Pendens was filed on January 8, 2010.
2. The Summons and Complaint were filed on January 8, 2010.
3. Service was made upon the Defendant, Valmar Nunes, on February 25, 2010, as shown by the Affidavit of Service filed herein.
4. Service was made upon the Defendant, Martin Properties, LLC, on March 9, 2010, as shown by the Affidavit of Service filed herein.
5. Service was made upon the Defendants, Southrail Enterprises, LLC, and Genevieve Stratos, on March 19, 2010, as shown by the Affidavit of Service filed herein.
6. The Defendants, Southrail Enterprises, LLC, Valmar Nunes, Genevieve Stratos and Martin Properties, LLC, are in default as shown by the Affidavit(s) on file herein.
7. According to the Affidavit(s) filed herein, no Defendant in default is in the Military Service of the United States of America, as contemplated under The Soldier's and Sailor's Civil Relief Act of 1940, and any amendments thereto.
8. An Order of Default and Reference was filed herein, and this matter was

Ex. B

referred to me as Master in Equity for Charleston County for the purpose of taking testimony and making findings of fact and conclusions of law and to render a final decree with direct appeal to the South Carolina Supreme Court or the South Carolina Court of Appeals as provided by the South Carolina Appellate Court Rules and pursuant to Section 14-11-85 of the Code of Laws of South Carolina, 1976, as amended.

AS TO THE FIRST CAUSE OF ACTION
(Foreclosure of Mortgage)

9. On or about July 30, 2007, for value received, the Defendant, Southrail Enterprises, LLC., made, executed and delivered to Tidelands Bank, the Plaintiff, a Promissory Note (the "Note"), and in addition, made, executed and delivered Renewal Notes dated August 23, 2008, and January 30, 2009.

10. Simultaneously therewith, the Defendant, Southrail Enterprises, LLC., executed a Mortgage of Real Estate (the "Mortgage") wherein it pledged as collateral certain real property commonly described as Lot 13-C South Rail Road, North Charleston, South Carolina, to secure repayment of all indebtedness under the Note.

11. Thereafter, the Mortgage was recorded on August 7, 2007, in the RMC/ROD Office for Charleston, County in Book A635 at Page 232.

12. That the Mortgage secures commercial or other non-residential property and is not subject to modification under the Home Affordable Modification Program ("HMP").

13. Under the terms of the Note and Mortgage, the Defendant, Southrail Enterprises, LLC., promised to pay the Plaintiff the sum of \$300,000.00 Dollars, plus interest, costs and reasonable attorneys' fees. Other terms and conditions are stated in the Note and Mortgage, which are of record herein.

14. The Note and Mortgage provide that the mortgagor will promptly pay the principal and interest evidenced by the Note at the time and in the manner therein provided.

15. According to the terms and conditions of the Note and Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable, at the option of the holders, and the mortgagee shall have power to sell said premises according to law and this Mortgage may be foreclosed and any such expenses and fees as may be incurred including the fees of any attorney employed by the mortgagee in any litigation or proceeding affecting said premises, shall be paid by the mortgagor and secured by this

instrument. And it is further agreed that in case the debt secured by the Mortgage or any part thereof is collected by suit or action, or the Mortgage be foreclosed, or put into the hands of an attorney for collection, suit, action or foreclosure, the said mortgagor shall be chargeable with all costs of collection including reasonable attorneys fees, which charges and fees together with all costs and expenses, are hereby secured and may be recovered in any suit or action hereupon or hereunder.

16. The payments due on the Note and Mortgage, have not been made as provided for in the Note and Mortgage, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of its attorneys herein for collection.

17. With respect to attorney fees, in view of the potential liabilities inherent in a real property matter, the attendant responsibilities, and the size of the mortgage debt, I find that a reasonable attorney's fee would be \$3,000.00. The Plaintiff engaged an attorney to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the running interest. It appears that the attorney examined the title to identify all parties having or claiming any interest in the subject real estate, the preparation of certain pleadings and other documents including the following:

- a. Lis Pendens;
- b. Summons and Complaint;
- c. Affidavit(s) of Service;
- d. Acknowledgment(s) of Service;
- e. Order of Reference;
- f. Notice(s) of Hearing;
- g. Record (Transcript) of Testimony; and
- h. Proposed Master in Equity's Report and Judgment of Foreclosure and Sale.

18. Additionally, the attorney prepared and served the pleadings upon the Defendant personally or by statutory/substitute service, provided reinstatement and payoff figures and payment histories as requested or required, and scheduled and attended the hearing in this matter.

19. Future duties include forwarding copies of the Judgment to appearing counsel, obtaining bidding instructions from Plaintiff or its designee, representing Plaintiff at the sale, preparing an Order of Sale or Report on Sale and Disbursements and Order Confirming Sale, and preparing the Master in Equity's Deed and any other documents

necessary in this particular action.

20. In addition to the time invested to date, the Court anticipates a minimum of two (2) hours after the hearing. Moreover, depending upon the interest shown by the Defendant, third parties, or counsel for either and the inherent negotiations required thereby, other time may also be committed to the completion of the case.

21. In regard to the professional standing of counsel, representation of Plaintiff has been undertaken by the firm of CLAWSON & STAUBES, LLC. The attorneys primarily involved in this representation have been Kristen Nichols Voyer, R. Timothy Whisler and Stephanie A. Grunthal. They concentrate their practice in the areas of foreclosure, bankruptcy and commercial litigation.

22. The fee requested is customary for the services provided, given the professional standing of Plaintiff's counsel. Also the Plaintiff's attorneys have achieved the beneficial result of a prompt foreclosure of the mortgage.

23. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys fees secured by the Note and Mortgage are as follows:

(a) Principal due as of August 3, 2010	<u>\$299,916.30</u>
(b) Accrued Interest as of August 3, 2010	<u>\$24,461.67</u>
(c) Escrow Adjustments (debits or credits)	<u>\$0.00</u>
(d) Costs of Collection prior to hearing (Clerk of Court, Service Fee, Title Search, Special Referee)	<u>\$591.20</u>
(e) Taxes, appraisal fees, insurance, late fees, etc. not included in above	<u>\$17,054.96</u>
(f) Attorneys Fees	<u>\$3,000.00</u>
Total debt secured by the Note and Mortgage, including interest to date shown:	<u>\$345,024.13</u>

Interest for the period from the date shown in (b) above through the date of this judgment at the rate of 6.50% per annum (\$31.45 per diem) (pursuant to the terms of the Note and Mortgage) to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the legal rate of interest for judgments on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which

such interest is computed.

24. The Plaintiff does not waive, but specifically demands judgment against the Defendant, Southrail Enterprises, LLC., for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendant, Southrail Enterprises, LLC., for any deficiency in this action remaining after sale of the mortgaged premises. Since a deficiency is demanded, the bidding will remain open for a period of thirty (30) days as prescribed by law.

25. The Defendant below named claims or may claim to have some interest in or lien upon the premises covered by the Plaintiff's Mortgage, or some part thereof, by virtue of the matters and things set forth below, but any such interest in or lien upon the said premises is junior and subordinate to the lien of the Plaintiff's Mortgage or does not attach to the property which is the subject of this action, or has been paid in full and not satisfied of record, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such interest or lien will be determined at a hearing subsequent to the sale as prescribed by law. Said liens or interests are of record in the RMC Office for Clerk of Court's Office for Charleston County and are described as follows:

- (a) The Defendant, Martin Properties, LLC, by virtue of a mortgage, given by Southrail Properties, LLC, in the amount of \$300,000.00, dated July 30, 2007, and recorded August 7, 2007, in Book A635 at Page 242; and

The Plaintiff is informed and believes that the interest of the above named Defendant, if any is junior and subordinate to the lien of the Plaintiff's Mortgage.

AS TO THE SECOND CAUSE OF ACTION
(Suit on Guaranty)

26. The Defendants, Valmar Nunes and Genevieve Stratos, in order to induce Tideland Bank to loan funds evidenced by the Note and Mortgage referred to herein, executed agreements personally guaranteeing payment of all obligations of Southrail Enterprises, LLC, plus costs, fees and any other obligation due the Plaintiff under the Note and Mortgage.

27. The Guaranty Agreements guarantees payment of all obligations, are unconditional and joint and several. Notice of default has been given to Valmar Nunes and Genevieve Stratos and the same has been refused.

28. Under the terms of the Guaranty Agreements, Valmar Nunes and Genevieve Stratos are liable for the full amount due under the Note and documents evidencing the

loan agreement as set forth herein.

29. Tideland Bank is entitled to judgment against the Defendants, Valmar Nunes and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Valmar Nunes and Genevieve Stratos, for any deficiency in this action remaining after the sale of the mortgaged premises.

30. That the Plaintiff does not waive, but specifically demands judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, for any deficiency in this action remaining after the sale of the mortgaged premises. Since a deficiency is demanded, the bidding will remain open for a period of thirty (30) days as prescribed by law.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

A. The Plaintiff's Mortgage constitutes a first (1st) lien on the subject real property, subject only to the lien for unpaid Charleston County ad valorem taxes, if any, on the subject real property.

B. The Plaintiff should have judgment of foreclosure of its Mortgage.

C. The mortgaged property should be ordered sold at public auction after due advertisement. The sale shall be made subject to taxes and assessments that are due on the day of sale. That after making the required deposit the successful bidder at the sale should be required to pay interest at the legal rate of interest for judgments from the date of sale through the date of compliance.

D. The proceeds arising from such sale should be applied, first, to the costs and disbursements of this action, including attorney's fees, and next, to the payment and discharge of the amount of the Plaintiff's debt and interest or so much thereof as the proceeds will pay, and any surplus should be held pending further order of the Court.

E. If the proceeds of sale are insufficient to pay the amounts hereinbefore authorized to be paid out of said proceeds, with the interest, costs and disbursements as aforesaid, the parties hereto entitled to such deficiency have judgment therefor against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos.

Now, on motion of Plaintiff's attorney, Clawson and Staubes, LLC,

IT IS ORDERED, ADJUDGED AND DECREED, that there is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$345,024.13, representing the "Total Debt" due Plaintiff as set out in Paragraph 23, *supra*, together with interest at the rate of 6.50% per annum (\$31.45 per diem) as provided in said Note on the balance of principal from the aforesaid date to the date hereof; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the amount due in the preceding paragraph (the "Total Debt" as set forth in Paragraph 23, *supra*, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the legal rate of interest for judgments; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, on or before the date of sale of the property herein described, pay to the Plaintiff, or Plaintiff's attorney, the total amount due Plaintiff, together with the costs and disbursements of this action, including reasonable attorney's fees; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that on default of payment at or before the time herein indicated, the mortgaged premises described in the Lis Pendens and Complaint, be sold by the undersigned Master in Equity, at public auction, at the Charleston County Courthouse, in the City of Charleston, Charleston County and State aforesaid, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

a. **FOR CASH:** the undersigned Master in Equity will require a deposit of Five (5%) Percent on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.

b. Interest on the balance of the bid shall be paid through the day of compliance at the legal rate of interest for judgments from the date of sale through the date of compliance.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

d. Purchaser to pay for the preparation of the deed, deed stamps and costs of recording the deed; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that if Plaintiff is the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness due Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses crediting the balance of the bid on the indebtedness due Plaintiff; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that a personal or deficiency judgment is being demanded, the bidding will remain open for thirty (30) days after the date of the initial sale as provided by law in such cases; and

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the undersigned Master in Equity apply the proceeds of the sale as follows:

First, to payment of the amount of the costs and expenses of this action, including attorney's fees, and any taxable disbursements by the attorneys in the action.

Next: to the payment to the Plaintiff or Plaintiff's attorney, of the amount of the debt and interest due Plaintiff or so much thereof as the purchase money will pay on the same.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that any surplus funds shall be held pending further Order of this Court; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that if the proceeds of the sale are insufficient to pay the amounts herein above authorized to be paid out of said proceeds, with the interest, costs and expenses as aforesaid, the parties hereto entitled to such deficiency have judgment therefor against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of

Charleston County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or its assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or its assigns in such peaceable possession; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that each Defendant named herein, and all persons whosoever claiming under him, them or it be forever barred and foreclosed of all rights, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the following is a description of the premises herein ordered to be sold:

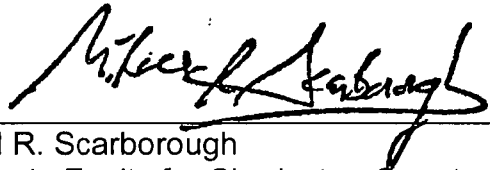
ALL that certain piece, parcel or tract of land, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, and designated as Lot 13-C, 4.71 Acres, more or less, on a plat entitled, "SUBDIVISION PLAT OF LOT 13 COLONY NORTH INDUSTRIAL TRACT TO CREATE LOTS 13-A, 13B AND 13-C OWNED BY SOUTHERN CONCRETE PRODUCTS, LLC ABOUT TO BE CONVEYED TO DEAN LOWDER, CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by 2 A D Surveying Co., Inc., dated July 11, 2002 and recorded in the RMC Office for Charleston County in Plat Book EF, at Page 732. Said Tract having such size, shape, courses, distances, buttings and boundings, as will by reference to said plat more fully will appear.

SUBJECT TO any and all easements, restrictions, rights-of-way and other matters of record.

BEING the same property conveyed to Southrail Enterprises, LLC., by deed of Martin Properties, LLC dated July 30, 2007, and recorded August 7, 2007, in the RMC/ROD Office for Charleston County in Book Y634 at Page 756.

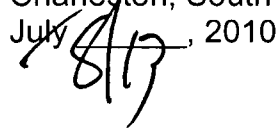
TMS No.: 484-00-00-144

AND IT IS SO ORDERED.



Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina
July 8, 2010



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	CASE NO.: 2010-CP-10-139
TIDELANDS BANK,	)	
	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
SOUTHRAIL ENTERPRISES, LLC.;	)	
VALMAR NUNES; GENEVIEVE	)	
STRATOS; and MARTIN	)	
PROPERTIES, LLC;	)	
Defendants.	)	

TESTIMONY

FILED
2010 AUG 16 PM 3:06
JULIE J. ARMSTRONG
CLERK OF COURT

A hearing was held August 3, 2010, at 10:00 AM, at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina 29401, which was attended by the undersigned attorney of Clawson and Staubes, LLC, Attorneys for the Plaintiff, authorized to testify by the Plaintiff by written Authorization duly filed in this action and made a part of the record herein.

1. This is an action that has been brought for the foreclosure of that certain Mortgage which was given by the Defendant, Southrail Enterprises, LLC., to Tidelands Bank dated July 30 ,2007, and recorded August 7, 2007, in the RMC/ROD Office for Charleston County, South Carolina in Book A635 at Page 232.

2. That Tidelands Bank (hereinafter "Plaintiff") is a banking institution authorized to do business in the State of South Carolina.

3. That the Defendant, Southrail Enterprises, LLC, is, upon information and belief, a limited liability company organized and operating under the laws of the State of South Carolina.

4. That the Defendants, Valmar Nunes and Genevieve Stratos, are, upon information and belief, residents of Charleston County, South Carolina, and are neither infants nor incompetent and not in the military service.

5. That the Defendant, Martin Properties, LLC, is, upon information and belief, a limited liability company organized and operating under the laws of the State of South Carolina.

6. That the subject of this action is real property located in Charleston County, South Carolina.

FIRST CAUSE OF ACTION
(Foreclosure of Mortgage)

7. That on or about July 30, 2007, for value received, the Defendant, Southrail

Enterprises, LLC., made, executed and delivered to Tidelands Bank, the Plaintiff, a Promissory Note (the "Note"), and in addition, made, executed and delivered Renewal Notes dated August 23, 2008, and January 30, 2009. Copies of the Notes are attached hereto collectively as **Exhibit "A"** and are incorporated herein by reference.

8. That simultaneously therewith, the Defendant, Southrail Enterprises, LLC., executed a Mortgage of Real Estate (the "Mortgage") wherein it pledged as collateral certain real property commonly described as Lot 13-C South Rail Road, North Charleston, South Carolina, to secure repayment of all indebtedness under the Note. A copy of the Mortgage to the Plaintiff is attached hereto as **Exhibit "B"** and is incorporated herein by reference. Said real property being more particularly described as follows:

ALL that certain piece, parcel or tract of land, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, and designated as Lot 13-C, 4.71 Acres, more or less, on a plat entitled, "SUBDIVISION PLAT OF LOT 13 COLONY NORTH INDUSTRIAL TRACT TO CREATE LOTS 13-A, 13B AND 13-C OWNED BY SOUTHERN CONCRETE PRODUCTS, LLC ABOUT TO BE CONVEYED TO DEAN LOWDER, CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by 2 A D Surveying Co., Inc., dated July 11, 2002 and recorded in the RMC Office for Charleston County in Plat Book EF, at Page 732. Said Tract having such size, shape, courses, distances, buttings and boundings, as will by reference to said plat more fully will appear.

SUBJECT TO any and all easements, restrictions, rights-of-way and other matters of record.

BEING the same property conveyed to Southrail Enterprises, LLC., by deed of Martin Properties, LLC dated July 30, 2007, and recorded August 7, 2007, in the RMC/ROD Office for Charleston County in Book Y634 at Page 756.

TMS No.: 484-00-00-144.

9. That thereafter, the Mortgage was recorded on August 7, 2007, in the RMC/ROD Office for Charleston County in Book A635 at Page 232.

10. That the Mortgage secures commercial or other non-residential property and is not subject to modification under the Home Affordable Modification Program ("HMP").

11. That under the terms of the Note and Mortgage, the Defendant, Southrail Enterprises, LLC., promised to pay the Plaintiff the sum of \$300,000.00 Dollars, plus interest.

12. That the Mortgage provides that the mortgagor will promptly pay the principal

and interest evidenced by the Note at the time and in the manner therein provided.

13. That according to the terms and conditions of the Note and Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable, at the option of the holders, and the mortgagee shall have power to sell said premises according to law and this Mortgage may be foreclosed and any such expenses and fees as may be incurred including the fees of any attorney employed by the mortgagee in any litigation or proceeding affecting said premises, shall be paid by the mortgagor and secured by this instrument. And it is further agreed that in case the debt secured by the Mortgage or any part thereof is collected by suit or action, or the Mortgage be foreclosed, or put into the hands of an attorney for collection, suit, action or foreclosure, the said mortgagor shall be chargeable with all costs of collection including reasonable attorneys fees, which charges and fees together with all costs and expenses, are hereby secured and may be recovered in any suit or action hereupon or hereunder.

14. That the Defendant, Southrail Enterprises, LLC., defaulted under the terms of the Note and Mortgage, and the Plaintiff elected to declare the entire balance of the indebtedness due and payable and that there is due on the Note and Mortgage as of August 3, 2010, the sum of \$343,207.13, together with interest accruing from and after said date at the rate of 6.50% per annum (\$31.45 per diem), and also the amount to be incurred as the costs and disbursements of this action including reasonable attorney's fees.

SECOND CAUSE OF ACTION
(Suit on Guaranty)

15. The Defendants, Valmar Nunes and Genevieve Stratos, in order to induce Tideland Bank to loan funds evidenced by the Note and Mortgage referred to herein, executed agreements personally guaranteeing payment of all obligations of Southrail Enterprises, LLC, plus costs, fees and any other obligation due the Plaintiff under the Note and Mortgage. A copy of the Guaranty Agreements executed by Valmar Nunes and Genevieve Stratos are annexed hereto as **Exhibit "C"** and are incorporated herein by reference.

16. The Guaranty Agreements guarantee payment of all obligations, are unconditional and joint and several. Notice of default has been given to Valmar Nunes and Genevieve Stratos and the same has been refused.

17. Under the terms of the Guaranty Agreements, Valmar Nunes and Genevieve

Stratos are liable for the full amount due under the Note and documents evidencing the loan agreement as set forth herein.

18. Tidelands Bank is entitled to judgment against the Defendants, Valmar Nunes and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Valmar Nunes and Genevieve Stratos, for any deficiency in this action remaining after the sale of the mortgaged premises.

TO ALL CAUSES OF ACTION

19. That the Plaintiff is entitled to reasonable attorney's fees for its attorneys, together with the costs and disbursements of this action.

20. The Mortgage provides that if the taxes are paid by the Mortgagee, the same may be added to the amount due and all such payments are secured thereby.

21. That the Plaintiff's Mortgage constitutes a first (1st) lien on the subject real property, subject only to the lien for unpaid Charleston County ad valorem taxes, if any, on the subject real property.

22. That it is the desire of the Plaintiff that the property be sold to satisfy the principal and interest due under the Note and Mortgage as well as the cost of this action including reasonable attorney's fees.

23. That the Plaintiff does not waive, but specifically demands judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, for any deficiency in this action remaining after sale of the mortgaged premises.

24. That the Defendant below named claims or may claim to have some interest in or lien upon the premises covered by the Plaintiff's Mortgage, or some part thereof, by virtue of the matters and things set forth below, but any such interest in or lien upon the said premises is junior and subordinate to the lien of the Plaintiff's Mortgage or does not attach to the property which is the subject of this action, or has been paid in full and not satisfied of record. Said liens or interests are of record in the RMC/ROD Office or Clerk of Court's Office for Charleston County and are described as follows:

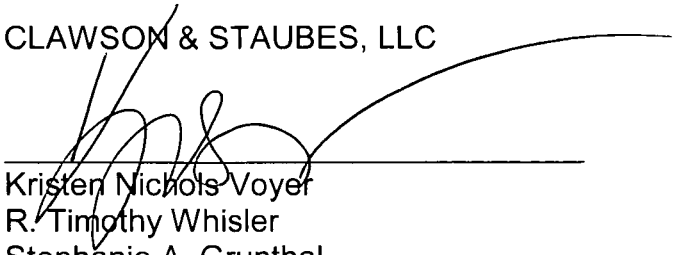
- (a) The Defendant, Martin Properties, LLC, by virtue of a mortgage, given by Southrail Properties, LLC, in the amount of \$300,000.00, dated July 30, 2007, and recorded August 7, 2007, in Book A635 at Page 242.

25. That all proper parties have been joined in this action, duly served with the Summons and Complaint, defaulted or consented to the jurisdiction of this Court and have been served with a notice of this hearing.

26. That on behalf of the Plaintiff, we demand judgment against the Defendant on all Claims for Relief as set forth above.

Your Honor, this concludes our case.

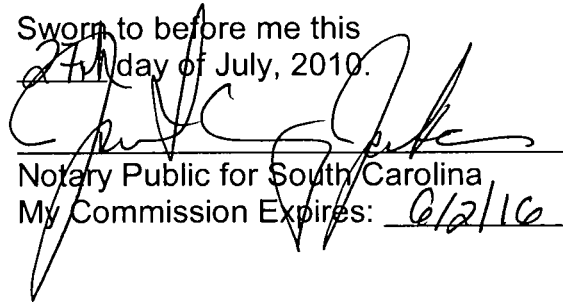
CLAWSON & STAUBES, LLC



Kristen Nichols Voyer
R. Timothy Whisler
Stephanie A. Grunthal
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
Telephone: (843) 577-2026
Facsimile: (843) 722-2867
Attorneys for Plaintiff

Charleston, South Carolina
July 27, 2010

Sworn to before me this
27th day of July, 2010.



Notary Public for South Carolina
My Commission Expires: 6/2/16

Southrail Enterprises, LLC 1810 Tennyson Row Mount Pleasant, SC 29466	Tidelands Bank 875 Lowcountry Blvd Mt. Pleasant, SC 29464	Loan Number _____ Date <u>07/30/2007</u> Maturity Date <u>08/02/2008</u> Loan Amount \$ <u>300,000.00</u> Renewal Of _____
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of Three Hundred Thousand Dollars Dollars \$ 300,000.00

- ☒ **Single Advance:** I will receive all of this principal sum on 07/30/2007. No additional advances are contemplated under this note.
- ☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.
- Conditions: The conditions for future advances are _____

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

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

INTEREST: I agree to pay interest on the outstanding principal balance from 07/30/2007 at the rate of 8.750 % per year until 07/31/2007.

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

☒ **Index Rate:** The future rate will be .50% above the following index rate: Wall Street Journal Prime Rate

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

☒ **Frequency and Timing:** The rate on this note may change as often as every day beginning 07/31/2007

A change in the interest rate will take effect on the same day

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

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

☒ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a Actual/365 basis.

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

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

☐ at a rate equal to _____

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the late amount with a minimum of \$10.00 and a maximum of \$500.00

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____

PAYMENTS: I agree to pay this note as follows:

☒ **Interest:** I agree to pay accrued interest in 11 Monthly interest payments beginning 08/02/2007 and with the principal.

☒ **Principal:** I agree to pay the principal in one final payment of principal and interest in the amount of \$302,260.41 due on 08/02/2008.

☐ **Installments:** I agree to pay this note in _____ payments. The first payment will be in the amount of \$ _____ and will be due _____. A payment of \$ _____ will be due _____ thereafter. The final payment of the entire unpaid balance of principal and interest will be due _____.

ADDITIONAL TERMS:

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date):
FROM on Lot 13-C South Rail Road, North Charleston, SC 29420.

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

PURPOSE: The purpose of this loan is Business: Purchase vacant land.

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

Genevieve Stratos
 Genevieve Stratos Member

Valmar Nunes
 Valmar Nunes Member

Signature for Lender

Scott M. Garcia
 Scott M. Garcia

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

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

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

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

PAYMENTS: Each payment I make on this note will first reduce the amount I owe you on charges and fees, either interest or principal. The remainder of each payment will then reduce the unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay all or part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

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

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

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

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

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

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

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

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

"Right to receive money from you" means:

- (1) any deposit account balance I have with you;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[illegible]

Southern Enterprises, LLC
1810 Tennyson Row
Mount Pleasant, SC 29466

Tidebank Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

Loan Number 140294900
Date 08/21/2008
Maturity Date 12/02/2008
Loan Amount \$ 299,916.30
Renewal (Y) 140294900

BORROWER'S NAME AND ADDRESS
"I" includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS
"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Two Hundred Ninety Nine Thousand Nine Hundred Sixteen Dollars and Thirty Cents, Dollars \$ 299,916.30

☒ Single Advance: I will receive all of this principal sum on 08/21/2008. No additional advances are contemplated under this note.
☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On I will receive the amount of \$ and future principal advances are contemplated.

Condition: The conditions for future advances are

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

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

INTEREST: I agree to pay interest on the outstanding principal balance from 08/21/2008 at the rate of 6.000 % per year until paid in full.

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

☒ Index Rate: The interest rate will be 50% above the following index rate: Wall Street Journal Prime Rate

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

☒ Frequency and Timing: The rate on this note may change as often as every day beginning 08/22/2008.

A change in the interest rate will take effect on the same day.

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than 6.000 % or less than % each.

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

☒ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCRAUAL METHOD: Interest will be calculated on a Actual/365 basis.

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

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

☒ At a rate equal to WSJ prime rate plus 5% (five percent) upon written default.

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the late amount, with a minimum of \$10.00 and a maximum of \$500.00.

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

☒ Interest: I agree to pay accrued interest, in 2 monthly interest payments beginning 10/02/2008 and with the principal.

☒ Principal: I agree to pay the principal in one final payment of principal and interest in the amount of \$ 301,995.33 due on 12/02/2008.

☐ Installments: I agree to pay this note in payments. The first payment will be in the amount of \$ and will be due . A payment of \$ will be due thereafter. The final payment of the entire unpaid balance of principal and interest will be due .

ADDITIONAL TERMS: This is a variable rate loan and the payment amounts may change. Mortgage in the amount of \$300,000.00 dated 7/30/2007, recorded on 8/7/2007 in Charleston County Official Records Book 4635, Page 232. This note renews but does not satisfy Promissory Note dated 7/30/2007 for loan #140294900.

☒ SECURITY: This note is separately secured by describe separate document by type and date:
FREM on lot 13-C South Rail Road, North Charleston, SC 29420.

After a return to the your interest rate before to set a separate security document does not mean the agreement will not enforce this note.

Signature for Lender

Scott M. Garcia

PURPOSE: The purpose of this loan is business Purchase vacant land.

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

Gennieve Scraton Member

Valmer Nunes Member

Southall Enterprises, LLC
1810 Remington Row
Mount Pleasant, SC 29464

Piedmont Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

Loan Number [REDACTED]
Date 01/30/2009
Maturity Date 06/02/2009
Loan Amount \$ 299,916.10
Renewal CI 140294900

BORROWER'S NAME AND ADDRESS

"I" includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS

"You" means the lender, its successors and assigns

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Two Hundred Sixty-Nine Thousand Nine Hundred Sixteen Dollars and Thirty Cents Dollars \$ 299,916.10

☒ Single Advance: I will receive all of this principal sum on 01/30/2009. No additional advances are contemplated under this note.

☐ Multiple Advances: The principal sum shown above is the maximum amount of principal I can borrow under this note. On and future principal advances are contemplated.

I will receive the amount of \$

Conditions: The conditions for future advances are

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

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

INTEREST: I agree to pay interest on the outstanding principal balance from 01/30/2009 at the rate of 6.5000 % per year until paid in full

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

☒ Index Rate: The future rate will be 1.00% above

the following index rate: Wall Street Journal Prime Rate

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

☒ Frequency and Timing: The rate on this note may change as often as every day beginning 01/31/2009

A change in the interest rate will take effect on the same day

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than 6.500 % or less than 6.500 % The rate may not change more than % each

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

☒ The amount of each scheduled payment will change.

☒ The amount of the final payment will change

ACCUAL METHOD: Interest will be calculated on a Actual/365 basis.

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

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

☒ at a rate equal to WSI prime rate plus 5% (five percent) upon written default notice

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the late amount with a minimum of \$10.00 and a maximum of \$500.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which are included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

☒ Interest: I agree to pay accrued interest in 3 Monthly interest payments beginning 03/02/2009 and with the principal.

☒ Principal: I agree to pay the principal in one final payment of principal and interest in the amount of \$101,572.00 due on 06/02/2009.

☐ Installments: I agree to pay this note in payments. The first payment will be in the amount of \$ will be due thereafter. The final payment of the entire unpaid balance of principal and interest will be due

ADDITIONAL TERMS: This is a variable rate loan and the payment amount may change.

Mortgage in the amount of \$300,000.00 dated 07/30/2007, recorded on 08/07/2007 in Charleston County Official Records at A635, Pg 232. This note renews but does not satisfy Preliminary Note dated 07/30/2007 & 08/21/2008 for loan #140294900.

☒ SECURITY: This note is separately secured by (describe separate document by type and date):
PHEM on lot 13-C South Ball Road, North Charleston, SC 29420.

"I" and "You" refer to the parties to this note, and "I" and "You" include each party to this note and their successors and assigns.

Signature for Lender

PURPOSE: The purpose of this loan is Business: Purchase vacant land.

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


Genevieve Blalock

Member


Valerie Martin

Member


Scott A. Griffin

DEFINITIONS: As used on page 1 "X" means the terms that apply to this note. "I," "me" or "my" means me, however who signs this note and which the person or legal entity (including guaranties, endorsers and assignors) who agrees to pay this note (together referred to as "us"). "You" or "your" means the lender and its successors and assigns.

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

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

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

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

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

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

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

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

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

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

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

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

"Right to receive money from you" means:

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

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

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

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

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

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

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

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

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

(5) You may use any remedy you have under state or federal law. By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.

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

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

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

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

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

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

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

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

DATE OF PAYMENT	PRINCIPAL PAYMENT	INTEREST PAID	INTEREST RATE	REMAINING BALANCE
0	0	0	0	0
1	0	0	0	0
2	0	0	0	0
3	0	0	0	0
4	0	0	0	0
5	0	0	0	0
6	0	0	0	0
7	0	0	0	0
8	0	0	0	0
9	0	0	0	0
10	0	0	0	0
11	0	0	0	0
12	0	0	0	0
13	0	0	0	0
14	0	0	0	0
15	0	0	0	0
16	0	0	0	0
17	0	0	0	0
18	0	0	0	0
19	0	0	0	0
20	0	0	0	0
21	0	0	0	0
22	0	0	0	0
23	0	0	0	0
24	0	0	0	0
25	0	0	0	0
26	0	0	0	0
27	0	0	0	0
28	0	0	0	0
29	0	0	0	0
30	0	0	0	0
31	0	0	0	0
32	0	0	0	0
33	0	0	0	0
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35	0	0	0	0
36	0	0	0	0
37	0	0	0	0
38	0	0	0	0
39	0	0	0	0
40	0	0	0	0
41	0	0	0	0
42	0	0	0	0
43	0	0	0	0
44	0	0	0	0
45	0	0	0	0
46	0	0	0	0
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85	0	0	0	0
86	0	0	0	0
87	0	0	0	0
88	0	0	0	0
89	0	0	0	0
90	0	0	0	0
91	0	0	0	0
92	0	0	0	0
93	0	0	0	0
94	0	0	0	0
95	0	0	0	0
96	0	0	0	0
97	0	0	0	0
98	0	0	0	0
99	0	0	0	0
100	0	0	0	0

This document was prepared by (name, address, phone):

Tidelands Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

BA A 635PG2321

LLF FILE NO.: RE07-323

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE

(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 07/30/2007 and the parties and their addresses are as follows:

MORTGAGOR: Southrail Enterprises, LLC
1810 Tennyson Row
Mount Pleasant, SC 29466

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

LENDER: Tidelands Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

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

See Attached Exhibit "A"

RECORD & RETURN TO:
The Lafond Law Firm, P.A.
120 S. Magnolia Street
Summerville, SC 29483

The property is located in Charleston at Lot 13-C South
(County)

Rail Road, North Charleston, South Carolina 29420
(Address) (City) (Zip Code)

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



3. MAXIMUM OBLIGATION LIMIT. The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 300,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

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

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

Promissory Note of even date and amount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- ☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- ☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

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

- ☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- ☒ **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.
- ☐ **Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- ☐ **Additional Terms.**

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

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

Entity Name: Southrail Enterprises, LLC

Entity Name: _____

Genevieve Stratos 07/30/2007 (Seal)
(Signature) Genevieve Stratos (Date)
Member

Valmar Nunes 07/30/2007 (Seal)
(Signature) Valmar Nunes (Date)
Member

Signed, Sealed and delivered in the presence of:

(Witness) DAISY L. GODFREY

(Witness) BENJAMIN A. LAFOND

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

BK A 635PG239

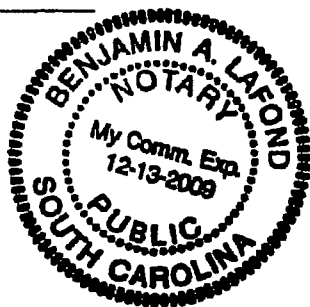
PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF DORCHESTER) ss.

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

Sworn to and subscribed before me this 30th dayof July, 2007

Notary Public for South Carolina

BENJAMIN A. LAFONDMy commission expires: 12/13/09DAISY L. GODFREY

(page 8 of 8)

EXHIBIT "A"**9K A 635PG240**

ALL that certain piece, parcel or tract of land, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, and designated as Lot 13-C, 4.71 Acres, more or less, on a plat entitled, "SUBDIVISION PLAT OF LOT 13 COLONY NORTH INDUSTRIAL TRACT TO CREATE LOTS 13-A, 13-B AND 13-C OWNED BY SOUTHERN CONCRETE PRODUCTS, LLC ABOUT TO BE CONVEYED TO DEAN LOWDER, CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by 2 A D Surveying Co., Inc., dated July 11, 2002 and recorded in the RMC Office for Charleston County in Plat Book EF, at Page 732. Said Tract having such size, shape, courses, distances, buttings and boundings, as will by reference to said plat more fully will appear.

SUBJECT TO any and all easements, restrictions, rights-of-way and other matters of record.

BEING the same property conveyed to the Mortgagor herein by deed of Martin Properties, LLC dated July 30, 2007, and recorded in the RMC Office for Charleston County simultaneously herewith.

TMS No.: 484-00-00-144

mk
Bk A 635PG241

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



FILED

August 7, 2007

11:29:41 AM

BK A 635PG232

Charlie Lybrand, Register
Charleston County, SC

Filed By:

Lafond Law Firm

120 South Magnolia St
Summerville SC 29483

Number of Pages:

10

DESCRIPTION	AMOUNT
	\$ 15.00
Postage	

TOTAL	\$ 15.00

DRAWER:

A - BJA

DO NOT STAMP BELOW THIS LINE

GUARANTY

Mt. Pleasant, South Carolina
(City) (State)

July 30, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Tidelands Bank

(herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of Southrail Enterprises, LLC
1810 Tennyson Row Mount Pleasant, SC 29466

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

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: Promissory Note
dated 07/30/2007, Loan # 140294900 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

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

The Undersigned further acknowledges and agrees with Lender that:

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

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

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

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 300,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

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

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

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

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

Valmar Nunes
Valmar Nunes

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



ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

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

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

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

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

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

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

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

GUARANTY

Mt. Pleasant
(City)South Carolina
(State)

July 30, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Tidelands Bank

(herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of Southrail Enterprises, LLC
1810 Tommyson Row Mount Pleasant, SC 29466

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

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

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

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 300,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

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

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

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

Genevieve Stratos
Genevieve Stratos

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

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

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

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

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

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

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

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

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
CASE No. 2010-CP-10-00139

KARMATIC, LLC ,

PLAINTIFF,

v.

SOUTHRAIL ENTERPRISES, LLC,
VALMAR NUNES,
GENEVIEVE STRATOS, AND
MARTIN PROPERTIES, LLC,

DEFENDANTS.

ORDER

VACATING
SUPPLEMENTAL
PROCEEDINGS

Before the Court is Defendant Genevieve Stratos' Motion for Reconsideration, To Vacate and/or Stay Order, Dismissal, and Alternate Relief, which is supported with an affidavit. The motion relates to the Rule to Show Cause in Supplementary Proceedings and Order of Reference entered by this Court on January 14, 2020.

The motion was timely filed on January 22, 2020 and a copy properly provided to Plaintiff's counsel and the undersigned pursuant to SCRCPP, Rule 59(g). Plaintiff supplied a return to Defendant's Motion which was not supported by affidavit or other admissible evidence. A hearing was scheduled and held February 25, 2020.

The Court listened intently to arguments made, carefully read and considered all documents submitted and presented. After careful consideration and review, the Court **VACATES** the Plaintiff's Rule to Show Cause in Supplementary Proceedings and Order of Reference filed January 14, 2020. The basis of the decision and findings are as follows:

General Background

1. Tidelands Bank filed a foreclosure action against Defendant Genevieve Stratos (Stratos) and others on January 8, 2010. An Order of Default and an Order Referring the Case to

Ex. C

the Master in Equity were both filed on May 11, 2010. . The matter was referred to the Master in Equity. A judgment was entered on August 16, 2010 and a sale of the property related to the mortgage took place. A deficiency judgment was entered against the defendants.

Stratos v. Payne Background

2. In 2016, Stratos filed a professional negligence lawsuit (Case No. 2016-CP-10-6477) against M. Chase Payne, Esq. (Payne) and Payne Law Firm, LLC. Stratos alleged Payne failed to address a judgment and act properly with regard to the short sale of her home in 2013. Stratos Affidavit ¶¶ 5-7. The allegations were generally denied. *Id.*
3. Karmatic, LLC (Karmatic) agrees Stratos hired Payne in 2013 to defend her in a foreclosure action and complete a short sale. Plaintiff's Return, p. 1.
4. A portion of a deposition from a prior case was played during the hearing, but for purposes of this motion it was not necessary for the court's finding.
5. It is undisputed that the judgment in this matter existed at the time Payne represented Stratos in 2013 in a foreclosure defense and short sale of her home.

Karmatic, LLC Background

6. On October 28, 2019, Karmatic was formed. Payne is listed on the Articles of Organization with the Secretary of State as the only member. His signature appears on the filing under "Official Signatures" as "Member." Stratos Affidavit, Ex. B.
7. On November 4, 2019, Karmatic, LLC got an assignment of the judgment from Tideland Bank for \$1,000.00. Stratos Affidavit, Ex. A Non-Recourse Assignment of Judgment Filed Nov. 9, 2019. On November 4, 2019, Payne signed the assignment of judgment as "Member of Karmatic, LLC."

8. November 4, 2019 was the same day Payne signed the agreement resolving the professional negligence lawsuit brought by Stratos. Stratos Affidavit, p. 2, ¶ 7.
9. On November 14, 2019, Karmatic filed a motion “pursuant to S.C.R.C.P. [Rule] 25” to be substituted as Plaintiff in this matter as “current owner of all rights, claims and interest under this judgment.” Karmatic did not provide notice to defendants of this motion.

Supplemental Proceedings Requirements Not Satisfied

10. On January 9, 2020, Karmatic filed a Notice of Motion and Motion for Supplementary Proceedings pursuant to S.C. Code Ann. § 15-39-310 and Order of Reference.
11. In relevant part, S.C. Code Ann. § 15-39-310 provides:

After the issuing of an execution against property and ***upon proof by affidavit of a party or otherwise***, to the satisfaction of the court or a judge thereof, that any judgment debtor has property which he ***unjustly*** refuses to apply towards the satisfaction of the judgment such court or judge may by an order require the judgment debtor to appear at a specified time and place to answer concerning the same. (Emphasis added)
12. Karmatic never submitted any affidavits or other admissible proof required to support supplemental proceedings pursuant to S.C. Code Ann. § 15-39-310. Having failed to submit an affidavit, the Court finds that Karmatic has not and cannot satisfy the requirements of S.C. Code Ann. § 15-39-310 showing Stratos “unjustly” refuses to apply money toward satisfaction of the judgment as further discussed herein.

Due Process and Failure to Serve Motion

13. Stratos argues and the Court agrees that the motion and proposed order filed by Karmatic seeking supplemental proceedings was required to be served on her. This is because a supplemental proceeding seeks different relief than plead in the original complaint like the enforcement of a judgment, and the sale of different real and personal property.

14. Karmatic failed to provide notice to any of the defendants of the motion or relief sought before the order at issue was entered.
15. At the hearing, Karmatic could not explain a reasonable basis why it only served the motion and other papers on Stratos *after* the order was issued for supplemental proceedings and not before.
16. Karmatic argues Stratos' default in the foreclosure action does not necessitate serving the motion for supplemental proceedings before obtaining an order for supplemental proceedings. Whether one is in default in the foreclosure action does not change the responsibility of the party seeking new relief to notify parties of the motion and similarly serve any proposed orders on the opposing party. Fairness and Due Process demands it. As Stratos did not receive the required notice, she was deprived of a meaningful opportunity to be heard and argue or alert the Court as to her position before the Court's decision and Order.

Conclusion

Based upon the foregoing, the Court hereby grants Stratos' motion for reconsideration and **VACATES** the Rule to Show Cause in Supplementary Proceedings and Order of Reference filed January 14, 2020.

IT IS SO ORDERED.

Jennifer B. McCoy
Circuit Court Judge

Charleston, South Carolina



Charleston Common Pleas

Case Caption: Karmatic LLC VS Southrail Enterprises Llc Etc , defendant, et al

Case Number: 2010CP1000139

Type: Order/Vacate Judgment

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2020-03-09 11:44:56 page 5 of 5

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TIDELANDS BANK,)
Plaintiff,)
vs.)
SOUTHRAIL ENTERPRISES, LLC.;)
VALMAR NUNES; GENEVIEVE)
STRATOS; and MARTIN)
PROPERTIES, LLC;)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-10-139

**ORDER FOR DEFICIENCY
JUDGMENT**

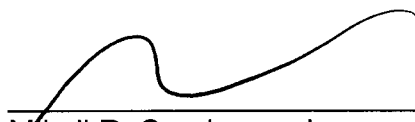
FILED
2010 DEC -8 PM 1:36
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER came before the undersigned upon referral for foreclosure and the Plaintiff reserving its right to a deficiency judgment; and

IT APPEARING TO THE COURT that upon consideration of the Master's Order of Sale and Disbursement in the above case, and upon the Order of Foreclosure entered August 13, 2010;

IT IS ORDERED that the Plaintiff have judgment against the Defendant, Southrail Enterprises, LLC., Valmar Nunes, and Genevieve Stratos, in the sum of \$55,297.74, plus interest accruing thereon from and after November 18, 2010, at the legal rate of interest for judgments.

AND IT IS SO ORDERED.


Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina

6 day of December, 2010

Ex. D

DEFICIENCY CALCULATION

Total debt due Plaintiff as of August 3, 2010 (including accrued interest on outstanding loan)	\$345,024.13
+ Additional accrued interest @ 6.50% per annum (\$31.45 per diem) on outstanding loan principal (from August 3, 2010 to August 13, 2010)	<u>\$314.50</u>
= Total judgment amount as of August 13, 2010)	\$345,338.63
+ Accrued Interest on total judgment amount @ 7.25% from August 13, 2010 to November 18, 2010 (97 days) (i.e., date of 2 nd sale)	<u>\$6,653.68</u>
= Total judgment amount as of November 18, 2010	<u><u>\$351,992.31</u></u>
= Total judgment amount as of November 18, 2010	\$351,992.31
- Credit for Plaintiff's Bid Amount	\$299,916.30
+ Additional costs paid by Plaintiff to MIE	<u>\$2,500.00</u>
+ Advertising costs	<u>\$721.73</u>
= Deficiency judgment as of November 18, 2010	<u><u>\$55,297.74</u></u>

¹Interest accruing on deficiency judgment amount at legal rate of interest.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION No. 2020-CP-10-03825

GENEVIEVE STRATOS,

PLAINTIFF,

V.

CHARLESTON COUNTY SHERIFF'S
OFFICE AND KARMATIC, LLC,

DEFENDANTS.

PLAINTIFF'S
NOTICE AND MOTION
FOR
PRELIMINARY RESTRAINING ORDER
AND
INJUNCTION

TO DEFENDANTS:

PLEASE TAKE NOTICE THAT at such time and place as may be set by the Court, Plaintiff will move to obtain a preliminary restraining order and injunction against the Defendants prohibiting the advertising, sale and transfer of property which is the subject of the Complaint and otherwise stay Defendants from executing, enforcing or otherwise acting on the judgement at issue. The reasons supporting said motion are set forth in the Complaint and attachments thereto and in the Memorandum in Support of this motion which are all incorporated by reference.

KAHN LAW FIRM, LLP
s/ **Justin S. Kahn**
S.C. Bar No. 65100
jskahn@kahnlawfirm.com
Ph: (843) 577-2128
Fax: (843) 577-3538
P.O. Box 31397
Charleston, SC 29417-1397
ATTORNEY FOR PLAINTIFF

Charleston, SC
August 31, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION No. 2020-CP-10-03825

GENEVIEVE STRATOS,

PLAINTIFF’S

PLAINTIFF,

MEMORANDUM IN SUPPORT OF
PRELIMINARY RESTRAINING ORDER
AND
INJUNCTION

V.

CHARLESTON COUNTY SHERIFF’S
OFFICE AND KARMATIC, LLC

DEFENDANTS.

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CONCISE SUMMARY OF THE NATURE OF THE CASE

Defendant Karmatic, LLC (Karmatic) insists that the Charleston County Sheriff’s Office execute on a judgment that expired August 16, 2020 against property owned by Plaintiff. She seeks to have the Court stay the enforcement of the judgment entered more than 10 years ago. Karmatic and the Charleston County Sheriff’s Office improperly seek to enforce the judgment based on an

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION No. 2020-CP-10-03825**

GENEVIEVE STRATOS,

PLAINTIFF'S

PLAINTIFF,

**MEMORANDUM IN SUPPORT OF
PRELIMINARY RESTRAINING ORDER**

V.

AND

**CHARLESTON COUNTY SHERIFF'S
OFFICE AND KARMATIC, LLC**

INJUNCTION

DEFENDANTS.

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CONCISE SUMMARY OF THE NATURE OF THE CASE

Defendant Karmatic, LLC (Karmatic) insists that the Charleston County Sheriff's Office execute on a judgment that expired August 16, 2020 against property owned by Plaintiff. She seeks to have the Court stay the enforcement of the judgment entered more than 10 years ago. Karmatic and the Charleston County Sheriff's Office improperly seek to enforce the judgment based on an

entry from December of 2010 which merely shows the reduction in the amount owed after public sales proceeds were applied.

The Court should grant the relief because the *final* judgment from August of 2010 expired, the execution is defective, and it is not equitable for Plaintiff's former lawyer (or others working with him) to seek out, buy and enforce a judgment against his former client via a company he created.

ARGUMENT

A. Preliminary Injunction

One seeking a preliminary injunction has the burden of persuasion to demonstrate clear evidence of facts sufficient to constitute a cause of action of injunctive relief. *Compton v. S.C. Dep't of Corr.*, 329 S.C. 361, 366, 709 S.E.2d 639, 642 (2011); *see also Calcutt v. Calcutt*, 282 S.C. 565, 320 S.E.2d 55 (Ct. App. 1984). "The power of the court to grant an injunction is in equity." *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). For a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002).

Plaintiff clearly demonstrates each of the elements to establish a preliminary injunction. She would suffer irreparable harm if the injunction is not granted because her unique real estate will be advertised and sold. *See e.g.* Ex. A to Complaint, ¶ 5 and Ex. 2 photos.

Plaintiff is likely to succeed on the merits as the August 16, 2010 Judgment expired and Defendants are not allowed to “enforce” an expired judgment or defective execution.

There is no other adequate remedy at law because if Plaintiff’s property is sold, money cannot “replace” the property and further, it is believed that Karmatic has no value and no assets to collect against. This case involves the quintessential hallmark of an injunction: preservation of the property at issue until the matter has been adjudicated. *Grosshuesch v. Cramer*, 367 S.C. 1, 5, 623 S.E.2d 833, 835 (2005).

Last, as this is an equitable matter, the Court can consider the fact that Karmatic was created by Plaintiff’s former attorney and is acting against her interests in impermissible and improper ways that the Court should not sanction.

B. Judgments Expire After 10 Years

The law is clear - “a judgment becomes stale and a judgment lien is extinguished after ten years.” *Gordon v. Lancaster*, 425 S.C. 386, 393, 823 S.E.2d

173, 176 (2018), *reh'g denied* (Feb. 20, 2019). Pursuant to S.C. Code Ann § 15-39-30, a judgment is “utterly extinguish[ed]” after ten years. *Gordon v. Lancaster*, at 392, 175-176. The statute Defendants seek to invoke to collect against the Plaintiff applies to “final judgments...” S.C. Code Ann. § 15-39-30.

C. Final Judgment Entered August 16, 2010 9:52 a.m.

The final judgment was entered August 16, 2010 at 9:52 a.m. This has been conclusively established. *See* Order Vacating Supplemental Proceedings March 9, 2020 Case No. 2010-CP-10-00139 Ex. C to Complaint. The Court should take judicial notice that the Clerk of Court’s website shows the following about the August 2010 Judgment: “Disposition Date”, “Judgments” and “Judgement Date: 08/16/2010.” *See* Ex. A Public Index (shown below).

Judgments							
For:	Tidelands Bank	Against:	Southrail Enterprises Llc Etc	Judg. Amount:	\$55,297.74	Judgment Date:	08/16/2010
Description:	Judgment/Judgment	Disposition:		Disp. Date:		Date Entered/Last Changed	-- 11/14/2019
Notes:	Assignment of Judgment Filed 11/7/19						
Judgment Details							
Claims Code		Detail Desc.		Detail Amount		Detail Date	
		INTEREST		\$0.00			
For:	Tidelands Bank	Against:	Nunes, Valmar	Judg. Amount:	\$55,297.74	Judgment Date:	08/16/2010
Description:	Judgment/Judgment	Disposition:	Satisfied Or Cancelled	Disp. Date:	08/15/2019	Date Entered/Last Changed	-- 11/14/2019
Notes:	Assignment of Judgment Filed 11/7/19						
Judgment Details							
Claims Code		Detail Desc.		Detail Amount		Detail Date	
		INTEREST		\$0.00			
For:	Tidelands Bank	Against:	Stratos, Genevieve	Judg. Amount:	\$55,297.74	Judgment Date:	08/16/2010
Description:	Judgment/Judgment	Disposition:		Disp. Date:		Date Entered/Last Changed	-- 11/14/2019
Notes:	Assignment of Judgment Filed 11/7/19						
Judgment Details							
Claims Code		Detail Desc.		Detail Amount		Detail Date	
		INTEREST		\$0.00			

Disposition Date:	08/16/2010

D. Judgment Reduction Entered December 2010

After the August 2010 final judgment was entered, property was sold resulting in a *reduction* of the amount owed.

The Deficiency Calculation shows the Court referenced the August “Judgment” and then gave “Credit for Plaintiff’s Bid Amount” of \$299,916.30. The balance after applying the sale proceeds was \$55,297.74.

It is this December entry which the Defendants rely upon to improperly seek to enforce and refer to as the “Judgment” from “6th day of December, 2010.” See Notice and Motion and Motion for Supplementary Proceedings and Order of Reference in 2010-CP-10-00139 and Execution Against Property from 2010-CP-10-00139 filed January 9, 2020 (Reproduced Below).

EXECUTION AGAINST PROPERTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 _____)

CASE NO. 2010-CP-10-00139

TO THE SHERIFF OF CHARLESTON COUNTY:

Judgment was rendered on the 6th day of December, 2010, in Case Number 2010-CP-10-00139 in the Charleston County Court of Common Pleas in favor of the Plaintiffs Karmatic, LLC as successor in interest to United Community Bank, Successor by Merger to Tideland Bank against Defendant Genevieve Stratos in the amount of Fifty-Five Thousand Two Hundred Ninety-Seven and 24/100 Dollars (\$55,297.74), as appears on the Judgment Roll, filed in the Office of the Clerk of Court of Charleston County Common Pleas.

AND WHEREAS, the said judgment was docketed in your County on the 8th day of December, 2010, in the sum of Fifty-Five Thousand Two Hundred Ninety-Seven and 24/100 Dollars (\$55,297.74), with interest and attorney's fees and costs until paid in full, is now actually due thereon.

THEREFORE, WE COMMAND YOU to satisfy the said judgment out of the personal property of the said judgment debtor, Genevieve Stratos, within your Charleston County, or if sufficient personal property cannot be found, then out of the real property in your County belonging to Genevieve Stratos on the date when the said judgment was so docketed, or at any time thereafter, in whose hands whomsoever the same may be, and duly return this execution according to law to the Clerk of Court's Office for Charleston County Court of Common Pleas.

For Karmatic, LLC
 Against Genevieve Stratos

Dated this 22nd day of
 November, 2019

/S/ Edward M. Farmer, Jr.
 Edward M. Farmer, Jr. (101620)
 Farmer Law Firm, LLC
 361 N. Shelmore Blvd
 Mount Pleasant, SC 29464
 Attorney for the Plaintiff

The deficiency amount stated as remaining was not a “new” judgment starting a separate 10-year clock from the August 2010 Judgment. Instead, it simply reflects that less was owed on the August 2010 Judgment. Before filing this action the Charleston County Sheriff's Office was made aware of the

multiple defects. Ex. A, Ex. 7 To Stratos Affidavit (shown below). Then, this lawsuit was filed.

Sgt. Craven

I appreciate your prompt response. Please consider the following and determine that the Charleston County Sheriff's Office attempt to enforce the execution does not properly exist under the unique facts present:

- The Judgment was entered on Aug. 16, 2010 at 9:52 a.m. It has admittedly expired. Thus, the ability to collect on it has expired because it is stale. Below shows the information from the Charleston County Court web site showing the time of entry for the August 16, 2010 Judgement.

Stratos, Genevieve	Judgment/Judgment	Judgment	08/16/2010- 09:52

- The December 2010 entry you reference only states that the August 2010 Judgment was decreased because money from a sale related to the August Judgment was applied. The December 2010 entry decreasing the amount due from the August 2010 Judgment is not a "new" or different judgment that survives for 10 years apart or on its own from the August Judgment. When looking at the entry on the same website, it confirms this reduction of the August 2010 Judgment by stating "Order for Deficiency Judgment **Reducing AMT.**" It does not show a time entry like the August Judgment because it is not a separate or new judgment. See below.

ORDER FOR DEFICIENCY JUDGMENT REDUCING AMT	Judgment	12/08/2010- 00:00	12/08/2010- 00:00

- As to the execution document itself, the document is fatally defective and is not an execution as required by S.C. Code Ann. § 15-39-80. The reasons for this include:
 - the execution was not attested to by the Clerk of Court of Charleston County as required,
 - the amount of the judgment is not stated,
 - the amount due is not stated;
 - the execution adds attorney's fees as part of the execution which is not stated anywhere in the December entry; and
 - the time of the docketing of the August Judgment is not stated.

Under these circumstances, I again request that the Charleston County Sheriff's Office agree to not move forward with or seek to enforce the "Execution." To do so would cause my client unnecessary and additional harm.

E. Execution is Fatally Defective

A proper execution has to meet the requirements stated in S.C. Code Ann. § 15-39-80. The execution in this case is fatally defective as it does not contain the following required elements:

- Attestation by the Clerk of Court of Charleston County;
- The amount of the judgment is not stated (August 2010 amount);
- The amount due is not stated (payments were made as recently as 2019 which have not been credited);
- Attorney's fees are added which is not stated as part of the 2010 Judgment or December entry; and
- The time of docketing of the August Judgment is not stated.

The absence of this information and failure to meet the requirements under the statute make the execution defective for many reasons including the Charleston County Sheriff's Office does not know how much is owed, how much to collect, and cannot verify that the Judgment is correct.

As the execution is defective, the Defendants should not be able to "enforce" or otherwise act on it.

F. Equity Prevents Enforcement by Client's Former Attorney

Equity does not allow a client's former attorney to create a company to collect on a judgment against the former client. It is indisputable that Karmatic was created by Plaintiff's former attorney Michael Chase Payne, Esq. *See e.g.* Ex. C to Complaint Order Vacating Judgment, ¶¶ 2-9. Further, the judgment at issue existed during the time and within the scope of Mr. Payne's representation.

He was required to address the judgment as part of his representation of Plaintiff as part of the foreclosure action and short sale.

Thus, he, the company he formed and those working with him to buy the Judgment against the Plaintiff are precluded from acting against Plaintiff.

CONCLUSION

For the reasons stated herein and for those facts and documents attached to the Complaint filed in this action, the Court should grant the preliminary injunction prohibiting and staying the Defendants from enforcing the execution or otherwise selling Plaintiff's property, maintain the status quo until a full hearing on the merits and grant such other and further relief as is deemed just and proper.

KAHN LAW FIRM, LLP
/s/ JUSTIN S. KAHN [SC BAR No. 65100]
PO BOX 31397
CHARLESTON, SC 29417-1397
P 843.577.2128 | F 843.577.3538
JSKAHN@KAHNLAWFIRM.COM
ATTORNEYS FOR PLAINTIFF



Julie J. Armstrong

Charleston County Clerk of Court

Charleston County
Circuit Court Case Details
Public Index

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[Magistrates Court](#)
[SC Judicial Home Page](#)
[Search Tips](#)
[Switch View](#)

Karmatic LLC VS Southrail Enterprises Llc Etc , defendant, et al

Case Number:	2010CP1000139	Court Agency:	Common Pleas	Filed Date:	01/08/2010
Case Type:	Common Pleas	Case Sub Type:	Foreclosure 420	File Type:	Non-Jury
Status:	Judgment	Assigned Judge:	Solicitor		
Disposition:	Ended by Non Jury	Disposition Date:	08/16/2010	Disposition Judge:	Solicitor
Original Source Doc:		Original Case #:			
Judgment Number:	2010CP1000139	Court Roster:			

Case Parties

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Colony North Property Owners Association Inc Etc					Defendant		03/19/2010
Farmer, Edward Merritt Jr.	361 N. Shelmore Blvd. Mt. Pleasant SC 29464				Plaintiff Attorney		01/09/2020
Jones, Jesse Ronald Jr	Clawson & Staubes, Llc 126 Seven Farms Dr., Ste. 200 Charleston SC 29492				Plaintiff Attorney		01/12/2010
Kahn, Justin S	PO Box 31397 Charleston SC 294171397				Defendant Attorney		01/22/2020
Karmatic LLC					Plaintiff		01/09/2020
Karmatic LLC(Inactive)					Other Party to Case		01/09/2020
Karmatic, Llc(Inactive)	361 N. Shelmore Blvd. Mount Pleasant SC 29464				Other Party to Case		11/18/2019
Martin Properties Llc Etc					Defendant		01/12/2010
Nunes, Valmar					Defendant		11/14/2019
Southrail Enterprises Llc Etc					Defendant		11/14/2019
Stratos, Genevieve					Defendant		01/22/2020
Tidelands Bank(Inactive)					Plaintiff		01/09/2020
United Community Bank Successor					Plaintiff		11/18/2019

Judgments

For:	Tidelands Bank	Against:	Southrail Enterprises Llc Etc	Judg. Amount:	\$55,297.74	Judgment Date:	08/16/2010
Description:	Judgment/Judgment	Disposition:		Disp. Date:		Date Entered/Last Changed	-- 11/14/2019
Notes:	Assignment of Judgment Filed 11/7/19						

Judgment Details

Claims Code		Detail Desc.			Detail Amount		Detail Date	
		INTEREST			\$0.00			
For:	Tidelands Bank	Against:	Nunes, Valmar	Judg. Amount:	\$55,297.74	Judgment Date:	08/16/2010	
Description:	Judgment/Judgment	Disposition:	Satisfied Or Cancelled	Disp. Date:	08/15/2019	Date Entered/Last Changed	-- 11/14/2019	
Notes:	Assignment of Judgment Filed 11/7/19							

Judgment Details

Claims Code		Detail Desc.			Detail Amount		Detail Date	
		INTEREST			\$0.00			
For:	Tidelands Bank	Against:	Stratos, Genevieve	Judg. Amount:	\$55,297.74	Judgment Date:	08/16/2010	
Description:	Judgment/Judgment	Disposition:		Disp. Date:		Date Entered/Last Changed	-- 11/14/2019	
Notes:	Assignment of Judgment Filed 11/7/19							

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
	INTEREST	\$0.00	

Tax Map Information

Agency name	Tax Map Number	Tax Map Description
Common Pleas	4840000144	LOT 13 C, 4.71 ACRES, MORE OR LESS

ELECTRONICALLY FILED - 2020 Aug 31 1:11 PM - CHARLES COUNTY CLERK OF COURT CASE#2020CP1003835

Associated Cases

Agency	Case #	External	Relationship	Description	Case Filed Date	Disposition Date	Case Status	Disposition
Master In Equity	2010CP1000139	N			04/28/2010	08/16/2010	Supplemental Proceedings - Active	Ended by Non Jury
Common Pleas	2010LP1006044	N	CP		01/08/2010	08/16/2010	Dismissed	Other / Circuit Civil

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Southrail Enterprises Llc Etc	NEF(03-09-2020 03:54:32 PM) Order/Vacate Judgment	Filing		03/09/2020-15:54		
Southrail Enterprises Llc Etc	Order Vacating Supplemental Proceedings	Order		03/09/2020-15:54		
Karmatic LLC	NEF(02-24-2020 10:37:43 PM) Filing/Other	Filing		02/25/2020-09:23		
Karmatic LLC	Return to Motion for Reconsideration	Filing		02/24/2020-22:37		
Stratos, Genevieve	NEF(01-22-2020 11:56:58 AM) Certificate/Certificate	Filing		01/22/2020-12:19		
Stratos, Genevieve	Certificate/Certificate	Filing		01/22/2020-11:56		
Stratos, Genevieve	NEF(01-22-2020 11:35:07 AM) Notice/Notice of Appearance	Filing		01/22/2020-11:47		
Stratos, Genevieve	Notice/Notice of Appearance	Filing		01/22/2020-11:35		
Stratos, Genevieve	Motion/Reconsideration/Vacate/Stay Order & Memo In Support	Motion		01/22/2020-11:35	03/09/2020-11:35	
Karmatic LLC	NEF(01-14-2020 11:03:01 AM) Order/Supplemental Proceedin...	Filing		01/14/2020-11:03		
Karmatic LLC	Order/Supplemental Proceedings Order before the Master	Order		01/14/2020-11:03		
Karmatic LLC	NEF(01-09-2020 04:36:19 PM) Order/Order Cover Sheet \$25....	Filing		01/09/2020-16:47		
Karmatic LLC	Order/Order Cover Sheet \$25.00	Filing		01/09/2020-16:36		
Karmatic LLC	Petition/Order for Supplemental Proceedings	Filing		01/09/2020-16:36		
Karmatic LLC	NEF(11-22-2019 08:46:23 AM) Execution/Issued	Filing		11/25/2019-10:23		
Karmatic LLC	Execution/Issued	Filing		11/22/2019-08:46		
Karmatic, Llc	NEF(11-18-2019 01:24:09 PM) Order/Substitution of Partie...	Filing		11/18/2019-13:24		
Karmatic, Llc	Order/Substitution of Pltff	Order		11/18/2019-13:24		
Karmatic, Llc	NEF(11-15-2019 11:16:57 AM) Motion/Substitute Parties	Filing		11/15/2019-11:25		
Karmatic, Llc	Motion/Substitute Parties	Motion		11/15/2019-11:16	11/18/2019-11:16	
Karmatic, Llc	Order/Order Cover Sheet \$25.00	Filing		11/15/2019-11:16		
Karmatic, Llc	Add Party to Case	Filing		11/15/2019-11:16		
Tidelands Bank	Assignment of Judgment	Filing		11/07/2019-09:52		
	Partial Release of Judgment as to Valmar nunes	Filing		08/15/2019-12:08		
	FORM4 IN RE:MSORD 20101208 9970 MAILED FIRST CLASS	Order		12/15/2010-00:00	12/15/2010-00:00	
	FORM4 IN RE:MOSD 20101208 9980 MAILED FIRST CLASS	Order		12/15/2010-00:00	12/15/2010-00:00	
	ORDER FOR DEFICIENCY JUDGMENT REDUCING AMT	Judgment		12/08/2010-00:00	12/08/2010-00:00	
	ORDER FOR DEFICIENCY JUDGMENT REDUCING AMT	Judgment		12/08/2010-00:00	12/08/2010-00:00	
	ORDER FOR DEFICIENCY JUDGMENT REDUCING AMT	Judgment		12/08/2010-00:00	12/08/2010-00:00	
	AFFIDAVIT OF PUBLICATION	Filing		12/08/2010-00:00	12/08/2010-00:00	
	MASTERS ORDER OF SALE & DISBURSEMENT	Order		12/08/2010-00:00	12/08/2010-00:00	
	MASTERS ORDER FOR DEFICIENCY JUDGMENT	Order		12/08/2010-00:00	12/08/2010-00:00	
	Master/Sale before Master	Action		11/18/2010-11:00	11/18/2010-11:00	
	Master/Sale before Master	Action		10/19/2010-11:00	10/19/2010-11:00	
	CERTIFICATE OF MAILING	Filing		09/29/2010-00:00	09/29/2010-00:00	
	FORM4 IN RE:MSRFS 20100816 9980 MAILED FIRST CLASS	Order		08/25/2010-00:00	08/25/2010-00:00	
Tidelands Bank	Judgment/Judgment	Judgment		08/16/2010-00:00	08/16/2010-00:00	
Tidelands Bank	Judgment/Judgment	Judgment		08/16/2010-00:00	08/16/2010-00:00	
Tidelands Bank	Judgment/Judgment	Judgment		08/16/2010-00:00	08/16/2010-00:00	

Southrail Enterprises Llc Etc	Judgment/Judgment	Judgment		08/16/2010-00:00	08/16/2010-00:00	
Nunes, Valmar	Judgment/Judgment	Judgment		08/16/2010-00:00	08/16/2010-00:00	
Stratos, Genevieve	Judgment/Judgment	Judgment		08/16/2010-00:00	08/16/2010-00:00	
	MASTERS ORDER & JUDGMENT OF FORECLOSURE & SALE	Order		08/16/2010-00:00	08/16/2010-00:00	
	MASTERS ORDER & JUDGMENT OF FORECLOSURE & SALE	Judgment		08/16/2010-00:00	08/16/2010-00:00	
	MASTERS ORDER & JUDGMENT OF FORECLOSURE & SALE	Judgment		08/16/2010-00:00	08/16/2010-00:00	
	MASTERS ORDER & JUDGMENT OF FORECLOSURE & SALE	Judgment		08/16/2010-00:00	08/16/2010-00:00	
	AFFIDAVIT OF ATTY FEES & COSTS	Filing		08/16/2010-00:00	08/16/2010-00:00	
Tidelands Bank	Judgment/Judgment	Judgment		08/16/2010-12:08		
Nunes, Valmar	Judgment/Judgment	Judgment		08/16/2010-12:08		
Tidelands Bank	Judgment/Judgment	Judgment		08/16/2010-09:52		
Stratos, Genevieve	Judgment/Judgment	Judgment		08/16/2010-09:52		
Southrail Enterprises Llc Etc	Judgment/Judgment	Judgment		08/16/2010-09:52		
Tidelands Bank	Judgment/Judgment	Judgment		08/16/2010-09:52		
	Hearing	Event		08/03/2010-10:00	08/03/2010-10:00	
	NOTICE OF HEARING & CERT/MAIL	Filing		07/14/2010-00:00	07/14/2010-00:00	
	FORM4 IN RE:OREF 20100511 9990 MAILED FIRST CLASS	Order		05/18/2010-00:00	05/18/2010-00:00	
	Order/Referred to Master	Order		05/11/2010-00:00	05/11/2010-00:00	
	ORDER OF DEFAULT & REFERENCE WITH FINALITY	Order		05/11/2010-00:00	05/11/2010-00:00	
	AFFIDAVIT OF DEFAULT	Filing		05/05/2010-00:00	05/05/2010-00:00	
	AFFIDAVIT OF NON-MILITARY SERVICE	Filing		05/05/2010-00:00	05/05/2010-00:00	
	CERTIFICATE OF MAILING	Filing		05/05/2010-00:00	05/05/2010-00:00	
	AFFIDAVIT OF SERVICE (3)	Filing		04/14/2010-00:00	04/14/2010-00:00	
	AFFIDAVIT OF SERVICE	Filing		03/12/2010-00:00	03/12/2010-00:00	
	AFFIDAVIT OF NON-SERVICE	Filing		03/12/2010-00:00	03/12/2010-00:00	
	VOLUNTARY DISMISSAL OF THE DEFNT COLONY NORTH	Filing		03/12/2010-00:00	03/12/2010-00:00	
Tidelands Bank	Civil Converted Cost	Filing		01/08/2010-00:00	01/08/2010-00:00	
	RECEIPT #10-317	Filing		01/08/2010-00:00	01/08/2010-00:00	
	NOTICE OF INTENT TO REFER TO MASTER IN EQUITY	Filing		01/08/2010-00:00	01/08/2010-00:00	
	SUMMONS & COMPLAINT	Filing		01/08/2010-00:00	01/08/2010-00:00	
	LIS PENDENS	Filing		01/08/2010-00:00	01/08/2010-00:00	

Financials

DP1003825

Summary					
Fine / Costs:	\$100.00	Total Paid for fine / costs:	\$100.00	Balance Due:	\$0.00
Costs					
Description	Cost Code	Amount	Charge Action	Disbursed Amount	
Motion / Order Filing Fee \$25	MOTION	\$25.00		\$25.00	
Motion / Order Filing Fee \$25	MOTION	\$25.00		\$25.00	
Motion / Order Filing Fee \$25	MOTION	\$25.00		\$25.00	
Motion / Order Filing Fee \$25	MOTION	\$25.00		\$25.00	
Payments					
Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount	
01 / 22 / 2020	613782	COCDDTS	PY	\$25.00	
01 / 09 / 2020	613090	COCBLC	PY	\$25.00	
11 / 15 / 2019	610770	COCMRR	WV	\$25.00	
05 / 05 / 2010	204870	BSG	PY	\$25.00	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2020-CP-10-03825
	)	
GENEVIEVE STRATOS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CHARLESTON COUNTY SHERIFF'S	)	
OFFICE AND KARMATIC, LLC,	)	
	)	
Defendants.	)	
	)	
	)	

**DEFENDANT KARMATIC, LLC's MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY RESTRAINING ORDER AND
INJUNCTION**

This matter is before the Court on Plaintiff's Motion for Preliminary Restraining Order and Injunction, seeking to enjoin the Defendants from executing a judgment against real property owned by Plaintiff. Because the judgment at issue was entered on December 8, 2010, and, therefore continues to be enforceable, Plaintiff cannot show she is likely to succeed on the merits of her claim that the judgment is stale and her Motion must be denied.

BACKGROUND

Plaintiff personally guaranteed a note given by a third-party which was secured by a mortgage on real property. The note went into default, foreclosure proceedings were initiated, and by Order filed August 16, 2010 (the "Foreclosure Order"), the Court ordered two things: 1) that the foreclosure sale take place; and 2) that Plaintiff would be liable if there was a deficiency. See Foreclosure Order, attached as Exhibit 1.

The foreclosure sale took place on November 18, 2010, and the proceeds of the sale were insufficient to satisfy the amount owed to the creditor/mortgagee. On December 8, 2010, the

Court entered an Order for Deficiency Judgment, ordering that the creditor/mortgagee “have judgment against... [Plaintiff] in the sum of \$55,297.74, plus interest accruing thereon from and after November 18, 2010, at the legal rate of interest for judgments.” See Order for Deficiency Judgment, attached as Exhibit 2.

Thereafter, on November 7, 2019, the deficiency judgment was assigned to Defendant Karmatic, LLC. See Non-Recourse Assignment of Judgment, attached as Exhibit 3. On November 22, 2019, Karmatic filed an Execution Against Property (attached as Exhibit 4), which was electronically endorsed by the Clerk of Court on November 25, 2019. As stated in the Execution, Karmatic seeks to enforce the Order for Deficiency Judgment, entered on December 8, 2010, and have the same satisfied out of the real and/or personal property of Plaintiff.

Real property titled in Plaintiff’s name, and located in Charleston County, has been located, and Defendant Charleston County Sheriff’s Office (“CCSO”) is in the process of executing the deficiency judgment against Plaintiff’s real property, with a Public Auction scheduled to take place on October 5, 2020.

On August 28, 2020, Plaintiff filed a Verified Complaint, seeking a temporary restraining order, a preliminary and permanent injunction, and a declaratory judgment. Essentially, Plaintiff seeks a declaration that the August 16, 2010, Foreclosure Order is the only order capable of being executed, and, because more than ten years have elapsed since that order was entered, it is now stale. Plaintiff’s Motion seeks an injunction prohibiting CCSO from proceeding with the judicial sale of her property. Because the December 10, 2010, Order for Deficiency Judgment is an independent, final order constituting a lien on Plaintiff’s property, Plaintiff is unlikely to succeed on the merits of her underlying claim and her Motion must be denied.

ARGUMENT

“The remedy of an injunction is a drastic one and ought to be applied with caution.” Forest Land Co. v. Black, 216 S.C. 255, 57 S.E.2d 420, 426 (1950); Lefurgy v. The Long Cove Owners Ass’n., Inc., 313 S.C. 555, 443 S.E.2d 577 (Ct. App. 1994). The party seeking the injunction has the formidable burden of proving each of the following elements: (1) an irreparable injury will occur in the absence of an injunction; (2) there is no adequate remedy at law; and (3) likelihood of success on the merits. Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

Here, Plaintiff cannot show likelihood of success on the merits of her underlying lawsuit. It appears that the crux of Plaintiff’s argument is that the December 10, 2010, Order for Deficiency Judgment is not a “new” judgment but essentially a reduction, or amendment, of the judgment imposed in the August 16, 2010, Foreclosure Order. This argument appears to conflate the two separate foreclosure procedures set forth, respectively, at S.C. Code Ann. § 29-3-650 and § 29-3-660.

“A judgment represents a judicial declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money.” Wells v. Sutton, 299 S.C. 19, 22, 382 S.E.2d 14, 16 (Ct. App. 1989). The Order for Deficiency Judgment, on its face, is clearly a stand-alone judicial declaration ordering “that the [creditor] have judgment against ... [Plaintiff] in the sum of \$55,297.74, plus interest accruing thereon from and after November 18, 2010, at the legal rate of interest for judgments.” It does not indicate that it is amending or reducing the amount of any prior order. Also telling is the fact that interest was ordered to accrue from November 18, 2010, the date of the foreclosure sale – not from the earlier date of the Foreclosure Order. See S.C. Code Ann. § 34-31-20(B) (“A money decree or judgment of a court enrolled or entered

must draw interest according to law.”). If Plaintiff’s argument were correct, interest would have been accruing from August 16, 2010, the date of the Foreclosure Order.

Review of the Foreclosure Order also establishes that is not a “judgment” against Plaintiff upon which an execution could issue. It orders foreclosure, and orders that, should the foreclosure sale result in a deficiency, Plaintiff would be held liable for such deficiency. In other words, it merely established that Plaintiff *would be* liable “[i]f the proceeds of sale are insufficient.” The order does not adjudicate Plaintiff liable for any sum certain, it indicates that a later judgment may be entered against Plaintiff if, and only if, the sale resulted in a deficiency.

In entering the Order of Deficiency Judgment, the Court utilized the procedure set forth in S.C. Code Ann. § 29-3-660 as applicable to Plaintiff as a guarantor of the debt:

In actions to foreclose mortgages ... if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor the plaintiff may make such person a party to the action and the ***court may adjudge payment*** of the residue of such debt remaining unsatisfied ***after*** a sale of the mortgaged premises against such other person ***and may enforce such judgment as in other cases.***

(emphasis added). This statute compels the conclusion that the December 8, 2010, Order for Deficiency Judgment is an enforceable judgment that was incapable of existing prior to the foreclosure sale.

This situation is distinguishable from those in which a Court elects to utilize the foreclosure procedure set forth in S.C. Code Ann. § 29-3-650, which allows the Court to enter judgment against the debtor for the *entire* amount of the debt due at the same time it orders the sale of the mortgaged premises. Once the property is sold, the amount of the judgment is reduced by whatever is realized by the sale. In other words, the debtor is given credit for the sales proceeds. See id. (“Upon the sale of the mortgaged premises the officer making the sale under the order of the court shall credit upon the judgment so rendered for the debt the amount paid to

the plaintiff from the proceeds of the sale.”). Unlike sales and orders conducted pursuant to S.C. Code Ann. § 29-3-650, in the present matter, the Court used the procedure set forth in S.C. Code Ann. § 29-3-660, resulting in the entry of a deficiency judgment following the conclusion of the foreclosure sale.

Because the December 8, 2010, Order for Deficiency Judgment is an independent judgment which Karmatic is statutorily permitted to enforce, and further because less than ten years have elapsed since that judgment was entered, Plaintiff is not likely to succeed on the merits of her claims and her Motion seeking injunctive relief must be denied.

ROSEN HAGOOD, LLC

By: s/ Elizabeth J. Palmer
Elizabeth J. Palmer
epalmer@rosenhagood.com
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726

ATTORNEY FOR DEFENDANT
KARMATIC, LLC

Charleston, South Carolina
September 4, 2020

ORDER
(DEFICIENCY DEMANDED)

FINDINGS OF FACT

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referred to me as Master in Equity for Charleston County for the purpose of taking testimony and making findings of fact and conclusions of law and to render a final decree with direct appeal to the South Carolina Supreme Court or the South Carolina Court of Appeals as provided by the South Carolina Appellate Court Rules and pursuant to Section 14-11-85 of the Code of Laws of South Carolina, 1976, as amended.

AS TO THE FIRST CAUSE OF ACTION
(Foreclosure of Mortgage)

9. On or about July 30, 2007, for value received, the Defendant, Southrail Enterprises, LLC., made, executed and delivered to Tidelands Bank, the Plaintiff, a Promissory Note (the "Note"), and in addition, made, executed and delivered Renewal Notes dated August 23, 2008, and January 30, 2009.

10. Simultaneously therewith, the Defendant, Southrail Enterprises, LLC., executed a Mortgage of Real Estate (the "Mortgage") wherein it pledged as collateral certain real property commonly described as Lot 13-C South Rail Road, North Charleston, South Carolina, to secure repayment of all indebtedness under the Note.

11. Thereafter, the Mortgage was recorded on August 7, 2007, in the RMC/ROD Office for Charleston, County in Book A635 at Page 232.

12. That the Mortgage secures commercial or other non-residential property and is not subject to modification under the Home Affordable Modification Program ("HMP").

13. Under the terms of the Note and Mortgage, the Defendant, Southrail Enterprises, LLC., promised to pay the Plaintiff the sum of \$300,000.00 Dollars, plus interest, costs and reasonable attorneys' fees. Other terms and conditions are stated in the Note and Mortgage, which are of record herein.

14. The Note and Mortgage provide that the mortgagor will promptly pay the principal and interest evidenced by the Note at the time and in the manner therein provided.

15. According to the terms and conditions of the Note and Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable, at the option of the holders, and the mortgagee shall have power to sell said premises according to law and this Mortgage may be foreclosed and any such expenses and fees as may be incurred including the fees of any attorney employed by the mortgagee in any litigation or proceeding affecting said premises, shall be paid by the mortgagor and secured by this

instrument. And it is further agreed that in case the debt secured by the Mortgage or any part thereof is collected by suit or action, or the Mortgage be foreclosed, or put into the hands of an attorney for collection, suit, action or foreclosure, the said mortgagor shall be chargeable with all costs of collection including reasonable attorneys fees, which charges and fees together with all costs and expenses, are hereby secured and may be recovered in any suit or action hereupon or hereunder.

16. The payments due on the Note and Mortgage, have not been made as provided for in the Note and Mortgage, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of its attorneys herein for collection.

17. With respect to attorney fees, in view of the potential liabilities inherent in a real property matter, the attendant responsibilities, and the size of the mortgage debt, I find that a reasonable attorney's fee would be \$3,000.00. The Plaintiff engaged an attorney to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the running interest. It appears that the attorney examined the title to identify all parties having or claiming any interest in the subject real estate, the preparation of certain pleadings and other documents including the following:

- a. Lis Pendens;
- b. Summons and Complaint;
- c. Affidavit(s) of Service;
- d. Acknowledgment(s) of Service;
- e. Order of Reference;
- f. Notice(s) of Hearing;
- g. Record (Transcript) of Testimony; and
- h. Proposed Master in Equity's Report and Judgment of Foreclosure and Sale.

18. Additionally, the attorney prepared and served the pleadings upon the Defendant personally or by statutory/substitute service, provided reinstatement and payoff figures and payment histories as requested or required, and scheduled and attended the hearing in this matter.

19. Future duties include forwarding copies of the Judgment to appearing counsel, obtaining bidding instructions from Plaintiff or its designee, representing Plaintiff at the sale, preparing an Order of Sale or Report on Sale and Disbursements and Order Confirming Sale, and preparing the Master in Equity's Deed and any other documents

necessary in this particular action.

20. In addition to the time invested to date, the Court anticipates a minimum of two (2) hours after the hearing. Moreover, depending upon the interest shown by the Defendant, third parties, or counsel for either and the inherent negotiations required thereby, other time may also be committed to the completion of the case.

21. In regard to the professional standing of counsel, representation of Plaintiff has been undertaken by the firm of CLAWSON & STAUBES, LLC. The attorneys primarily involved in this representation have been Kristen Nichols Voyer, R. Timothy Whisler and Stephanie A. Grunthal. They concentrate their practice in the areas of foreclosure, bankruptcy and commercial litigation.

22. The fee requested is customary for the services provided, given the professional standing of Plaintiff's counsel. Also the Plaintiff's attorneys have achieved the beneficial result of a prompt foreclosure of the mortgage.

23. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys fees secured by the Note and Mortgage are as follows:

(a) Principal due as of August 3, 2010	<u>\$299,916.30</u>
(b) Accrued Interest as of August 3, 2010	<u>\$24,461.67</u>
(c) Escrow Adjustments (debits or credits)	<u>\$0.00</u>
(d) Costs of Collection prior to hearing (Clerk of Court, Service Fee, Title Search, Special Referee)	<u>\$591.20</u>
(e) Taxes, appraisal fees, insurance, late fees, etc. not included in above	<u>\$17,054.96</u>
(f) Attorneys Fees	<u>\$3,000.00</u>
Total debt secured by the Note and Mortgage, including interest to date shown:	<u>\$345,024.13</u>

Interest for the period from the date shown in (b) above through the date of this judgment at the rate of 6.50% per annum (\$31.45 per diem) (pursuant to the terms of the Note and Mortgage) to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the legal rate of interest for judgments on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which

such interest is computed.

24. The Plaintiff does not waive, but specifically demands judgment against the Defendant, Southrail Enterprises, LLC., for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendant, Southrail Enterprises, LLC., for any deficiency in this action remaining after sale of the mortgaged premises. Since a deficiency is demanded, the bidding will remain open for a period of thirty (30) days as prescribed by law.

25. The Defendant below named claims or may claim to have some interest in or lien upon the premises covered by the Plaintiff's Mortgage, or some part thereof, by virtue of the matters and things set forth below, but any such interest in or lien upon the said premises is junior and subordinate to the lien of the Plaintiff's Mortgage or does not attach to the property which is the subject of this action, or has been paid in full and not satisfied of record, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such interest or lien will be determined at a hearing subsequent to the sale as prescribed by law. Said liens or interests are of record in the RMC Office for Clerk of Court's Office for Charleston County and are described as follows:

- (a) The Defendant, Martin Properties, LLC, by virtue of a mortgage, given by Southrail Properties, LLC, in the amount of \$300,000.00, dated July 30, 2007, and recorded August 7, 2007, in Book A635 at Page 242; and

The Plaintiff is informed and believes that the interest of the above named Defendant, if any is junior and subordinate to the lien of the Plaintiff's Mortgage.

AS TO THE SECOND CAUSE OF ACTION
(Suit on Guaranty)

26. The Defendants, Valmar Nunes and Genevieve Stratos, in order to induce Tideland Bank to loan funds evidenced by the Note and Mortgage referred to herein, executed agreements personally guaranteeing payment of all obligations of Southrail Enterprises, LLC, plus costs, fees and any other obligation due the Plaintiff under the Note and Mortgage.

27. The Guaranty Agreements guarantees payment of all obligations, are unconditional and joint and several. Notice of default has been given to Valmar Nunes and Genevieve Stratos and the same has been refused.

28. Under the terms of the Guaranty Agreements, Valmar Nunes and Genevieve Stratos are liable for the full amount due under the Note and documents evidencing the

loan agreement as set forth herein.

29. Tideland Bank is entitled to judgment against the Defendants, Valmar Nunes and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Valmar Nunes and Genevieve Stratos, for any deficiency in this action remaining after the sale of the mortgaged premises.

30. That the Plaintiff does not waive, but specifically demands judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, for any deficiency in this action remaining after the sale of the mortgaged premises. Since a deficiency is demanded, the bidding will remain open for a period of thirty (30) days as prescribed by law.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

A. The Plaintiff's Mortgage constitutes a first (1st) lien on the subject real property, subject only to the lien for unpaid Charleston County ad valorem taxes, if any, on the subject real property.

B. The Plaintiff should have judgment of foreclosure of its Mortgage.

C. The mortgaged property should be ordered sold at public auction after due advertisement. The sale shall be made subject to taxes and assessments that are due on the day of sale. That after making the required deposit the successful bidder at the sale should be required to pay interest at the legal rate of interest for judgments from the date of sale through the date of compliance.

D. The proceeds arising from such sale should be applied, first, to the costs and disbursements of this action, including attorney's fees, and next, to the payment and discharge of the amount of the Plaintiff's debt and interest or so much thereof as the proceeds will pay, and any surplus should be held pending further order of the Court.

E. If the proceeds of sale are insufficient to pay the amounts hereinbefore authorized to be paid out of said proceeds, with the interest, costs and disbursements as aforesaid, the parties hereto entitled to such deficiency have judgment therefor against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos.

Now, on motion of Plaintiff's attorney, Clawson and Staubes, LLC,

IT IS ORDERED, ADJUDGED AND DECREED, that there is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$345,024.13, representing the "Total Debt" due Plaintiff as set out in Paragraph 23, *supra*, together with interest at the rate of 6.50% per annum (\$31.45 per diem) as provided in said Note on the balance of principal from the aforesaid date to the date hereof; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the amount due in the preceding paragraph (the "Total Debt" as set forth in Paragraph 23, *supra*, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the legal rate of interest for judgments; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, on or before the date of sale of the property herein described, pay to the Plaintiff, or Plaintiff's attorney, the total amount due Plaintiff, together with the costs and disbursements of this action, including reasonable attorney's fees; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that on default of payment at or before the time herein indicated, the mortgaged premises described in the Lis Pendens and Complaint, be sold by the undersigned Master in Equity, at public auction, at the Charleston County Courthouse, in the City of Charleston, Charleston County and State aforesaid, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

a. **FOR CASH:** the undersigned Master in Equity will require a deposit of Five (5%) Percent on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.

b. Interest on the balance of the bid shall be paid through the day of compliance at the legal rate of interest for judgments from the date of sale through the date of compliance.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

d. Purchaser to pay for the preparation of the deed, deed stamps and costs of recording the deed; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that if Plaintiff is the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness due Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses crediting the balance of the bid on the indebtedness due Plaintiff; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that a personal or deficiency judgment is being demanded, the bidding will remain open for thirty (30) days after the date of the initial sale as provided by law in such cases; and

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the undersigned Master in Equity apply the proceeds of the sale as follows:

First, to payment of the amount of the costs and expenses of this action, including attorney's fees, and any taxable disbursements by the attorneys in the action.

Next: to the payment to the Plaintiff or Plaintiff's attorney, of the amount of the debt and interest due Plaintiff or so much thereof as the purchase money will pay on the same.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that any surplus funds shall be held pending further Order of this Court; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that if the proceeds of the sale are insufficient to pay the amounts herein above authorized to be paid out of said proceeds, with the interest, costs and expenses as aforesaid, the parties hereto entitled to such deficiency have judgment therefor against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of

Charleston County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or its assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or its assigns in such peaceable possession; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that each Defendant named herein, and all persons whosoever claiming under him, them or it be forever barred and foreclosed of all rights, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the following is a description of the premises herein ordered to be sold:

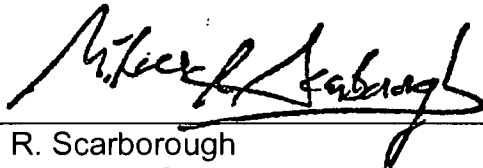
ALL that certain piece, parcel or tract of land, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, and designated as Lot 13-C, 4.71 Acres, more or less, on a plat entitled, "SUBDIVISION PLAT OF LOT 13 COLONY NORTH INDUSTRIAL TRACT TO CREATE LOTS 13-A, 13B AND 13-C OWNED BY SOUTHERN CONCRETE PRODUCTS, LLC ABOUT TO BE CONVEYED TO DEAN LOWDER, CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by 2 A D Surveying Co., Inc., dated July 11, 2002 and recorded in the RMC Office for Charleston County in Plat Book EF, at Page 732. Said Tract having such size, shape, courses, distances, buttings and boundings, as will by reference to said plat more fully will appear.

SUBJECT TO any and all easements, restrictions, rights-of-way and other matters of record.

BEING the same property conveyed to Southrail Enterprises, LLC., by deed of Martin Properties, LLC dated July 30, 2007, and recorded August 7, 2007, in the RMC/ROD Office for Charleston County in Book Y634 at Page 756.

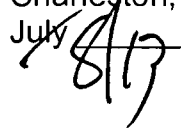
TMS No.: 484-00-00-144

AND IT IS SO ORDERED.



Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina
July 8, 2010



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TIDELANDS BANK,)
Plaintiff,)
vs.)
SOUTHRAIL ENTERPRISES, LLC.;)
VALMAR NUNES; GENEVIEVE)
STRATOS; and MARTIN)
PROPERTIES, LLC;)
Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2010-CP-10-139

TESTIMONY

FILED
2010 AUG 16 PM 3:06
JULIE J. ARMSTRONG
CLERK OF COURT

A hearing was held August 3, 2010, at 10:00 AM, at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina 29401, which was attended by the undersigned attorney of Clawson and Staubes, LLC, Attorneys for the Plaintiff, authorized to testify by the Plaintiff by written Authorization duly filed in this action and made a part of the record herein.

1. This is an action that has been brought for the foreclosure of that certain Mortgage which was given by the Defendant, Southrail Enterprises, LLC., to Tidelands Bank dated July 30 ,2007, and recorded August 7, 2007, in the RMC/ROD Office for Charleston County, South Carolina in Book A635 at Page 232.

2. That Tidelands Bank (hereinafter "Plaintiff") is a banking institution authorized to do business in the State of South Carolina.

3. That the Defendant, Southrail Enterprises, LLC, is, upon information and belief, a limited liability company organized and operating under the laws of the State of South Carolina.

4. That the Defendants, Valmar Nunes and Genevieve Stratos, are, upon information and belief, residents of Charleston County, South Carolina, and are neither infants nor incompetent and not in the military service.

5. That the Defendant, Martin Properties, LLC, is, upon information and belief, a limited liability company organized and operating under the laws of the State of South Carolina.

6. That the subject of this action is real property located in Charleston County, South Carolina.

FIRST CAUSE OF ACTION
(Foreclosure of Mortgage)

7. That on or about July 30, 2007, for value received, the Defendant, Southrail

Enterprises, LLC., made, executed and delivered to Tidelands Bank, the Plaintiff, a Promissory Note (the "Note"), and in addition, made, executed and delivered Renewal Notes dated August 23, 2008, and January 30, 2009. Copies of the Notes are attached hereto collectively as **Exhibit "A"** and are incorporated herein by reference.

8. That simultaneously therewith, the Defendant, Southrail Enterprises, LLC., executed a Mortgage of Real Estate (the "Mortgage") wherein it pledged as collateral certain real property commonly described as Lot 13-C South Rail Road, North Charleston, South Carolina, to secure repayment of all indebtedness under the Note. A copy of the Mortgage to the Plaintiff is attached hereto as **Exhibit "B"** and is incorporated herein by reference. Said real property being more particularly described as follows:

ALL that certain piece, parcel or tract of land, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, and designated as Lot 13-C, 4.71 Acres, more or less, on a plat entitled, "SUBDIVISION PLAT OF LOT 13 COLONY NORTH INDUSTRIAL TRACT TO CREATE LOTS 13-A, 13B AND 13-C OWNED BY SOUTHERN CONCRETE PRODUCTS, LLC ABOUT TO BE CONVEYED TO DEAN LOWDER, CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by 2 A D Surveying Co., Inc., dated July 11, 2002 and recorded in the RMC Office for Charleston County in Plat Book EF, at Page 732. Said Tract having such size, shape, courses, distances, buttings and boundings, as will by reference to said plat more fully will appear.

SUBJECT TO any and all easements, restrictions, rights-of-way and other matters of record.

BEING the same property conveyed to Southrail Enterprises, LLC., by deed of Martin Properties, LLC dated July 30, 2007, and recorded August 7, 2007, in the RMC/ROD Office for Charleston County in Book Y634 at Page 756.

TMS No.: 484-00-00-144.

9. That thereafter, the Mortgage was recorded on August 7, 2007, in the RMC/ROD Office for Charleston County in Book A635 at Page 232.

10. That the Mortgage secures commercial or other non-residential property and is not subject to modification under the Home Affordable Modification Program ("HMP").

11. That under the terms of the Note and Mortgage, the Defendant, Southrail Enterprises, LLC., promised to pay the Plaintiff the sum of \$300,000.00 Dollars, plus interest.

12. That the Mortgage provides that the mortgagor will promptly pay the principal

and interest evidenced by the Note at the time and in the manner therein provided.

13. That according to the terms and conditions of the Note and Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable, at the option of the holders, and the mortgagee shall have power to sell said premises according to law and this Mortgage may be foreclosed and any such expenses and fees as may be incurred including the fees of any attorney employed by the mortgagee in any litigation or proceeding affecting said premises, shall be paid by the mortgagor and secured by this instrument. And it is further agreed that in case the debt secured by the Mortgage or any part thereof is collected by suit or action, or the Mortgage be foreclosed, or put into the hands of an attorney for collection, suit, action or foreclosure, the said mortgagor shall be chargeable with all costs of collection including reasonable attorneys fees, which charges and fees together with all costs and expenses, are hereby secured and may be recovered in any suit or action hereupon or hereunder.

14. That the Defendant, Southrail Enterprises, LLC., defaulted under the terms of the Note and Mortgage, and the Plaintiff elected to declare the entire balance of the indebtedness due and payable and that there is due on the Note and Mortgage as of August 3, 2010, the sum of \$343,207.13, together with interest accruing from and after said date at the rate of 6.50% per annum (\$31.45 per diem), and also the amount to be incurred as the costs and disbursements of this action including reasonable attorney's fees.

SECOND CAUSE OF ACTION
(Suit on Guaranty)

15. The Defendants, Valmar Nunes and Genevieve Stratos, in order to induce Tideland Bank to loan funds evidenced by the Note and Mortgage referred to herein, executed agreements personally guaranteeing payment of all obligations of Southrail Enterprises, LLC, plus costs, fees and any other obligation due the Plaintiff under the Note and Mortgage. A copy of the Guaranty Agreements executed by Valmar Nunes and Genevieve Stratos are annexed hereto as **Exhibit "C"** and are incorporated herein by reference.

16. The Guaranty Agreements guarantee payment of all obligations, are unconditional and joint and several. Notice of default has been given to Valmar Nunes and Genevieve Stratos and the same has been refused.

17. Under the terms of the Guaranty Agreements, Valmar Nunes and Genevieve

Stratos are liable for the full amount due under the Note and documents evidencing the loan agreement as set forth herein.

18. Tideland Bank is entitled to judgment against the Defendants, Valmar Nunes and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Valmar Nunes and Genevieve Stratos, for any deficiency in this action remaining after the sale of the mortgaged premises.

TO ALL CAUSES OF ACTION

19. That the Plaintiff is entitled to reasonable attorney's fees for its attorneys, together with the costs and disbursements of this action.

20. The Mortgage provides that if the taxes are paid by the Mortgagee, the same may be added to the amount due and all such payments are secured thereby.

21. That the Plaintiff's Mortgage constitutes a first (1st) lien on the subject real property, subject only to the lien for unpaid Charleston County ad valorem taxes, if any, on the subject real property.

22. That it is the desire of the Plaintiff that the property be sold to satisfy the principal and interest due under the Note and Mortgage as well as the cost of this action including reasonable attorney's fees.

23. That the Plaintiff does not waive, but specifically demands judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes and Genevieve Stratos, for any deficiency in this action remaining after sale of the mortgaged premises.

24. That the Defendant below named claims or may claim to have some interest in or lien upon the premises covered by the Plaintiff's Mortgage, or some part thereof, by virtue of the matters and things set forth below, but any such interest in or lien upon the said premises is junior and subordinate to the lien of the Plaintiff's Mortgage or does not attach to the property which is the subject of this action, or has been paid in full and not satisfied of record. Said liens or interests are of record in the RMC/ROD Office or Clerk of Court's Office for Charleston County and are described as follows:

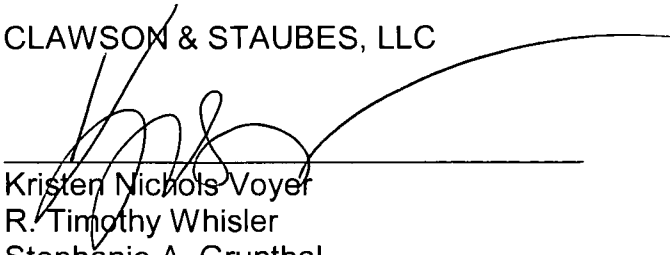
- (a) The Defendant, Martin Properties, LLC, by virtue of a mortgage, given by Southrail Properties, LLC, in the amount of \$300,000.00, dated July 30, 2007, and recorded August 7, 2007, in Book A635 at Page 242.

25. That all proper parties have been joined in this action, duly served with the Summons and Complaint, defaulted or consented to the jurisdiction of this Court and have been served with a notice of this hearing.

26. That on behalf of the Plaintiff, we demand judgment against the Defendant on all Claims for Relief as set forth above.

Your Honor, this concludes our case.

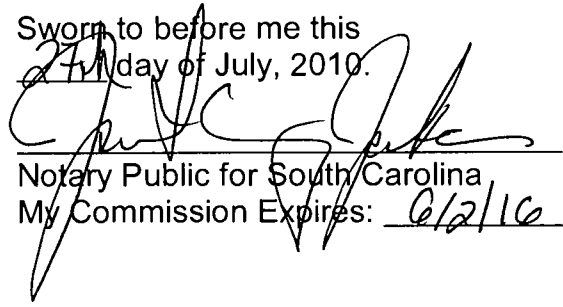
CLAWSON & STAUBES, LLC



Kristen Nichols Voyer
R. Timothy Whisler
Stephanie A. Grunthal
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
Telephone: (843) 577-2026
Facsimile: (843) 722-2867
Attorneys for Plaintiff

Charleston, South Carolina
July 27, 2010

Sworn to before me this
27th day of July, 2010.



Notary Public for South Carolina
My Commission Expires: 6/2/16

Southrail Enterprises, LLC 1810 Tennyson Row Mount Pleasant, SC 29466	Tidelands Bank 875 Lowcountry Blvd Mt. Pleasant, SC 29464	Loan Number _____ Date <u>07/30/2007</u> Maturity Date <u>08/02/2008</u> Loan Amount \$ <u>300,000.00</u> Renewal Of _____
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of Three Hundred Thousand Dollars Dollars \$ 300,000.00

☒ **Single Advance:** I will receive all of this principal sum on 07/30/2007. No additional advances are contemplated under this note.
☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.
 Conditions: The conditions for future advances are _____

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

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

INTEREST: I agree to pay interest on the outstanding principal balance from 07/30/2007 at the rate of 8.750 % per year until 07/31/2007.

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

☒ **Index Rate:** The future rate will be .50% above the following index rate: Wall Street Journal Prime Rate

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

☒ **Frequency and Timing:** The rate on this note may change as often as every day beginning 07/31/2007

A change in the interest rate will take effect on the same day

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

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

☒ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a Actual/365 basis.

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

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

☐ at a rate equal to _____

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the late amount with a minimum of \$10.00 and a maximum of \$500.00

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____

PAYMENTS: I agree to pay this note as follows:

☒ **Interest:** I agree to pay accrued interest in 11 Monthly interest payments beginning 08/02/2007 and with the principal.

☒ **Principal:** I agree to pay the principal in one final payment of principal and interest in the amount of \$302,260.41 due on 08/02/2008.

☐ **Installments:** I agree to pay this note in _____ payments. The first payment will be in the amount of \$ _____ and will be due _____ A payment of \$ _____ will be due _____

thereafter. The final payment of the entire unpaid balance of principal and interest will be due _____

ADDITIONAL TERMS:

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date):
FROM on Lot 13-C South Rail Road, North Charleston, SC 29420.

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

PURPOSE: The purpose of this loan is Business: Purchase vacant land.

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

Genevieve Stratos
 Genevieve Stratos Member

Valmar Nunes
 Valmar Nunes Member

Signature for Lender

Scott M. Garcia

FILED 800-631-8889

EXHIBIT

A

Southrail Enterprises, LLC
1810 Pennyson Row
Mount Pleasant, SC 29466

Tideland Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

Loan Number 140294900
Date 08/21/2008
Maturity Date 12/02/2008
Loan Amount \$ 293,315.30
Renewal (Y) 140294900

BORROWER'S NAME AND ADDRESS
("includes each borrower above, jointly and severally.")

LENDER'S NAME AND ADDRESS
("You" means the lender, its successors and assigns.")

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Two Hundred Ninety Three Thousand Nine Hundred Sixteen Dollars and Thirty Cents .. Dollars \$ 293,315.30

☒ Single Advance: I will receive all of this principal sum on 08/21/2008 .. No additional advances are contemplated under this note.
☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On ..
I will receive the amount of \$.. and future principal advances are contemplated

Condition: The conditions for future advances are ..

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

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

INTEREST: I agree to pay interest on the outstanding principal balance from 08/21/2008 .. at the rate of 6.000 % per year until .. paid in full

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

☒ Index Rate: The future rate will be .50% above .. the following index rate: Wall Street Journal Prime Rate

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

☒ Frequency and Timing: The rate on this note may change as often as EVERY day beginning 08/22/2008 ..
A change in the interest rate will take effect on the same day

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than 6.000 % or less than 6.000 % each ..

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

☒ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCUAL METHOD: Interest will be calculated on a Actual/365 basis.

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

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

☒ At a rate equal to WSJ prime rate plus 5% (five percent) upon written default

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the late amount, with a minimum of \$10.00 and a maximum of \$500.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

☒ Interest: I agree to pay accrued interest, in 2 monthly interest payments beginning 10/02/2008 and with the principal.

☒ Principal: I agree to pay the principal in one final payment of principal and interest in the amount of \$ 301,395.33 due on 12/02/2008.

☐ Installments: I agree to pay this note in .. payments. The first payment will be in the amount of \$.. and will be due ... A payment of \$.. will be due .. thereafter. The final payment of the entire unpaid balance of principal and interest will be due ..

ADDITIONAL TERMS: This is a variable rate loan and the payment amounts may change.
Mortgage in the amount of \$300,000.00 dated 7/30/2007, recorded on 8/7/2007 in Charleston County Official Records Book A635, Page 212. This note satisfies but does not satisfy Promissory Note dated 7/30/2007 for loan #140294900.

☒ SECURITY: This note is separately secured by describe separate document by type and date:
FROM on lot 13-C South Rail Road, North Charleston, SC 29420.

(After a section is law your original note before to use a separate security document does not mean the agreement will not require this note.)

PURPOSE: The purpose of this loan is Business; Purchase vacant land.

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

Demetrius Stratos .. Member

James Nunez .. Member

Signature for Lender

Stuart M. Garcia

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

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

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

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

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

INTEREST: Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, my obligation will start to earn interest only when I receive the advance. The interest rate for this note is my prime rate plus 1% in advance. The interest rate I advance at this time is my prime rate plus 1% apply to the entire principal advanced at this time. Notwithstanding anything to the contrary, I do not agree to pay and we do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to here (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

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

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

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

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

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

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

GC/ 011; I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

(2) any money owed to me on an item presented to you or in your possession for collection or exchange; and

(3) any repurchase agreement or other nondeposit obligation.

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

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

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

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

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

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

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

(1) You may demand immediate payment of all I owe you under this note principal, accrued unpaid interest and other accrued charges).

(2) You may set off this debt against any right I have in the payment of money from you, subject to the terms of the "R-1 C-1" paragraph herein.

(3) You may demand security, additional security, or additional portion to be paid in pay this note as a condition for not using any other remedy.

(4) You may refuse to make advances in me or allow purchases on credit by me.

(B) You may use any remedy you have under state or federal law. By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.

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

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

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

I waive any defenses I have based on insanity or impairment of

OBLIGATIONS INDEPENDENT: I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me, inform, or sue/advise also who is obligated on this note, or any number of us

to, or anyone else who is obligated in this note, or any member of the household, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by more or less than all of us will not release me from my duty to pay it. [Of course, you are entitled to only one payment in full.] I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, till to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

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

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

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

[illegible]

Southall Enterprises, LLC
1010 Anthony Knox
Mount Pleasant, SC 29466

Wadsworth Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

Loan Number [REDACTED]
Date 01/30/2009
Maturity Date 06/02/2009
Loan Amount \$ 299,916.30
Renewal CI 140294900

BORROWER'S NAME AND ADDRESS

"I" includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS

"You" means the lender, its successors and assigns

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Two Hundred Ninety-Nine Thousand Nine Hundred Sixteen Dollars and Thirty Cents
Dollars \$ 299,916.30

☒ Single Advance: I will receive all of this principal sum on 01/30/2009. No additional advances are contemplated under this note.

☐ Multiple Advances: The principal sum shown above is the maximum amount of principal I can borrow under this note. On [] I will receive the amount of \$ [] and future principal advances are contemplated.

Conditions: The conditions for future advances are:

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

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

INTEREST. I agree to pay interest on the outstanding principal balance from 01/30/2009 at the rate of 6.50000 % per year until paid in full.

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

☒ Index Rate: The future rate will be 1.00% above the following index rate: Wall Street Journal Prime Rate

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

☒ Frequency and Timing: The rate on this note may change as often as every day beginning 01/31/2009. A change in the interest rate will take effect on the same day.

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than 6.500 % or less than 6.500 %.

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

☒ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a Actual/365 basis.

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

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

☒ at a rate equal to WSJ prime rate plus 5% (five percent) upon written default notice.

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the late amount with a minimum of \$10.00 and a maximum of \$500.00.

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which [] are [] are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

☒ Interest: I agree to pay accrued interest in 3 Monthly Interest payments beginning 03/02/2009 and with the principal.

☒ Principal: I agree to pay the principal in one final payment of principal and interest in the amount of \$301,572.00 due on 06/02/2009.

☐ Installments: I agree to pay this note in [] payments. The first payment will be in the amount of \$ [] will be due [] thereafter. The final payment of the entire unpaid balance of principal and interest will be due on []

ADDITIONAL TERMS: This is a variable rate loan and the payment amounts may change.

Mortgage in the amount of \$300,000.00 dated 07/30/2007, recorded on 08/07/2007 in Charleston County Official Records Book 6635, Page 732. This note renews but does not satisfy Preliminary Note dated 07/30/2007 & 08/21/2008 for loan #140294900.

☒ **SECURITY:** (This note is separately secured by (describe separate document by type and date):
PHEW on lot 13-C South Ball Road, North Charleston, SC 29420.

(If a document is herewith referred to, failure to list it separately and to sign and sign over this document will constitute a breach.)

Signature for Lender

Signature for Borrower
SOUTH A. GRIFFIN

PURPOSE: The purpose of this loan is Business: Purchase vacant land.

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

Signature
Genevieve Blalock

Number

Signature
Velmae Murray

Number

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

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

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

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

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

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

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

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

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

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

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

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

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

"Right to receive money from you" means:

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

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

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

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

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

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

DEFAULT: I will be in default if any one or more of the following occur:

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

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

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

(b) You may use any remedy you have under state or federal law. By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare me in default, you do not waive your right to later consider the event as a default if it continues or happens again.

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

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

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

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

OBLIGATIONS INDEPENDENT: I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may add me, alone, or anyone else who is obligated on this note, to my guarantor or co-guarantor, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any assignment of my right to any of us, or removal of this note by all or some of us will not release me from my duty to pay it. (Or, maybe, you are entitled to only one payment in full.) I agree that you may in your option extend this note or the debt represented by this note, or any part of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, fail to perfect your security interest in property, or release any security and I will still be obligated to pay this loan.

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

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

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

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This document was prepared by (name, address, phone):

Tidelands Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

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LLF FILE NO.: RE07-323

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE

(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 07/30/2007 and the parties and their addresses are as follows:

MORTGAGOR: Southrail Enterprises, LLC
1810 Tennyson Row
Mount Pleasant, SC 29466

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER: Tidelands Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

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

See Attached Exhibit "A"

RECORD & RETURN TO:
The Lafond Law Firm, P.A.
120 S. Magnolia Street
Summerville, SC 29483

The property is located in Charleston at Lot 13-C South
(County)

Rail Road, North Charleston, South Carolina 29420
(Address) (City) (Zip Code)

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



3. MAXIMUM OBLIGATION LIMIT. The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 300,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

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

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

Promissory Note of even date and amount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BK A 635PG237

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

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

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

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

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

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

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

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

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

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

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

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

- ☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- ☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

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

- ☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- ☒ **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.
- ☐ **Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- ☐ **Additional Terms.**

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

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

Entity Name: Southrail Enterprises, LLC

Entity Name: _____

Genevieve Stratos 07/30/2007 (Seal)
(Signature) Genevieve Stratos (Date)
Member

Valmar Nunes 07/30/2007 (Seal)
(Signature) Valmar Nunes (Date)
Member

Signed, Sealed and delivered in the presence of:

(Witness) DAISY L. GODFREY

(Witness) BENJAMIN A. LAFOND

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

BK A 635PG239

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF DORCHESTER) ss.

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

Sworn to and subscribed before me this 30th day

of July, 2007

[Signature]
Notary Public for South Carolina

BENJAMIN A. LAFOND

My commission expires: 12/13/09

[Signature]
DAISY L. GODFREY

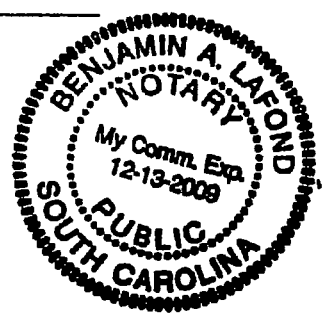


EXHIBIT "A"**9K A 635PG240**

ALL that certain piece, parcel or tract of land, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, and designated as Lot 13-C, 4.71 Acres, more or less, on a plat entitled, "SUBDIVISION PLAT OF LOT 13 COLONY NORTH INDUSTRIAL TRACT TO CREATE LOTS 13-A, 13-B AND 13-C OWNED BY SOUTHERN CONCRETE PRODUCTS, LLC ABOUT TO BE CONVEYED TO DEAN LOWDER, CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by 2 A D Surveying Co., Inc., dated July 11, 2002 and recorded in the RMC Office for Charleston County in Plat Book EF, at Page 732. Said Tract having such size, shape, courses, distances, buttings and boundings, as will by reference to said plat more fully will appear.

SUBJECT TO any and all easements, restrictions, rights-of-way and other matters of record.

BEING the same property conveyed to the Mortgagor herein by deed of Martin Properties, LLC dated July 30, 2007, and recorded in the RMC Office for Charleston County simultaneously herewith.

TMS No.: 484-00-00-144

3K A 635PG241

RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



FILED

August 7, 2007

11:29:41 AM

BK A 635PG232

Charlie Lybrand, Register
Charleston County, SC

Filed By:

Lafond Law Firm

120 South Magnolia St
Summerville

SC 29483

Number of Pages:

10

DESCRIPTION

AMOUNT

	\$ 15.00
Postage	

TOTAL

\$ 15.00

DRAWER:

A - BJA

DO NOT STAMP BELOW THIS LINE

GUARANTY

Mt. Pleasant, South Carolina
(City) (State)

July 30, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Tidelanda Bank

(herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of Southrail Enterprises, LLC
1810 Tennessee Row Mount Pleasant, SC 29466

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

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: Promissory Note
dated 07/30/2007, Loan # 140294200 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

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

The Undersigned further acknowledges and agrees with Lender that:

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

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

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

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 300,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

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

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

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

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

Valmar Nunez
Valmar Nunez

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



ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

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

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

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

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

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

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

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

WN

(page 2 of 2)

GUARANTY

Mt. Pleasant, South Carolina
(City) (State)

July 30, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Tidelands Bank

(herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of Southrail Enterprises, LLC
1810 Tommyson Row Mount Pleasant, SC 29466

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

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: Promissory Note dated 07/30/2007, Loan # 140294900 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

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

The Undersigned further acknowledges and agrees with Lender that:

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

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

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

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 300,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

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

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

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

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

Genevieve Stratos
Genevieve Stratos

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

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under § 1111(b)(2) of the United States Bankruptcy Code.

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

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

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

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

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

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

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

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF CHARLESTON)

CASE NO.: 2010-CP-10-139)

TIDELANDS BANK,)

Plaintiff,)

vs.)

**ORDER FOR DEFICIENCY
JUDGMENT**

SOUTHRAIL ENTERPRISES, LLC.;)

VALMAR NUNES; GENEVIEVE)

STRATOS; and MARTIN)

PROPERTIES, LLC;)

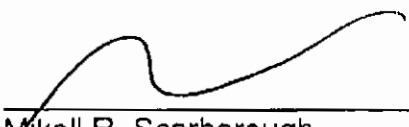
Defendants.)

THIS MATTER came before the undersigned upon referral for foreclosure and the Plaintiff reserving its right to a deficiency judgment; and

IT APPEARING TO THE COURT that upon consideration of the Master's Order of Sale and Disbursement in the above case, and upon the Order of Foreclosure entered August 13, 2010;

IT IS ORDERED that the Plaintiff have judgment against the Defendant, Southrail Enterprises, LLC., Valmar Nunes, and Genevieve Stratos, in the sum of \$55,297.74, plus interest accruing thereon from and after November 18, 2010, at the legal rate of interest for judgments.

AND IT IS SO ORDERED.


Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina

6 day of December, 2010

DEFICIENCY CALCULATION

Total debt due Plaintiff as of August 3, 2010 (including accrued interest on outstanding loan)	\$345,024.13
+ Additional accrued interest @ 6.50% per annum (\$31.45 per diem) on outstanding loan principal (from August 3, 2010 to August 13, 2010)	<u>\$314.50</u>
= Total judgment amount as of August 13, 2010)	\$345,338.63
+ Accrued Interest on total judgment amount @ 7.25% from August 13, 2010 to November 18, 2010 (97 days) (i.e., date of 2 nd sale)	<u>\$6,653.68</u>
= Total judgment amount as of November 18, 2010	<u><u>\$351,992.31</u></u>
= Total judgment amount as of November 18, 2010	\$351,992.31
- Credit for Plaintiff's Bid Amount	\$299,916.30
+ Additional costs paid by Plaintiff to MIE	<u>\$2,500.00</u>
+ Advertising costs	<u>\$721.73</u>
= Deficiency judgment as of November 18, 2010	<u><u>\$55,297.74</u></u>

¹Interest accruing on deficiency judgment amount at legal rate of interest.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Tidelands Bank,

Plaintiff,

v.

Southrail Enterprises, LLC, Valmar
Nunes; Genevieve Stratos; Martin
Properties, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

County C/A No.: 2010-CP-10-00139

**NON-RECOURSE ASSIGNMENT
OF JUDGMENT**

THIS NON-RECOURSE ASSIGNMENT OF JUDGMENTS (this "Assignment") is made and entered into effective as of the 4th day of November 2019 by and between **United Community Bank, Successor by Merger to Tidelands Bank** (the "Assignor") and **Karmatic, LLC** (the "Assignee").

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the payment of ONE THOUSAND DOLLARS and other good and valuable consideration from **Assignee** to **Assignor**, and other provisions stated herein, the receipt and adequacy of which consideration are acknowledged, **Assignor** does hereby sell, transfer, assign, convey and deliver unto **Assignee**, all right, title and interest of **Assignor** in, to and under the Judgment attached hereto as Exhibit "A", and made a part hereof (said documents and rights being collectively referred to herein as the "**Judgment**").

TOGETHER WITH AND INCLUDING all benefits, rights, interests, privileges, remedies, claims, actions and causes of action, set forth in or arising under the Judgment, including, without limitation the right to receive, collect and enforce the payment of the

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CLERK
COMMON PLEAS COURT

FILED

indebtedness evidenced and secured by the Judgment, and all agreed charges from time to time owing thereunder.

TO HAVE AND TO HOLD unto **Assignee**, its successors and assigns forever.

IN WITNESS WHEREOF, **Assignor** and **Assignee** have caused this instrument to be executed by their duly authorized officers, as of the day and year first above written.

SIGNED, SEALED and DELIVERED
in the presence of:



Witness #1

Assignor:



(Seal)
By: Anthony R. Young
Title: Senior Vice President



Witness #2/Notary Public

State of South Carolina

Acknowledgment

County of Charleston

I, G.S. Isaacson, a notary public for South Carolina, do hereby certify that Anthony R. Young, on behalf of Assignor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 4th day of November, 2019.

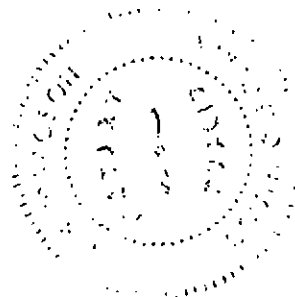


Notary Public

(Notarial Seal)

My Commission Expires:

My Commission Expires September 16, 2025



SIGNED, SEALED and DELIVERED
in the presence of:

Witness #1

Witness #2/Notary Public

Assignee:

By: M. Chase Payne

Title: Member of Karmatic, LLC

(Seal)

State of South Carolina

County of Berkeley

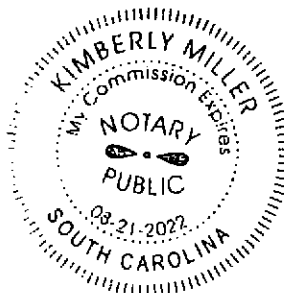
Acknowledgment

I, Kim Miller, a notary public for South Carolina, do hereby certify that
M. Chase Payne, on behalf of Assignee, personally appeared before me this day and
acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 4th day of November, 2019.

Notary Public

My Commission Expires:



(Notarial Seal)

EXHIBIT "A"
THE JUDGMENT

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

TIDELANDS BANK,)

Plaintiff,)

vs.)

SOUTHRAIL ENTERPRISES, LLC.;)

VALMAR NUNES; GENEVIEVE)

STRATOS; and MARTIN)

PROPERTIES, LLC;)

Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-10-139

**ORDER FOR DEFICIENCY
JUDGMENT**2010 DEC - 8
JULY J. ARMSTRONG
CLERK OF COURT

THIS MATTER came before the undersigned upon referral for foreclosure and the Plaintiff reserving its right to a deficiency judgment; and

IT APPEARING TO THE COURT that upon consideration of the Master's Order of Sale and Disbursement in the above case, and upon the Order of Foreclosure entered August 13, 2010;

IT IS ORDERED that the Plaintiff have judgment against the Defendant, Southrail Enterprises, LLC., Valmar Nunes, and Genevieve Stratos, in the sum of \$55,297.74, plus interest accruing thereon from and after November 18, 2010, at the legal rate of interest for judgments.

AND IT IS SO ORDERED.


 Mikell R. Scarborough
 Master in Equity for Charleston County

Charleston, South Carolina

 day of December, 2010

EXECUTION AGAINST PROPERTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
 _____)

CASE NO. 2010-CP-10-00139

TO THE SHERIFF OF CHARLESTON COUNTY:

Judgment was rendered on the 6th day of December, 2010, in Case Number 2010-CP-10-00139 in the Charleston County Court of Common Pleas in favor of the Plaintiffs Karmatic, LLC as successor in interest to United Community Bank, Successor by Merger to Tidelands Bank against Defendant Genevieve Stratos in the amount of Fifty-Five Thousand Two Hundred Ninety-Seven and 24/100 Dollars (\$55,297.74), as appears on the Judgment Roll, filed in the Office of the Clerk of Court of Charleston County Common Pleas.

AND WHEREAS, the said judgment was docketed in your County on the 8th day of December, 2010, in the sum of Fifty-Five Thousand Two Hundred Ninety-Seven and 24/100 Dollars (\$55,297.74), with interest and attorney's fees and costs until paid in full, is now actually due thereon.

THEREFORE, WE COMMAND YOU to satisfy the said judgment out of the personal property of the said judgment debtor, Genevieve Stratos, within your Charleston County, or if sufficient personal property cannot be found, then out of the real property in your County belonging to Genevieve Stratos on the date when the said judgment was so docketed, or at any time thereafter, in whose hands whomsoever the same may be, and duly return this execution according to law to the Clerk of Court's Office for Charleston County Court of Common Pleas.

For Karmatic, LLC
 Against Genevieve Stratos

Dated this 22nd day of
 November, 2019

/S/ Edward M. Farmer, Jr.
 Edward M. Farmer, Jr. (101620)
 Farmer Law Firm, LLC
 361 N. Shelmore Blvd
 Mount Pleasant, SC 29464
 Attorney for the Plaintiff

 Clerk of Court
 Dated this ____ day of November, 2019.



Common Pleas

Case Caption: United Community Bank Successor , plaintiff, et al VS Southrail Enterprises Llc Etc , defendant, et al

Case Number: 2010CP1000139

Type: Execution/Issued

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of Court, by AMR

Electronically signed on 2019-11-25 10:21:36 page 2 of 2

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-10-4235

WELLS FARGO BANK, N.A. as successor by merger
to Wachovia Bank, National Association

William Larry Singleton; 1 Chalmers Street
Council of Co-Owners, Inc.; Latonia Nelson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Christopher M. Towery (#100250)

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Defendant Latonia Nelson is hereby stricken from the caption in this matter.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Wells Fargo Bank, N.A.	William Larry Singleton	\$507,467.17
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: ALL that certain piece, parcel or lot of land, situate, lying and being in the City and County of Charleston, State of South Carolina, and being known and designated as UNIT 17 STATE (initially described as Unit/Space A) in 1 CHALMERS STREET HORIZONTAL PROPERTY REGIME, established pursuant to the Horizontal Property Act, Section 27-31-10, et. seq., Code of Laws of South Carolina, 1976, as amended and submitted by Master Deed dated May 30, 2003, and recorded in Book K-451, Page 875, Charleston

County RMC Office. Said Master Deed being Corrected and Restated by instrument recorded August 29, 2005, in Book F-551, Page 738 and amended by instrument recorded in Book V-604, Page 142, said RMC Office.

SUBJECT to all easements, restrictions and rights of way of record.

BEING the same property conveyed to the Mortgagor herein by deed dated August 11, 2008 and recorded in the Charleston County RMC Office on August 15, 2008 in Book 0004 at Page 345.

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

Circuit Court Judge

Judge Code

Date _____

For Clerk of Court Office Use Only

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

Christopher M. Towery

PO Box 10208

Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-10-4235

Wells Fargo Bank, N.A., as successor by
merger to Wachovia Bank, National
Association,

Plaintiff,

vs.

William Larry Singleton; 1 Chalmers Street
Council of Co-Owners, Inc.; Latonia Nelson

Defendants.

**MASTER'S DECREE AND JUDGMENT
OF FORECLOSURE**

**DEFICIENCY JUDGMENT AGAINST
WILLIAM LARRY SINGLETON**

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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

- Ineligible under the Home Affordable Modification Program -

This matter was referred to me pursuant to a Consent Order of Reference filed on October 25, 2012. Pursuant to the terms of the Consent Order of Reference, I have been authorized and directed to take testimony and to make findings of fact and conclusions of law and to enter a final judgment and decree thereon on the causes of action asserted by the Plaintiff Wells Fargo Bank, N.A., as successor by merger to Wachovia Bank, National Association (the "Plaintiff").

A hearing was held on January 8, 2013, at 2:00 p.m. (the "Hearing"). Christopher M. Towery, Esquire, from the law firm of Womble Carlyle Sandridge & Rice, LLP, represents the Plaintiff in this matter. Defendant William Larry Singleton ("Borrower") has not appeared in this case and, despite valid service, is in default. Christopher Paton, Esquire, from the Rosen Law Firm, represents 1 Chalmers Street Council of Co-Owners ("Chalmers Street Council") in this matter.

At the conclusion of the Hearing, the undersigned held that Plaintiff had met its burden of proof and ordered the real property which is the subject of this action, a description of which is attached hereto as Exhibit A (the "Real Property") to be sold at the March 5, 2013, or next available, sales date.

Having reviewed the pleadings in this case, and the exhibits introduced as part of the record in this matter, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The following pleadings are on file with the Charleston County Clerk of Court's Office:

- a. Lis Pendens filed June 28, 2012
 - b. Summons filed June 28, 2012
 - c. Complaint filed June 28, 2012
 - d. Certificate of Exemption from Administrative Order filed June 28, 2012
 - e. Acceptance of Service of Chalmers Street Council filed July 25, 2012
 - f. Answer, Request for Notice of Surplus Funds, and Consent to Reference of Chalmers Street Council filed August 10, 2012
 - g. Certificate of Service as to Borrower filed September 20, 2012
 - h. Affidavit of Default as to Borrower filed October 24, 2012
 - i. Consent Order of Reference filed October 25, 2012
 - j. Notice of Foreclosure Hearing served December 27, 2012 and filed December 28, 2012
 - k. Affidavit Pursuant to 108 P.L. 189; 117 Stat. 2835; 2003 Enacted H.R. 100 (Servicemembers Civil Relief Act) filed January 8, 2013
 - l. Affidavit of Attorneys Fees of S. Sterling Laney filed January 8, 2013
 - m. Affidavit of Indebtedness and Authorization to Testify filed January 8, 2013
2. Plaintiff is a national banking association organized under the laws of the United States, and is a citizen of the State of South Dakota for jurisdictional purposes because its main office, as set forth in its articles of association, is located in South Dakota.
 3. Borrower is an individual citizen and resident of the State of Georgia.
 4. As the owner of an interest in and/or possessor of real property in this state, Borrower is subject to the jurisdiction of this Court.
 5. Borrower was served with the Summons and Complaint on September 13, 2012.
 6. Borrower has not served an answer or other responsive pleading in this action, and is therefore in default.
 7. Chalmers Street Council is a non-profit corporation organized and existing under the laws of the State of South Carolina and, as such, is subject to the jurisdiction of this Court.
 8. The Real Property is located in Charleston County, South Carolina, and as such, venue is proper in this county pursuant to South Carolina Code § 15-7-10.
 9. No defendant herein is in military service a minor or incompetent.

10. This Court has jurisdiction over the parties and the matters which are the subject of this action.

11. The Real Property is commercial, and the Home Affordable Modification Program is inapplicable.

12. The Administrative Order of the Supreme Court of South Carolina dated May 2, 2011 (2011-05-02-01) does not apply in this case because the Real Property is not an "owner-occupied dwelling" as defined in the Administrative Order.

13. In connection with a loan given by Wachovia Bank, National Association ("Wachovia") to the Singleton (the "Loan"), for value received, the Singleton gave to Wachovia his Promissory Note in the principal amount of \$480,000.00 dated August 11, 2008 (the "Note"). A copy of the Note is attached to the Complaint as "Exhibit B."

14. Plaintiff is successor by merger to Wachovia.

15. Plaintiff has the legal right to enforce the Note and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

16. In order to secure his obligations to Wachovia, Singleton gave to Wachovia his Mortgage and Assignment of Rents, dated August 11, 2008 (the "Mortgage"), a copy of which is attached to the Complaint as "Exhibit C," covering, among other things, the Real Property. The Mortgage was recorded in the RMC for Charleston County, South Carolina on August 15, 2008, in Mortgage Book 0004 at Page 348.

17. Based on the record before me in this matter, I find that the Mortgage is a valid first mortgage lien on the Real Property.

18. The Note and the Mortgage may hereinafter be referred to collectively as the "Loan Documents."

19. Plaintiff has the legal right to enforce the Loan Documents, and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

20. The Note requires that all principal and accrued interest shall be due and payable on July 11, 2011.

21. Pursuant to the terms of the Loan Documents, failure to make a payment on time or in the amount due is an event of default.

22. Pursuant to the terms of the Loan Documents and South Carolina law, upon an event of default, Plaintiff may foreclose the Mortgage.

23. The Loan Documents provide for the payment of late charges as described in the Loan Documents, and the Loan Documents provide for the reimbursement by Borrower of Plaintiff's costs and expenses of collection and foreclosure, including, but not necessarily limited to, the payment of reasonable attorneys' fees and costs, all of which are secured by the Mortgage.

24. Borrower has failed to make payments in full when due under the terms set forth in the Loan Documents including, but not limited to, the scheduled principal and interest payment that was due and payable to Plaintiff on February 11, 2010 and the unpaid principal and interest at the Note's maturity on July 11, 2011, and as such, the Borrower has breached the terms of the Note and is in default under the terms of the Note and other Loan Documents.

25. On March 5, 2010, Plaintiff sent a demand letter to Borrower in which Plaintiff notified Borrower of his default under the Loan Documents and made demand on Borrower (the "Demand Letter"). A true and accurate copy of the Demand Letter is attached to the Complaint as "Exhibit F."

26. Despite demand, Borrower has failed to make full payment of the amounts due under the Note.

27. Plaintiff is entitled to have an order entered foreclosing the Mortgage and selling the Real Property at public sale in accordance with law, free and clear of all subordinate liens on March 5, 2013 or the next available sales date.

28. As of January 8, 2013, the following are the total amounts that remain due and owing under the Note, excluding the costs of collection and attorney fees:

Principal balance:	\$ 444,309.38
Interest balance:	\$ 50,270.06
Fees:	\$ 366.05
Total:	\$ 494,945.49

29. Interest continues to accrue at the default rate set forth in the Note, at a per diem rate of \$82.45, until paid in full. Such total shall comprise a portion of the total judgment debt entered pursuant to this Order, plus advertising for the Notice of Sale, additional court costs, and any property protection advances made for protection of the Real Property. Interest after the date of entry of judgment shall continue on such judgment debt at the judgment rate. Such amounts are secured by the Mortgage.

30. The Real Property is located within the 1 Chalmers Street Horizontal Property Regime.

31. Chalmers Street Council has asserted liens against the Real Property, including the lien evidenced by that Notice of Lien, in the amount of \$11,566.40, recorded in the R.M.C. for Charleston County, South Carolina, on February 24, 2012, in Book 0235 at Page 322, a copy of which is attached to the Complaint as Exhibit D.

32. Any such liens, claims, or interest of Chalmers Street Council against the Real Property that may be asserted by Chalmers Street Council are, and will be, junior and subordinate to the lien of the Mortgage.

33. Defendant Latonia Nelson was named by virtue of a judgment against Larry Singleton d/b/a Sing Realty in the amount of \$580.00, dated December 13, 2007 and recorded December 17, 2007 in Judgment Roll No. 07-JG-10-1896 (the "Nelson Judgment").

34. Defendant Nelson was not served in this action.

35. It appears that the Nelson Judgment is not one against Borrower and that Defendant Latonia Nelson's name should be stricken from the caption in this matter.

36. Charleston County taxes and user fees on the Real Property for calendar year 2012 are due and payable.

37. Plaintiff has retained the law firm of Womble Carlyle Sandridge & Rice, LLP for the purpose of instituting and prosecuting this action.

38. The sum of \$12,521.68 is a reasonable amount to allow as attorney's fees and costs under the terms of the Loan Documents for Plaintiff's attorney's services.

CONCLUSIONS OF LAW

39. The Real Property is commercial, and the Home Affordable Modification Program is inapplicable.

40. The Administrative Order of the Supreme Court of South Carolina dated May 2, 2011 (2011-05-02-01) does not apply in this case because the Real Property is not an "owner-occupied dwelling" as defined in the Administrative Order.

41. Borrower and Chalmers Street Council have been properly served in this action.

42. Borrower and Chalmers Street Council were properly notified of the Hearing.

43. The Mortgage is a good, valid first mortgage lien upon the Real Property.

44. Plaintiff is entitled to have an order entered foreclosing the Mortgage, according to law and the practice of the Court, free and clear of any liens, security interests, and claims of others, including any purported liens of Chalmers Street Council, but subject to any taxes and assessments that are past due on the day of such sale.

45. The Real Property shall be ordered sold at public auction after due advertisement. After making the required deposit, the successful bidder at sale, other than the Plaintiff, shall be required to pay interest at the default rate set forth in the Note from the date of sale to the date of compliance.

46. The proceeds arising from the sale of the Real Property shall be applied, first, to the costs and disbursements of this action, and next to the payment and discharge of the amount of Plaintiff's debt and interest own under the Note, or so much thereof as the proceeds will pay, and any surplus shall be held pending further order of this Court.

47. Plaintiff having not waived its rights to a deficiency judgment in this action, the bidding shall remain open for thirty (30) days after the sale.

48. In the event of the failure of a representative of Plaintiff, to appear on the date and time specified for the sale of the Property, the foreclosure sale shall be canceled and continued until the next convenient sales date thereafter, and should the regular day of judicial sales fall on

a legal holiday, then in such event, the sales day shall be on the next business day following such holiday.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

49. Pursuant to Rule 53(e) of the South Carolina Rules of Civil Procedure, this Order shall constitute a final judgment, and any appeal shall be directly to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

50. Plaintiff is entitled to judgment of foreclosure on the Real Property under the terms of the Mortgage.

51. It appearing that the Nelson Judgment is not one against Borrower, and upon motion of Plaintiff, Defendant Latonia Nelson is hereby stricken from the caption in this matter.

52. As of January 8, 2013, the total amount due Plaintiff under the terms of the Note was \$494,945.49 (the "Debt"), excluding attorneys fees and costs of collection, which consist of the following:

Principal balance:	\$ 444,309.38
Interest balance:	\$ 50,270.06
Fees:	\$ 366.05
Total:	<u>\$ 494,945.49</u>

Interest shall continue to accrue after January 8, 2013 on the outstanding principal balance of the Note at the default rate, each day on and after January 8, 2013, until such amount is paid in full. Such total shall comprise a portion of the total judgment debt entered pursuant to this Order, plus advertising for the Notice of Sale, additional court costs, and any property protection advances made for protection of the Real Property. Such amount is secured by the Mortgage.

53. The sum of \$12,521.68 is a reasonable amount to allow as Attorneys' Fees and costs.

54. The Debt and Attorney Fees costs are hereinafter referred to as the ("Total Debt").

55. The Total Debt as of January 8, 2013 is Five Hundred Seven Thousand Four Hundred and Sixty-Seven and 17/100 Dollars (\$507,467.17) plus accruing interest, advertising cost for the Notice of Sale, additional court costs, and any property protection advances made for protection of the Real Property.

56. Plaintiff's attorneys shall have the right to petition the Court for a supplemental award of attorneys' fees (a) for services rendered after the sale of the Property, or (b) in the event that the award of attorneys' fees and other collection costs hereunder is insufficient to reimburse Plaintiff for the same. In such event, the defendants shall be notified of any such petition and have the right to appear and contest the same.

57. If Borrower shall pay the Total Debt on or before the date of sale of the Property, the amount of the Total Debt, together with all accrued interest and the costs of disbursements of

this action, the action shall be dismissed with prejudice. Any amounts advanced the Plaintiff for costs, such as the payment of ad valorem real property taxes, shall be added to the Total Debt.

58. On default of payment at or before the time and date of the sale, the Real Property described in the Complaint shall be sold together by the undersigned, at public auction, at the Charleston County Courthouse, Charleston, South Carolina, on March 5, 2013, or on some other convenient sales day hereafter and should the regular day of judicial sales fall on a legal holiday, the sales day shall be on the next business day succeeding such holiday on the following terms:

- a. FOR CASH: The undersigned will require a deposit of five (5%) percent on the amount of the bid (in cash equivalent), same to be applied on the purchase price only upon compliance with the bid, but in the case of non-compliance within thirty (30) days same to be forfeited and applied to the costs and debts.
- b. Full compliance with the bid must occur within thirty (30) days after the date of public sale. If the successful bidder does not comply within such time period, the good faith deposit shall be forfeited and applied to the costs and to Plaintiff's debt and the Property shall be resold at the risk of the former highest bidder.
- c. Interest on the balance of the bid shall be paid to the day of full compliance at the rate set forth in the Note as to the Property.
- d. The sale shall be free and clear of all subordinate liens, including the liens of Chalmers Street Council.
- e. The sale shall be subject to taxes and assessments that are not past due on the date of sale, existing easements, and easements and restrictions of record.
- f. Purchaser shall pay for the preparation of the deed, for deed stamps and for the cost of recording the deed.

59. In the event that the sale is adjourned, the undersigned shall have the right to adjourn the sale for such amount of time as is necessary in order to commence the sale as soon as possible after the schedule time of sale.

60. If Plaintiff is the successful bidder at the sale, for a sum not exceeding the amount of costs, expenses and indebtedness, Plaintiff may pay to the undersigned only the amount of costs and expenses, crediting the balance of the bid on the indebtedness.

61. Plaintiff seeks a deficiency judgment. Bidding, therefore, shall remain open until the thirtieth day after the sale, exclusive of the date of sale. Bidding shall be reopened on the thirtieth day after the sale, exclusive of the day of the sale.

62. Plaintiff shall be granted judgment against Borrower in the amount of \$507,467.17, the Total Debt. Such judgment shall be entered and docketed in the Clerk of Court's office immediately and in the same manner as other judgment pursuant to South Carolina Code Ann. § 29-3-650. Upon sale of the subject property, this judgment shall be credited the amount paid to Plaintiff from the proceeds of the sale.

63. The undersigned will, by advertisement according to law, give notice of the time and location of sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the Real Property. The Plaintiff, or another party to this action, may become a purchaser at such sale. If the purchaser or purchasers should fail to comply with the terms of sale within thirty (30) days after the date of sale, then the undersigned may advertise the Real Property for sale on the next or some other subsequent sales day, at the risk of the former highest bidder, and from time to time thereafter until full compliance shall have occurred. In the event Plaintiff or Defendants is the successful bidder, at its option or the option of its assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien on the Real Property.

64. The undersigned shall apply the proceeds of the sale as follows:

- a. First, proceeds shall be applied to payment of the costs and disbursements of this action and the sale and any liens for taxes due and payable upon the Property sold.
- b. Second, proceeds shall be applied to payment to Plaintiff, or Plaintiff's attorneys, of the amount due to Plaintiff under this Order together with any taxes or insurance premiums which may be due or which may be or have been paid by Plaintiff and with Plaintiff's costs and attorneys fees.
- c. Third, any surplus shall be held by the undersigned pending further order as provided in Rule 71(c) of the South Carolina Rules of Civil Procedure.

65. In the event the successful bidder is other than the defendants in possession herein, the Sheriff of Charleston County is ordered and directed to eject and remove from the premises the occupants of the Property, together with all personal property located thereon, to put the successful bidder or his assigns in full, quiet and peaceable possession of the Property without delay, and to keep the successful bidder or its assigns in such peaceable.

66. Borrower, and all persons whosoever claiming under him, shall be forever barred and foreclosed of all right, title, interest and equity of redemption in the Real Property or any part thereof.

67. The deed of conveyance given pursuant to such sale need contain the names of only the first-named plaintiff and the first-named defendant and the defendant who was the titleholder of the mortgaged Property at the time of the filing of the notice of pendency of this action, and the name of the grantee, and the R.M.C. is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

68. That, in the event of the failure of a representative of Plaintiff, to appear on the date and time specified for the sale of the Real Property, the foreclosure sale shall be canceled and continued until the next convenient sales date thereafter, and should the regular day of judicial sales fall on a legal holiday, then in such event, the sales day shall be on the next business day following such holiday.

69. That the undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a supplemental order to evidence additional debt incurred if the sale of the property is delayed for any reason, including the filing

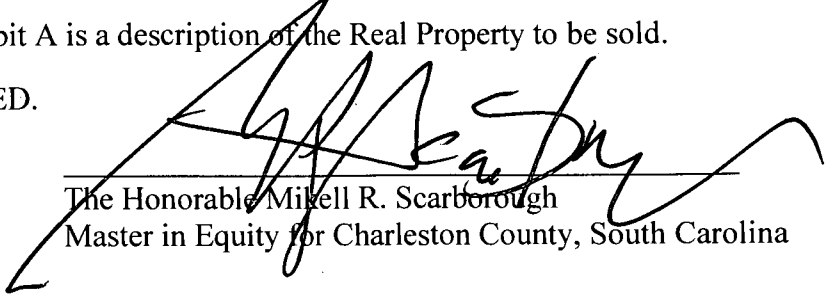
of a bankruptcy petition, transfer of service of the Loan Documents by Plaintiff or an attempt of the parties to reach a settlement, the issuance of a Supplemental Order to correct a harmless error in the action that does not substantially affect the rights of the parties, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c), South Carolina Rules of Civil Procedure.

70. After the Order Confirming Sale and Disbursements has been issued and filed, the undersigned shall direct the R.M.C. to release of record the liens being foreclosed.

71. Attached as Exhibit A is a description of the Real Property to be sold.

AND IT IS SO ORDERED.

January 30, 2013
Charleston, South Carolina



The Honorable Mikell R. Scarborough
Master in Equity for Charleston County, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. ____ CP-_____

PLAINTIFF(S) _____

DEFENDANT(S) _____

Attorney for : ☐ Plaintiff ☐ Defendant
or

Submitted by: _____

☐ Self-Represented Litigant**DISPOSITION TYPE (CHECK ONE)**

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: _____

ORDER INFORMATIONThis order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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

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

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION No. 2020-CP-10-03825

GENEVIEVE STRATOS,

PLAINTIFF,

v.

CHARLESTON COUNTY SHERIFF'S
OFFICE AND KARMATIC, LLC,

DEFENDANTS.

PLAINTIFF'S MEMORANDUM
IN SUPPORT OF
INJUNCTION

Plaintiff submits this memorandum for the September 15, 2020 hearing in the form of a proposed order along with an affidavit of the Charleston County Clerk of Court dated September 11, 2020.

Following a motion for a preliminary injunction filed by Plaintiff Genevieve Stratos (Ms. Stratos) and a hearing with notice to all parties, on September 4, 2020 the Court issued a preliminary injunction staying the advertising and sale of Plaintiff's property by Defendants. The Court set a hearing for September 15, 2020 "to determine the issue of the date of judgment."

Ms. Stratos contends that the date the judgment entered in *Tidelands Bank v. Southrail Enterprises, LLC, et al* Civil Action No. 2010-CP-10-139 was August 16, 2010, and the ability to enforce it has expired. *See Gordon v. Lancaster*, 425 S.C. 386, 823 S.E.2d 173 (2018) *rehearing denied* (Feb. 20, 2019). Defendant Karmatic, LLC (Karmatic) contends that a deficiency judgment entered December

8, 2010 giving credit for sale proceeds derived from a public sale is the date that should be used to determine the 10-year expiration date.

After reviewing all of the materials submitted, including the publicly available Charleston County Clerk of Court records, the Charleston County Clerk of Court's Affidavit dated September 11, 2020 and listening to arguments of counsel, the Court finds and concludes that the judgment against Ms. Stratos was entered August 16, 2010 and the 10-year time period to enforce it has expired. To the extent necessary, the Court further GRANTS a permanent injunction against enforcing the 2010 judgment against Ms. Stratos.

The findings of fact and conclusions of law supporting this decision are:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. All parties were properly served notice of this hearing and attended via WebEx Meetings through counsel.
2. This matter arises out of a lawsuit entitled *Tidelands Bank v. Southrail Enterprises, LLC, et al* Civil Action No. 2010-CP-10-139. (Tidelands Bank Lawsuit) Karmatic has been substituted for Tidelands Bank by "Order Substituting Plaintiff" filed November 18, 2019.
3. As to the Tidelands Bank Lawsuit, there were two causes of action: Foreclosure of Mortgage and Suit on Guaranty.
4. Ms. Stratos was sued *only under* the Suit on Guaranty cause of action.

5. The Tidelands Bank Lawsuit claims Ms. Stratos “executed agreements personally guaranteeing payment of all obligations of Southrail Enterprises, LLC...” Tidelands Complaint, ¶ 17 filed January 8, 2010 and referenced the attached Ex. C the “Guaranty.”
6. Tidelands claimed that because of the Guaranty, Ms. Stratos was “liable for the full amount due under the Note...” Tidelands Complaint, ¶ 19.
7. Tidelands sought a determination that it was “entitled to judgment” against Stratos “for the full amount due to the Plaintiff on the Note...” Tidelands Complaint, ¶¶20, 26 pp. 4-5.
8. The Tidelands Complaint makes clear that the foreclosure sought was *only* against Southrail Enterprises, LLC as it executed the Promissory Note and a Mortgage of Real Estate pledging as collateral, certain real property. Tidelands Complaint, ¶¶ 8-9; it was sued to foreclose on the Mortgage. *Id.* ¶ 14; and it was in default under the terms of the Note and Mortgage. *Id.* ¶ 15.
9. The matter was referred to the Master for “a final decision” pursuant to SCRCP, Rules 53 (Masters and Special Referees), 71 (Foreclosure and Partition) and S.C. Code Ann. 14-11-85 (Appeal from final judgment of master-in-equity). Order of Reference dated May 7, 2010.
10. The Master determined the amount due and owing on the note as of August 3, 2010. *See* August Order ¶23, p. 4.

11. The Master determined, decreed and adjudged the amount of the principal, accrued interest, costs, taxes and attorney's fees as \$345,024.13. This amount represented the "'Total Debt' to comprise the amount of the *judgment debt entered herein* and interest after the date of judgment at the legal rate of interest for judgments on the judgment debt should be added to such judgment debt..."

See Order ¶23, p. 4. Emphasis added.

12. As to the judgment amount, the Order states:

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the total debt due is "the amount due in the preceding paragraph (the "Total Debt" as set forth in Paragraph 23, *supra*, and later accrued interest on the principal) *shall constitute the total judgment debt* due the Plaintiff and shall *bear interest hereafter at the legal rate of interest for judgments*"

See August Order, p. 7. (emphasis added).

13. The Clerk of Court of Charleston County entered the judgment against Ms. Stratos and others on August 16, 2010 in the amount of \$345,024.13. *See* Charleston County Clerk of Court's Affidavit dated September 11, 2020 and Charleston County Clerk of Court's public website.

14. In its filing with the Court in this matter, Karmatic conceded "[i]f Plaintiff's argument were correct [that the judgment was entered in August of 2010], interest would have been accruing from August 16, 2010, the date of the

Foreclosure Order.” Karmatic’s Memorandum of Law in Opposition, p. 4 dated Sept. 3, 2020.

15. The facts show that interest was accruing from August 2010 at the rate for judgments. The Deficiency Calculation, part of the December Deficiency Judgment states “Accrued interest on total judgment amount @ 7.25% from August 13, 2010...” Order for Deficiency Judgment Filed Dec. 8, 2010, p. 2. *See also* Supreme Court Order 2010-01-04-01 setting the legal rate of interest at 7.25% from Jan. 15, 2010 through Jan. 14, 2011. Thus, this is further evidence that the judgment was entered when the August 16, 2010 order was filed.
16. Karmatic argues that the December 2010 Deficiency Judgment was an “independent judgment which Karmatic is statutorily permitted to enforce.” This is incorrect and inconsistent with the August 2010 Order holding:
 - a. the “Total Debt” was “the sum of \$345,024.13,” was due and “*shall constitute the total judgment debt due* the Plaintiff and shall *bear interest hereafter at the legal rate of interest for judgments*” (emphasis added);
 - b. Ms. Stratos, “on or before the date of sale of the property herein described, *pay to the Plaintiff*, or Plaintiff’s attorney, *the total amount due* Plaintiff...” (emphasis added);

c. Deficiency calculation repeatedly referencing the August “Judgment” and stating “accrued interest on total judgment amount @ 7.25% from August 13, 2020...”

17.Karamatic contends the Master used the “procedure set forth in S.C. Code Ann § 29-3-660, resulting in the entry of a deficiency judgment following the conclusion of the foreclosure sale.” *See* Defendant Karamatic, LLC’s Memo dated Sept. 3, 2020. Further, Karamatic argues that the Deficiency Judgment was “an independent judgment which Karamatic is statutorily permitted to enforce, and further because less than ten years have elapsed since the judgment was entered” Karamatic is entitled to enforce the judgment. *Id.*

18.Karamatic’s argument is incorrect for several reasons. First, the deficiency judgment was dependent on the judgment filed and entered August 16, 2010. Following the sale, the judgment was decreased based on the credit given for the sale. That remainder or residue was the deficiency amount remaining. Second, the statutory language is clear that the debt must be established *by a judgment before* the foreclosure sale. S.C. Code Ann. § 29-3-630. (No sale under or by virtue of any mortgage...shall be valid to pass the title of the land mortgaged unless the debt for which the security is given ***shall first be established by the judgment*** of some court of competent jurisdiction...).

Because there was a foreclosure sale, the August 2010 Order must have been a

judgment. Further, the South Carolina Rules of Civil Procedure, Rule 71(b) makes clear that the “*judgment* shall direct the mortgaged premises...be sold...[and that] *judgment* shall also contain a good and sufficient legal description of the property being sold” and other items. The requirements set forth in SCRCP, Rule 71(b) related to “Judgment and Sale on Foreclosure” are present here further supporting the conclusion that the Order was a judgment. August 13, 2010 Order pp. 7-9. (emphasis added).

19. “A judgment represents a judicial declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money.” *Wells ex rel. A.C. Sutton & Sons, Inc. v. Sutton*, 299 S.C. 19, 22, 382 S.E.2d 14, 16 (Ct. App. 1989).
20. According to the filed August 16, 2010 Order, a sum certain was determined to be owed by Ms. Stratos pursuant to the Guaranty she signed. The fact that there *would* or could be a sale of the mortgaged property does not change that.
21. Based on the August 2010 Order, the Clerk of Court’s entry of judgment on August 16, 2010 and the other facts present in this case, the judgment against Ms. Stratos was entered on August 16, 2010. This is the date that there was a judicial declaration filed that debtors, including Ms. Stratos, were personally indebted to the judgment creditor for a sum of money.

22. In sum, the evidence is there was a determination that Ms. Stratos was personally indebted to the judgment creditor “for a sum of money.” Order August 13, 2010 and filed August 16, 2010 (August 2010 Judgment). The Court found there was a sum certain amount of money owed, referred to the amount as the “judgment debt” and judgment interest at the rate of 7.25% was calculated based on the sum certain amount from August 13, 2010 as stated in the subsequent Order filed December 8, 2010. As more than ten years have passed since the August 16, 2010 judgment was entered against Ms. Stratos, attempts to collect on or otherwise execute on that debt against her are barred.

IT IS THEREFORE ORDRED ADJUDGED AND DECREED THAT:

1. Plaintiff’s Motion for Injunction is hereby GRANTED;
2. Defendants are hereby permanently enjoined from advertising, executing against and/or selling any property, real or personal, of Plaintiff or otherwise taking steps to enforce the judgment in Civil Action No. 2010-CP-10-139 against Plaintiff during the pendency of this case;
3. This permanent injunction is binding upon the Defendants, their officers, agents, servants, employees, attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order for Preliminary Injunction by personal service or otherwise;

4. Plaintiff is not required to post a bond or other security as a result of the granting of the permanent injunction in this case.

AND IT IS SO ORDERED.

Respectfully submitted,

KAHN LAW FIRM, LLP
s/ **Justin S. Kahn**
S.C. Bar No. 65100
jskahn@kahnlawfirm.com
Ph: (843) 577-2128
Fax: (843) 577-3538
P.O. Box 31397
Charleston, SC 29417-1397
ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION No. 2020-CP-10-03825

GENEVIEVE STRATOS,

PLAINTIFF,

v.

CHARLESTON COUNTY SHERIFF'S
OFFICE AND KARMATIC, LLC,

DEFENDANTS.

CHARLESTON COUNTY
CLERK OF COURT'S

AFFIDAVIT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Personally, appeared before me, Julie J. Armstrong, Charleston County
Clerk of Court, who being duly sworn, deposes and states as follows:

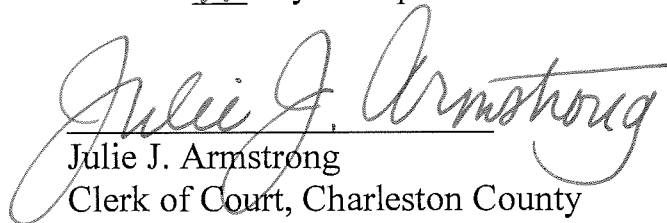
1. I am Julie J. Armstrong, Charleston County Clerk of Court and do not have an
interest in this matter. Among the official duties I have, I am the keeper of the
books and records of the Charleston County Clerk of Court, including
judgments entered and abstracts of judgments.
2. I am familiar with how judgments are recorded and maintained by the
Charleston County Clerk of Court.
3. I have been asked to and have reviewed the public records in case
2010-CP-10-00139, formerly captioned *Tidelands Bank v. Southrail
Enterprises, LLC, Valmar Nunes, Genevieve Stratos and Martin Properties,
LLC*.

4. I hereby verify that the official public record of the Charleston County Clerk of Court for case 2010-CP-10-00139 shows the following:

- a. Judgment in the amount of \$345,024.13 was entered on August 16, 2010 against Southrail Enterprises, LLC., Valmar Nunes, and Genevieve Stratos.
- b. Pursuant to the Order of Deficiency Judgment filed on December 8, 2010, the judgment amount was amended to \$55,297.74.

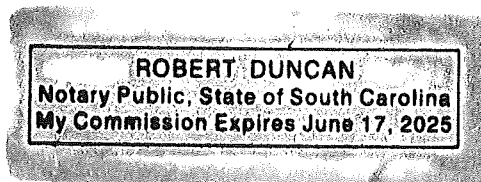
5. Further Deponent Sayeth Not.

Witness my hand and seal this 11 day of September 2020.


Julie J. Armstrong
Clerk of Court, Charleston County

SWORN to before me
this 11 day of September 2020.


Notary Public for South Carolina
My Commission Expires:



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2020-CP-10-03825
	)	
GENEVIEVE STRATOS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CHARLESTON COUNTY SHERIFF'S	)	
OFFICE AND KARMATIC, LLC,	)	
	)	
Defendants.	)	
	)	
	)	

**DEFENDANT KARMATIC, LLC's SUPPLEMENTAL MEMORANDUM OF LAW IN
OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY RESTRAINING
ORDER AND INJUNCTION**

This matter is before the Court on Plaintiff's Motion for Preliminary Restraining Order and Injunction, seeking to enjoin the Defendants from executing a judgment against real property owned by Plaintiff. Plaintiff seeks to avoid the execution/Sheriff's sale by arguing that the underlying judgment is stale. Specifically at issue is whether the Order for Deficiency Judgment, entered December 8, 2010, constitutes an enforceable judgment from which execution can be taken or, whether, as argued by Plaintiff, it is a mere amendment of a previous money judgment previously entered against Plaintiff on August 16, 2010¹. To be clear: there were two judgments here, one entered in August 2010, the other in December 2010. Only one, the December 2010 Order for Deficiency Judgment, constitutes a money judgment against Plaintiff against which a judgment creditor is capable of executing.

¹ Plaintiff argues that, if an amendment or revision of the August 2010 order, the December 2010 order would be stale. Defendant Karmatic does not concede this point and is aware of no legal authority compelling a determination that a revised or amended judgment is never capable of "restarting" the ten year period during which a judgment is enforceable.

The Order for Deficiency Judgment was entered following a foreclosure sale. The sale was ordered by “Order (Deficiency Demanded)” entered on August 16, 2010. Plaintiff contends that the Order for Deficiency Judgment, entered December 8, 2010, is simply an amended or revised version of the August 16, 2010, Order, and, as such, is stale as more than 10 years have elapsed.

This argument is incorrect because the December 8, 2010, Order for Deficiency Judgment, on its face, is a stand-alone, enforceable judgment pursuant to Rule 54(a), SCRPC (“Judgment’ as used in these rules includes any decree or order which dismisses the action as to any party or finally determines the rights of any party.”). For example, the Order for Deficiency Judgment states that it is based, in part, “upon consideration of the Master’s Order of Sale and Disbursement...” As such, it could not have been entered at any time prior to the foreclosure sale. It further states: “IT IS ORDERED that the Plaintiff have judgement against the ...[Plaintiff]..” This language clearly indicates that the Court was entering a money judgment against Plaintiff on December 8, 2010.

Moreover, the Order for Deficiency Judgment is devoid of any indication that it was amending or revising any prior order. This is for good reason: no prior order, specifically, the August 16, 2010, Order, entered a money judgment against Plaintiff.

Rather, the August 16, 2010, Order declared that the plaintiff in that action, the mortgagee, was entitled to foreclose on its mortgage lien and that, should a deficiency exist following the foreclosure sale, the mortgagee would, at that later time, be entitled to a deficiency judgment against the Plaintiff in this action, who personally guaranteed the underlying debt at issue. In so ordering, the Master-in-Equity utilized the procedure set forth in S.C. Code Ann. §

29-3-660, which specifically provides for the entry of a money judgment against a debtor/guarantor **after** a foreclosure sale in the event of a deficiency:

In actions to foreclose mortgages ... if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor the plaintiff may make such person a party to the action and the **court may adjudge payment** of the residue of such debt remaining unsatisfied **after** a sale of the mortgaged premises against such other person **and may enforce such judgment as in other cases**.

(emphasis added); see also Fed. Land Bank of Columbia v. Davant, 292 S.C. 172, 178, 355 S.E.2d 293, 296 (Ct. App. 1987) (“Section 29–3–660 specifically authorizes the entry of a deficiency judgment when the mortgage debt remains unsatisfied **after** sale of the mortgaged premises”); Am. Gen. Fin. Servs., Inc. v. Brown, 376 S.C. 580, 583, 658 S.E.2d 99, 100 (2008) (“the general rule is that ‘if the mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the remaining deficiency.’ Moreover, ‘a mortgagee is not denied the full amount due him merely because he elects initially to pursue his remedy by foreclosure. An action for a deficiency judgment as a sequel to foreclosure is taken as a matter of course.’”) (quoting Perpetual Bldg. and Loan Ass’n of Anderson v. Braun, 270 S.C. 338, 240, 242 S.E.2d 407 (1978)).

Even the Master-in-Equity’s website compels the conclusion that there are two ways a personal judgment for a deficiency can be entered, one of which (as here) occurs **after** the foreclosure sale:

8) Deficiency Judgment. In order to request a deficiency judgment, the better practice is for the plaintiff to specifically request it in the pleadings. If a deficiency is waived, the order will not be a personal judgment against the mortgagor. Absent such a waiver, the decree of foreclosure establishes a personal judgment against the debtor. **There are two ways this personal judgment may be entered. First, the court may enter a personal judgment for the total debt after the hearing. The net proceeds of the sale are then applied to reduce the balance due on the judgment debt. Alternatively, the court can order that a deficiency judgment be granted after the sale. After the sale, the court determines the amount of the deficiency and enters a personal judgment for that amount.** Under either procedure, the debtor or

other proper defendants may demand that the property be appraised to determine if the high bid at sale was a fair price for the property. § 29-3-660 through -730.

See <https://www.charlestoncounty.org/departments/master-in-equity/mortgage-foreclosures-primer.php> (last accessed 9/15/20).

Contrary to Plaintiff's argument, the August 16, 2010, Order does not contain any finding or order specifically entering a money judgment against Plaintiff at that point in time. Rather, it was ordering a judgment of foreclosure and ordering that, should there be a deficiency *after* the foreclosure sale, Plaintiff would be liable for that deficiency as later determined. Clearly, courts have the power pursuant to S.C. Code Ann. § 29-3-650 to order foreclosure and, at the same time and in the same order, enter a money judgment for the full amount of the debt owed against the debtor. That is not what happened here. When employing this method of ordering both foreclosure and the entry of a money/personal judgment against the debtor for the full amount ("total debt"), the orders issued unequivocally authorize and instruct the entry of a money award against the debtor. For example, in the Wells Fargo Bank, N.A. v. Singleton, et. al. (Chas. Cty. 2012-CP-10-4235) matter, the court, in the "Master's Decree and Judgment of Foreclosure [and] Deficiency Judgment Against William Larry Singleton" clearly used the procedure set forth in S.C. Code Ann. § 29-3-650, ordering both that the plaintiff was entitled to judgment of foreclosure under the mortgage and the entry of a money judgment against the borrower for the total debt:

62. Plaintiff shall be granted judgment against Borrower in the amount of \$507,467.17, the Total Debt. Such judgment shall be entered and docketed in the Clerk of Court's office immediately and in the same manner as other judgment pursuant to South Carolina Code Ann. § 29-3-650. Upon sale of the subject property, this judgment shall be credited the amount paid to Plaintiff from the proceeds of the sale.

See Exhibit 1, ¶¶ 44, 62. No such language can be found anywhere in the August 2010 Order at issue in this case. Additionally, on the Form 4 "Judgment in a Civil Case" accompanying the

Wells Fargo foreclosure and deficiency judgment order, the money judgment against the debtor is specifically listed:

INFORMATION FOR THE JUDGMENT INDEX Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Wells Fargo Bank, N.A.	William Larry Singleton	\$507,467.17
		\$
		\$

See Exhibit 1, p. 1. This comports with the instructions provided with Form 4, specifically:

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

See Exhibit 2, p. 5.

In Security Federal Bank v. Galleria Irmo, LLC, et. al. (Richland County, 2014-CP-40-4329), the Judgment of Foreclosure and Order for Sale, entered on October 15, 2014, orders the judgment of foreclosure as well as the entry of a money judgment against the debtor for the total debt due using the following language:

12. That Plaintiff shall have judgment of foreclosure. That Plaintiff shall have judgment against Defendant Galleria Irmo, LLC for the full amount found to be due Plaintiff on the Notes and Mortgages, which judgment shall be reduced by the net proceeds of sale pursuant to S.C. Code Ann §29-3-650, as amended, as determined by this Court in a subsequent Order for Deficiency Judgment. Plaintiff may waive any of its rights prior to sale, including its right to a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure. Plaintiff's waiver shall be made in writing.

See Exhibit 3, p. 10. Following the foreclosure sale, the court entered an Order for Deficiency Judgment on March 3, 2015 (see Exhibit 4). As discussed below, the Public Index reflects that the “Judgment Date” is March 3, 2015 (see Exhibit 5).

In Bank of S.C. v. Knight-Truesdell, et al. (Kershaw County, 2012-CP-28-1170), the Master’s Decree and Judgement of Foreclosure and Sale, entered on May 4, 2015, orders the judgment of foreclosure as well as the entry of a money judgment against the debtor for the total debt due using the following language:

5. That pursuant to S.C. Code Ann. § 29-3-650 (1976) Plaintiff is entitled to an immediate personal judgment, against Defendant Betsy Olivia Knight-Truesdell as Personal Representative of Estate of David Jeffrey Truesdell, Deceased, for the total amount shown in Paragraph 17, *supra*, with said judgment subject to a credit in an amount equal to the proceeds from the sale of the mortgaged property described below.

See Exhibit 6 (p. 7). Following the foreclosure sale, the court entered an Order for Deficiency Judgment on September 15, 2015 (see Exhibit 7). As discussed below, the Public Index reflects that the “Judgment Date” is September 15, 2015 (see Exhibit 8).

The language quoted above from the orders issued pursuant to S.C. Code Ann. § 29-3-650 cannot be found within the August 2010 Order at issue here. In fact, Defendant would have been incapable of issuing a writ of execution against Plaintiff’s property based on the August 16, 2010, Order if it had tried to do so. S.C. Code Ann. § 15-39-80 requires that executions must state “the amount of the judgment if it be for money”. The August 2010 Order does not contain any specific judgment amount as against Plaintiff, thus, no execution could have issued from that order. It only states that *if* there was a deficiency after the foreclosure sale, Plaintiff would be liable for that deficiency. It was certainly possible that the foreclosure sale could have resulted in

a surplus, in which case, of course, no money judgment against the Plaintiff would have been entered at all.

Contrasted with the language of the foreclosure orders quoted above imposing specific money judgments against debtors, the language in the August 2010 Order at issue here is almost identical to that in the matter of Wells Fargo Bank, N.A. v. Provider Investments, LLC (Chas. Cty. 2011-CP-10-5311). In its July 18, 2013, Order and Judgment of Foreclosure and Sale, the Master-in-Equity in the Provider Investments matter ordered the judgment of foreclosure, calculated the “Total Debt Secured by Mortgage” due the Plaintiff, and ordered:

4. The Plaintiff should have a personal judgment against the Borrower and defendants Thomas C. McConnell and Lisa L. McConnell for any deficiency remaining after the sale, unless waived by the Plaintiff, in writing, prior to the sale.

See Exhibit 9 (p. 5). Notably, on the Form 4 filed with the Order and Judgment of Foreclosure and Sale, the “Information for the Judgment Index”, in which any money judgment entered would be reflected, it is written “N/A”. See Exhibit 9.

Just ss here, following the foreclosure sale, the court in Provider Investments entered an Order for Deficiency Judgment on December 11, 2013, entering a personal judgment against the debtor and guarantors for the difference between the “Amount of Judgment” as of the date of the foreclosure order and the proceeds from the sale. See Exhibit 10 (including Form 4 listing money judgment against debtor/guarantors). And again, in the Public Index, the “Judgment Date” is shown as December 11, 2013, the date of the Order for Deficiency Judgment. See Exhibit 11.

The language of the orders in the Provider Investments matter is substantially, if not exactly, the same as that used in the orders in this matter. Why the Public Index in the present matter would not reflect a judgment date of December 8, 2010, for the Order for Deficiency

Judgment, which, again, is the only order in this matter entering a money judgment against Plaintiff, is unknown. In fact, in both the Security Federal and Bank of S.C. matters, supra, both of which entered money judgments against the debtors pursuant to S.C. Code Ann. § 29-3-650 at the same time foreclosure was ordered, the Public Index shows the dates of judgments against the debtors not the dates the foreclosure orders were entered (and the money judgments first entered), but the dates the deficiency judgments were entered. See Exhibit 5 (Security Federal Public Index) and Exhibit 8 (Bank of S.C. Public Index).

The seemingly inconsistent treatment of the present matter on the Public Index provides no basis to ignore the black letter law of S.C. Code Ann. §§ 29-3-650 and -660, and the four-corners of the December 2010 Order for Deficiency Judgment, which compel the conclusion that it is a stand-alone judgment, entered following the foreclosure sale, and it may be enforced the same as judgments in other cases. There is no basis to start the ten-year period to enforce the December 2010 Order at any earlier date.

Finally, should this Court decide to issue any form of injunctive relief, Defendant Karmatic requests that Plaintiff be ordered to obtain bond or other security in the amount of \$100,000.00², which bond would compensate Defendant for its damages should it be determined that the injunctive relief was wrongfully ordered. See Rule 65(c) (“no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained”). If the Court grants the injunctive relief sought by Plaintiff, effectively halting the Sheriff’s execution and sale

² With interest, Defendant calculates that the total amount due is approximately \$ 94,718.59 as of today’s date, accruing interest of \$10.98 per diem.

of Plaintiff's property, resolution of this matter will not be possible prior the expiration of the ten years' period that the December 2010 Order for Deficiency Judgment is effective and enforceable. As such, if it is later determined that injunctive relief was improperly granted, Defendant will be damaged in that the judgment will have become stale. See Atwood Agency v. Black, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007) (circuit court's order requiring only a nominal security bond did not satisfy Rule 65(c) because it erroneously assumed the injunction was proper instead of providing an amount sufficient to protect appellants in the event the injunction was ultimately deemed improper).

CONCLUSION

Because the December 8, 2010, Order for Deficiency Judgment is an independent judgment which Defendant Karmatic, LLC, is statutorily permitted to enforce, and further because less than ten years have elapsed since that judgment was entered, Plaintiff is not likely to succeed on the merits of her claims and her Motion seeking injunctive relief must be denied.

ROSEN HAGOOD, LLC

By: s/ Elizabeth J. Palmer
Elizabeth J. Palmer
epalmer@rosenhagood.com
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726

ATTORNEY FOR DEFENDANT
KARMATIC, LLC

Charleston, South Carolina
September 15, 2020

Index to Exhibits

1. “Master’s Decree and Judgment of Foreclosure [and] Deficiency Judgment Against William Larry Singleton”; Wells Fargo Bank, N.A. v. Singleton, et. al. (Chas. Cty. 2012-CP-10-4235)
2. Form 4 “Judgment in a Civil Case”
3. “Judgment of Foreclosure and Order for Sale” (10/15/14); Security Federal Bank v. Galleria Irmo, LLC, et. al. (Richland County, 2014-CP-40-4329)
4. “Order for Deficient Judgment” (3/3/15); Security Federal Bank v. Galleria Irmo, LLC, et. al. (Richland County, 2014-CP-40-4329)
5. Public Index for Security Federal Bank v. Galleria Irmo, LLC, et. al. (Richland County, 2014-CP-40-4329)
6. “Master’s Decree and Judgement of Foreclosure and Sale” (5/4/15); Bank of S.C. v. Knight-Truesdell, et al. (Kershaw County, 2012-CP-28-1170)
7. “Order for Deficiency Judgment” (9/15/15); Bank of S.C. v. Knight-Truesdell, et al. (Kershaw County, 2012-CP-28-1170)
8. Public Index for Bank of S.C. v. Knight-Truesdell, et al. (Kershaw County, 2012-CP-28-1170)
9. “Order and Judgment of Foreclosure and Sale” (7/18/13); Wells Fargo Bank, N.A. v. Provider Investments, LLC (Chas. Cty. 2011-CP-10-5311)
10. “Order for Deficiency Judgment” (12/11/13); Wells Fargo Bank, N.A. v. Provider Investments, LLC (Chas. Cty. 2011-CP-10-5311)
11. Public Index for Wells Fargo Bank, N.A. v. Provider Investments, LLC (Chas. Cty. 2011-CP-10-5311)

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-10-4235

WELLS FARGO BANK, N.A. as successor by merger
to Wachovia Bank, National Association

William Larry Singleton; 1 Chalmers Street
Council of Co-Owners, Inc.; Latonia Nelson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Christopher M. Towery (#100250)

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Defendant Latonia Nelson is hereby stricken from the caption in this matter.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Wells Fargo Bank, N.A.	William Larry Singleton	\$507,467.17
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: ALL that certain piece, parcel or lot of land, situate, lying and being in the City and County of Charleston, State of South Carolina, and being known and designated as UNIT 17 STATE (initially described as Unit/Space A) in 1 CHALMERS STREET HORIZONTAL PROPERTY REGIME, established pursuant to the Horizontal Property Act, Section 27-31-10, et. seq., Code of Laws of South Carolina, 1976, as amended and submitted by Master Deed dated May 30, 2003, and recorded in Book K-451, Page 875, Charleston

County RMC Office. Said Master Deed being Corrected and Restated by instrument recorded August 29, 2005, in Book F-551, Page 738 and amended by instrument recorded in Book V-604, Page 142, said RMC Office.

SUBJECT to all easements, restrictions and rights of way of record.

BEING the same property conveyed to the Mortgagor herein by deed dated August 11, 2008 and recorded in the Charleston County RMC Office on August 15, 2008 in Book 0004 at Page 345.

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

Circuit Court Judge

Judge Code

Date _____

For Clerk of Court Office Use Only

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

Christopher M. Towery

PO Box 10208

Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-10-4235

Wells Fargo Bank, N.A., as successor by
merger to Wachovia Bank, National
Association,

Plaintiff,

vs.

William Larry Singleton; 1 Chalmers Street
Council of Co-Owners, Inc.; Latonia Nelson

Defendants.

**MASTER'S DECREE AND JUDGMENT
OF FORECLOSURE**

**DEFICIENCY JUDGMENT AGAINST
WILLIAM LARRY SINGLETON**

FILED
2013 FEB 11 PM 12:43
JULIE J. ARMSTRONG
CLERK OF COURT
BY

- Ineligible under the Home Affordable Modification Program -

This matter was referred to me pursuant to a Consent Order of Reference filed on October 25, 2012. Pursuant to the terms of the Consent Order of Reference, I have been authorized and directed to take testimony and to make findings of fact and conclusions of law and to enter a final judgment and decree thereon on the causes of action asserted by the Plaintiff Wells Fargo Bank, N.A., as successor by merger to Wachovia Bank, National Association (the "Plaintiff").

A hearing was held on January 8, 2013, at 2:00 p.m. (the "Hearing"). Christopher M. Towery, Esquire, from the law firm of Womble Carlyle Sandridge & Rice, LLP, represents the Plaintiff in this matter. Defendant William Larry Singleton ("Borrower") has not appeared in this case and, despite valid service, is in default. Christopher Paton, Esquire, from the Rosen Law Firm, represents 1 Chalmers Street Council of Co-Owners ("Chalmers Street Council") in this matter.

At the conclusion of the Hearing, the undersigned held that Plaintiff had met its burden of proof and ordered the real property which is the subject of this action, a description of which is attached hereto as Exhibit A (the "Real Property") to be sold at the March 5, 2013, or next available, sales date.

Having reviewed the pleadings in this case, and the exhibits introduced as part of the record in this matter, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The following pleadings are on file with the Charleston County Clerk of Court's Office:

- a. Lis Pendens filed June 28, 2012
 - b. Summons filed June 28, 2012
 - c. Complaint filed June 28, 2012
 - d. Certificate of Exemption from Administrative Order filed June 28, 2012
 - e. Acceptance of Service of Chalmers Street Council filed July 25, 2012
 - f. Answer, Request for Notice of Surplus Funds, and Consent to Reference of Chalmers Street Council filed August 10, 2012
 - g. Certificate of Service as to Borrower filed September 20, 2012
 - h. Affidavit of Default as to Borrower filed October 24, 2012
 - i. Consent Order of Reference filed October 25, 2012
 - j. Notice of Foreclosure Hearing served December 27, 2012 and filed December 28, 2012
 - k. Affidavit Pursuant to 108 P.L. 189; 117 Stat. 2835; 2003 Enacted H.R. 100 (Servicemembers Civil Relief Act) filed January 8, 2013
 - l. Affidavit of Attorneys Fees of S. Sterling Laney filed January 8, 2013
 - m. Affidavit of Indebtedness and Authorization to Testify filed January 8, 2013
2. Plaintiff is a national banking association organized under the laws of the United States, and is a citizen of the State of South Dakota for jurisdictional purposes because its main office, as set forth in its articles of association, is located in South Dakota.
 3. Borrower is an individual citizen and resident of the State of Georgia.
 4. As the owner of an interest in and/or possessor of real property in this state, Borrower is subject to the jurisdiction of this Court.
 5. Borrower was served with the Summons and Complaint on September 13, 2012.
 6. Borrower has not served an answer or other responsive pleading in this action, and is therefore in default.
 7. Chalmers Street Council is a non-profit corporation organized and existing under the laws of the State of South Carolina and, as such, is subject to the jurisdiction of this Court.
 8. The Real Property is located in Charleston County, South Carolina, and as such, venue is proper in this county pursuant to South Carolina Code § 15-7-10.
 9. No defendant herein is in military service a minor or incompetent.

10. This Court has jurisdiction over the parties and the matters which are the subject of this action.

11. The Real Property is commercial, and the Home Affordable Modification Program is inapplicable.

12. The Administrative Order of the Supreme Court of South Carolina dated May 2, 2011 (2011-05-02-01) does not apply in this case because the Real Property is not an "owner-occupied dwelling" as defined in the Administrative Order.

13. In connection with a loan given by Wachovia Bank, National Association ("Wachovia") to the Singleton (the "Loan"), for value received, the Singleton gave to Wachovia his Promissory Note in the principal amount of \$480,000.00 dated August 11, 2008 (the "Note"). A copy of the Note is attached to the Complaint as "Exhibit B."

14. Plaintiff is successor by merger to Wachovia.

15. Plaintiff has the legal right to enforce the Note and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

16. In order to secure his obligations to Wachovia, Singleton gave to Wachovia his Mortgage and Assignment of Rents, dated August 11, 2008 (the "Mortgage"), a copy of which is attached to the Complaint as "Exhibit C," covering, among other things, the Real Property. The Mortgage was recorded in the RMC for Charleston County, South Carolina on August 15, 2008, in Mortgage Book 0004 at Page 348.

17. Based on the record before me in this matter, I find that the Mortgage is a valid first mortgage lien on the Real Property.

18. The Note and the Mortgage may hereinafter be referred to collectively as the "Loan Documents."

19. Plaintiff has the legal right to enforce the Loan Documents, and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

20. The Note requires that all principal and accrued interest shall be due and payable on July 11, 2011.

21. Pursuant to the terms of the Loan Documents, failure to make a payment on time or in the amount due is an event of default.

22. Pursuant to the terms of the Loan Documents and South Carolina law, upon an event of default, Plaintiff may foreclose the Mortgage.

23. The Loan Documents provide for the payment of late charges as described in the Loan Documents, and the Loan Documents provide for the reimbursement by Borrower of Plaintiff's costs and expenses of collection and foreclosure, including, but not necessarily limited to, the payment of reasonable attorneys' fees and costs, all of which are secured by the Mortgage.

24. Borrower has failed to make payments in full when due under the terms set forth in the Loan Documents including, but not limited to, the scheduled principal and interest payment that was due and payable to Plaintiff on February 11, 2010 and the unpaid principal and interest at the Note's maturity on July 11, 2011, and as such, the Borrower has breached the terms of the Note and is in default under the terms of the Note and other Loan Documents.

25. On March 5, 2010, Plaintiff sent a demand letter to Borrower in which Plaintiff notified Borrower of his default under the Loan Documents and made demand on Borrower (the "Demand Letter"). A true and accurate copy of the Demand Letter is attached to the Complaint as "Exhibit F."

26. Despite demand, Borrower has failed to make full payment of the amounts due under the Note.

27. Plaintiff is entitled to have an order entered foreclosing the Mortgage and selling the Real Property at public sale in accordance with law, free and clear of all subordinate liens on March 5, 2013 or the next available sales date.

28. As of January 8, 2013, the following are the total amounts that remain due and owing under the Note, excluding the costs of collection and attorney fees:

Principal balance:	\$ 444,309.38
Interest balance:	\$ 50,270.06
Fees:	\$ 366.05
Total:	\$ 494,945.49

29. Interest continues to accrue at the default rate set forth in the Note, at a per diem rate of \$82.45, until paid in full. Such total shall comprise a portion of the total judgment debt entered pursuant to this Order, plus advertising for the Notice of Sale, additional court costs, and any property protection advances made for protection of the Real Property. Interest after the date of entry of judgment shall continue on such judgment debt at the judgment rate. Such amounts are secured by the Mortgage.

30. The Real Property is located within the 1 Chalmers Street Horizontal Property Regime.

31. Chalmers Street Council has asserted liens against the Real Property, including the lien evidenced by that Notice of Lien, in the amount of \$11,566.40, recorded in the R.M.C. for Charleston County, South Carolina, on February 24, 2012, in Book 0235 at Page 322, a copy of which is attached to the Complaint as Exhibit D.

32. Any such liens, claims, or interest of Chalmers Street Council against the Real Property that may be asserted by Chalmers Street Council are, and will be, junior and subordinate to the lien of the Mortgage.

33. Defendant Latonia Nelson was named by virtue of a judgment against Larry Singleton d/b/a Sing Realty in the amount of \$580.00, dated December 13, 2007 and recorded December 17, 2007 in Judgment Roll No. 07-JG-10-1896 (the "Nelson Judgment").

34. Defendant Nelson was not served in this action.

35. It appears that the Nelson Judgment is not one against Borrower and that Defendant Latonia Nelson's name should be stricken from the caption in this matter.

36. Charleston County taxes and user fees on the Real Property for calendar year 2012 are due and payable.

37. Plaintiff has retained the law firm of Womble Carlyle Sandridge & Rice, LLP for the purpose of instituting and prosecuting this action.

38. The sum of \$12,521.68 is a reasonable amount to allow as attorney's fees and costs under the terms of the Loan Documents for Plaintiff's attorney's services.

CONCLUSIONS OF LAW

39. The Real Property is commercial, and the Home Affordable Modification Program is inapplicable.

40. The Administrative Order of the Supreme Court of South Carolina dated May 2, 2011 (2011-05-02-01) does not apply in this case because the Real Property is not an "owner-occupied dwelling" as defined in the Administrative Order.

41. Borrower and Chalmers Street Council have been properly served in this action.

42. Borrower and Chalmers Street Council were properly notified of the Hearing.

43. The Mortgage is a good, valid first mortgage lien upon the Real Property.

44. Plaintiff is entitled to have an order entered foreclosing the Mortgage, according to law and the practice of the Court, free and clear of any liens, security interests, and claims of others, including any purported liens of Chalmers Street Council, but subject to any taxes and assessments that are past due on the day of such sale.

45. The Real Property shall be ordered sold at public auction after due advertisement. After making the required deposit, the successful bidder at sale, other than the Plaintiff, shall be required to pay interest at the default rate set forth in the Note from the date of sale to the date of compliance.

46. The proceeds arising from the sale of the Real Property shall be applied, first, to the costs and disbursements of this action, and next to the payment and discharge of the amount of Plaintiff's debt and interest own under the Note, or so much thereof as the proceeds will pay, and any surplus shall be held pending further order of this Court.

47. Plaintiff having not waived its rights to a deficiency judgment in this action, the bidding shall remain open for thirty (30) days after the sale.

48. In the event of the failure of a representative of Plaintiff, to appear on the date and time specified for the sale of the Property, the foreclosure sale shall be canceled and continued until the next convenient sales date thereafter, and should the regular day of judicial sales fall on

a legal holiday, then in such event, the sales day shall be on the next business day following such holiday.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

49. Pursuant to Rule 53(e) of the South Carolina Rules of Civil Procedure, this Order shall constitute a final judgment, and any appeal shall be directly to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

50. Plaintiff is entitled to judgment of foreclosure on the Real Property under the terms of the Mortgage.

51. It appearing that the Nelson Judgment is not one against Borrower, and upon motion of Plaintiff, Defendant Latonia Nelson is hereby stricken from the caption in this matter.

52. As of January 8, 2013, the total amount due Plaintiff under the terms of the Note was \$494,945.49 (the "Debt"), excluding attorneys fees and costs of collection, which consist of the following:

Principal balance:	\$ 444,309.38
Interest balance:	\$ 50,270.06
Fees:	\$ 366.05
Total:	<u>\$ 494,945.49</u>

Interest shall continue to accrue after January 8, 2013 on the outstanding principal balance of the Note at the default rate, each day on and after January 8, 2013, until such amount is paid in full. Such total shall comprise a portion of the total judgment debt entered pursuant to this Order, plus advertising for the Notice of Sale, additional court costs, and any property protection advances made for protection of the Real Property. Such amount is secured by the Mortgage.

53. The sum of \$12,521.68 is a reasonable amount to allow as Attorneys' Fees and costs.

54. The Debt and Attorney Fees costs are hereinafter referred to as the ("Total Debt").

55. The Total Debt as of January 8, 2013 is Five Hundred Seven Thousand Four Hundred and Sixty-Seven and 17/100 Dollars (\$507,467.17) plus accruing interest, advertising cost for the Notice of Sale, additional court costs, and any property protection advances made for protection of the Real Property.

56. Plaintiff's attorneys shall have the right to petition the Court for a supplemental award of attorneys' fees (a) for services rendered after the sale of the Property, or (b) in the event that the award of attorneys' fees and other collection costs hereunder is insufficient to reimburse Plaintiff for the same. In such event, the defendants shall be notified of any such petition and have the right to appear and contest the same.

57. If Borrower shall pay the Total Debt on or before the date of sale of the Property, the amount of the Total Debt, together with all accrued interest and the costs of disbursements of

this action, the action shall be dismissed with prejudice. Any amounts advanced the Plaintiff for costs, such as the payment of ad valorem real property taxes, shall be added to the Total Debt.

58. On default of payment at or before the time and date of the sale, the Real Property described in the Complaint shall be sold together by the undersigned, at public auction, at the Charleston County Courthouse, Charleston, South Carolina, on March 5, 2013, or on some other convenient sales day hereafter and should the regular day of judicial sales fall on a legal holiday, the sales day shall be on the next business day succeeding such holiday on the following terms:

- a. FOR CASH: The undersigned will require a deposit of five (5%) percent on the amount of the bid (in cash equivalent), same to be applied on the purchase price only upon compliance with the bid, but in the case of non-compliance within thirty (30) days same to be forfeited and applied to the costs and debts.
- b. Full compliance with the bid must occur within thirty (30) days after the date of public sale. If the successful bidder does not comply within such time period, the good faith deposit shall be forfeited and applied to the costs and to Plaintiff's debt and the Property shall be resold at the risk of the former highest bidder.
- c. Interest on the balance of the bid shall be paid to the day of full compliance at the rate set forth in the Note as to the Property.
- d. The sale shall be free and clear of all subordinate liens, including the liens of Chalmers Street Council.
- e. The sale shall be subject to taxes and assessments that are not past due on the date of sale, existing easements, and easements and restrictions of record.
- f. Purchaser shall pay for the preparation of the deed, for deed stamps and for the cost of recording the deed.

59. In the event that the sale is adjourned, the undersigned shall have the right to adjourn the sale for such amount of time as is necessary in order to commence the sale as soon as possible after the schedule time of sale.

60. If Plaintiff is the successful bidder at the sale, for a sum not exceeding the amount of costs, expenses and indebtedness, Plaintiff may pay to the undersigned only the amount of costs and expenses, crediting the balance of the bid on the indebtedness.

61. Plaintiff seeks a deficiency judgment. Bidding, therefore, shall remain open until the thirtieth day after the sale, exclusive of the date of sale. Bidding shall be reopened on the thirtieth day after the sale, exclusive of the day of the sale.

62. Plaintiff shall be granted judgment against Borrower in the amount of \$507,467.17, the Total Debt. Such judgment shall be entered and docketed in the Clerk of Court's office immediately and in the same manner as other judgment pursuant to South Carolina Code Ann. § 29-3-650. Upon sale of the subject property, this judgment shall be credited the amount paid to Plaintiff from the proceeds of the sale.

63. The undersigned will, by advertisement according to law, give notice of the time and location of sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the Real Property. The Plaintiff, or another party to this action, may become a purchaser at such sale. If the purchaser or purchasers should fail to comply with the terms of sale within thirty (30) days after the date of sale, then the undersigned may advertise the Real Property for sale on the next or some other subsequent sales day, at the risk of the former highest bidder, and from time to time thereafter until full compliance shall have occurred. In the event Plaintiff or Defendants is the successful bidder, at its option or the option of its assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien on the Real Property.

64. The undersigned shall apply the proceeds of the sale as follows:

- a. First, proceeds shall be applied to payment of the costs and disbursements of this action and the sale and any liens for taxes due and payable upon the Property sold.
- b. Second, proceeds shall be applied to payment to Plaintiff, or Plaintiff's attorneys, of the amount due to Plaintiff under this Order together with any taxes or insurance premiums which may be due or which may be or have been paid by Plaintiff and with Plaintiff's costs and attorneys fees.
- c. Third, any surplus shall be held by the undersigned pending further order as provided in Rule 71(c) of the South Carolina Rules of Civil Procedure.

65. In the event the successful bidder is other than the defendants in possession herein, the Sheriff of Charleston County is ordered and directed to eject and remove from the premises the occupants of the Property, together with all personal property located thereon, to put the successful bidder or his assigns in full, quiet and peaceable possession of the Property without delay, and to keep the successful bidder or its assigns in such peaceable.

66. Borrower, and all persons whosoever claiming under him, shall be forever barred and foreclosed of all right, title, interest and equity of redemption in the Real Property or any part thereof.

67. The deed of conveyance given pursuant to such sale need contain the names of only the first-named plaintiff and the first-named defendant and the defendant who was the titleholder of the mortgaged Property at the time of the filing of the notice of pendency of this action, and the name of the grantee, and the R.M.C. is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

68. That, in the event of the failure of a representative of Plaintiff, to appear on the date and time specified for the sale of the Real Property, the foreclosure sale shall be canceled and continued until the next convenient sales date thereafter, and should the regular day of judicial sales fall on a legal holiday, then in such event, the sales day shall be on the next business day following such holiday.

69. That the undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a supplemental order to evidence additional debt incurred if the sale of the property is delayed for any reason, including the filing

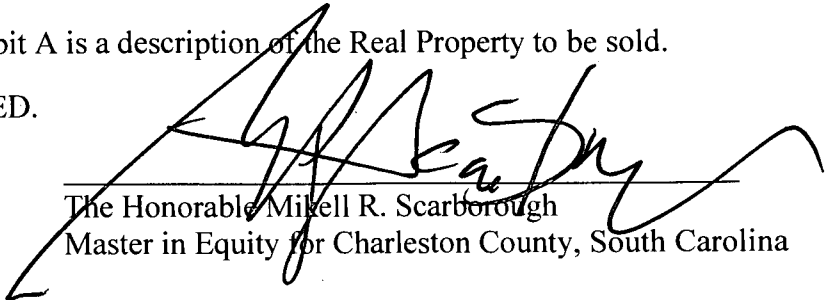
of a bankruptcy petition, transfer of service of the Loan Documents by Plaintiff or an attempt of the parties to reach a settlement, the issuance of a Supplemental Order to correct a harmless error in the action that does not substantially affect the rights of the parties, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c), South Carolina Rules of Civil Procedure.

70. After the Order Confirming Sale and Disbursements has been issued and filed, the undersigned shall direct the R.M.C. to release of record the liens being foreclosed.

71. Attached as Exhibit A is a description of the Real Property to be sold.

AND IT IS SO ORDERED.

January 30, 2013
Charleston, South Carolina



The Honorable Mikell R. Scarborough
Master in Equity for Charleston County, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. ____ CP-_____

PLAINTIFF(S)

DEFENDANT(S)

Attorney for : ☐ Plaintiff ☐ Defendant
or

Submitted by: _____

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

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

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

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE**(Instructions for Information Only-Not to be filed with Form 4C)**

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
C/A NO.: 2014-CP-40-4329

Security Federal Bank,

Plaintiff,

vs.

Galleria Irmo, LLC, Jimani, LLC, Sincerely
Yours, Inc., Branch Banking and Trust
Company of South Carolina n/k/a Branch
Banking and Trust Company, South
Carolina Bank and Trust, NA n/k/a SCBT,
and First Palmetto Bank f/k/a First Palmetto
Savings Bank, FSB,

Defendants,

**JUDGMENT OF FORECLOSURE
AND ORDER FOR SALE**

(Deficiency Demanded as to Defendant
Galleria Irmo, LLC only)
(Non-Eligible for Loan Modification Under
the Home Affordable Modification
Program)

RICHLAND COUNTY
FILED
2014 OCT 15 PM 2:20
JEANNETTE W. HOEFER
C.C.P. & G.S.

Pursuant to Rule 53 SCRPC, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the cause with appeal, if any, directly to the South Carolina Court of Appeals. Pursuant to the said Order of Reference, a hearing was held, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on May 20, 2014, and the Amended Lis Pendens was filed on July 9, 2014.
2. The Summons and Complaint were filed on July 9, 2014.
3. Service was made upon the Defendants, named in this order as is shown by the Proofs of Service filed herein.
4. Pursuant to the Administrative Order of the Honorable Jean Hofer Toal, Chief Justice of the S.C. Supreme Court, dated May 22, 2009, Plaintiff completed the

Verification and Affidavit Regarding HMP Modification and/or Affidavit of Proof Statement of Account which is attached to the Summons and Complaint and was served upon the Defendants therewith. Based upon same, Plaintiff alleges the Note and Mortgage are not subject to modification under the Home Affordable Modification Program (“HMP”).

5. The Defendants were notified of the time, date and place of hearing in this matter, a copy of said notice is filed in this action.
6. Galleria Irmo, LLC, Jimani, LLC , Sincerely Yours, Inc., and Branch Banking and Trust Company of South Carolina n/k/a Branch Banking and Trust Company have served no Answer or other responsive pleading upon Plaintiff and are now in default.
7. The Defendants South Carolina Bank and Trust, NA n/k/a SCB and First Palmetto Bank f/k/a First Palmetto Savings Bank, FSB each filed an Answer, copies of which have been filed of record.
8. For value received, Defendant Galleria Irmo, LLC made, executed and delivered to Security Federal Bank a Universal Note (“First Note”) dated October 27, 2011, promising thereby to pay to Security Federal Bank the sum of \$2,244,000.00, upon the terms and conditions set forth therein.
9. To better secure the payment of the First Note described above, Defendant Galleria Irmo, LLC and Jimani, LLC made, executed and delivered to Security Federal Bank in writing, a Mortgage dated October 27, 2011, (“First Mortgage”) covering real property in Richland, Kershaw, and Lexington Counties.

10. On October 31, 2011, the said First Mortgage was recorded in the Office of the Register of Deeds for Richland County in Mortgage Book 1718 at Page 202.
11. On October 28, 2011 the said First Mortgage was recorded in the Office of the Register of Deeds for Kershaw County in Mortgage Book 2858 at Page 183.
12. On October 31, 2011 the said First Mortgage was recorded in the Office of the Register of Deeds for Lexington County in Mortgage Book 15140 at Page 99.
13. The First Mortgage constitutes a first lien on the subject properties.
14. For value received on October 27, 2011, Defendant Galleria Irmo, LLC made, executed and delivered to Plaintiff a second note in the original principal sum of \$409,074.00 ("Second Note") (The Note and Second Note may be hereafter collectively referred to as the "Notes").
15. In Order to secure the Second Note, Defendants Galleria Irmo, LLC and Jimani, LLC did on October 27, 2011, make, execute and deliver to Security Federal Bank, their successors and assigns, a certain Second Mortgage (hereinafter "Second Mortgage") (the First Mortgage and Second Mortgage are collectively referred to as "Mortgages"), covering the aforementioned real property.
16. The Second Mortgage constitutes a valid second mortgage lien upon the aforementioned real property.
17. On October 31, 2011, the said Second Mortgage was recorded in the Office of the Register of Deeds for Lexington County in Mortgage Book 15140 at Page 110.
18. On October 25, 2011, the said Second Mortgage was recorded in the Office of the Register of Deeds for Kershaw County in Mortgage Book 2858 at Page 194.

19. The Plaintiff also holds a third mortgage upon the Property located in Lexington County by virtue of a third mortgage in the sum of \$750,000.00, dated March 13, 2012, and recorded March 21, 2012, in the Office of the Register of Deeds for Lexington County in Book 15402 at Page 343.
20. The Plaintiff reserves its right to bring such other and further actions as may be necessary to collect upon the Third Mortgage, including but not limited to, its entitlement to surplus funds, if any.
21. The titleholder of record in and to the subject property as of the filing of the Lis Pendens in this action is Defendants Galleria Irmo, LLC and Jimani, LLC which are the original mortgagors.
22. The Notes and Mortgages have matured and despite demand for same, the Defendant Galleria and Jimani have failed and refused to pay the same in full and Plaintiff has placed the Note and Mortgage in the hands of the attorney herein for collection.
23. The sum of \$6,902.00 is a reasonable fee to allow as attorney fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Notes and Mortgages. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.
24. The amount due and owing on the Notes, with interest at the rate provided in the Notes, and other costs and expenses of collection, including attorney's fee, secured by the Mortgages are as follows:

First Note:

a.	Principal due as of October 15, 2014	\$1,843,800.74
b.	Interest from January 1, 2004 through October 15, 2014 at 3.500%	\$41,033.35
c.	Appraisal	\$3,900.00
d.	Attorneys' fee	\$6,902.00
e.	Costs of collection prior to hearing	\$2,169.49

Total Debt secured by Note and Mortgage,
including interest to date shown \$1,897,805.58

Per Diem at \$180.40

The amount due (shown above) shall accrue interest at the rate of 3.500% per annum and together with such interest shall constitute the total debt due the Plaintiff, pursuant to S.C. Code §29-3-630.

Second Note:

f.	Principal due as of October 15, 2014	\$429,188.79
g.	Interest from January 1, 2004 through October 15, 2014 at 3.500%	\$23,951.11

Total Debt secured by Note and Mortgage,
including interest to date shown \$453,139.90

Per Diem at \$41.73

The amount due (shown above) shall accrue interest at the rate of 3.500% per annum and together with such interest shall constitute the total debt due the Plaintiff, pursuant to S.C. Code §29-3-630.

TOTAL OF NOTES 1 AND 2: \$2,350,945.48

25. That the Plaintiff is seeking foreclosure of the Mortgages against all Defendants, and its right to a deficiency judgment against Defendant Galleria Irmo, LLC is expressly demanded.

26. Defendant Sincerely Yours, Inc. is named a defendant herein by virtue of a Confession of Judgment from D&D Properties of Columbia, LLC in favor of Sincerely Yours, Inc., in the principal sum of \$28,940.10 filed March 2, 2012, in the Offices of the Lexington County Clerk of Court bearing judgment roll no. 2010-CP-32-1976. The judgment affects only that portion of the property listed as "Easement Parcel" on 7325 Saint Andrews Road, Irmo, South Carolina 29063. the aforementioned judgment is junior to the interests of Plaintiff.
27. Defendant Branch Banking and Trust Company of South Carolina n/k/a Branch Banking and Trust Company is named a defendant herein by virtue of a judgment against D and D Properties of Columbia, LLC, in the sum of \$184,048.78 filed May 2, 2011 in the Offices of the Clerk of Court for Lexington County, bearing judgment roll no. 2010-CP-32-2461. The judgment affects only that portion of the property listed as "Easement Parcel" on 7325 Saint Andrews Road, Irmo, South Carolina 29063. The aforementioned judgment is junior to the interests of Plaintiff.
28. Defendant South Carolina Bank and Trust, NA n/k/a SCBT is named a defendant herein by virtue of a Confession of Judgment from Jimani, LLC in favor of South Carolina Bank and Trust, NA n/k/a SCBT in the sum of \$19,000.00, filed April 25, 2014, in the Office of the Clerk of Court for Richland County bearing judgment roll no. 2014-CP-40-2674. The aforementioned judgment is junior to the interests of Plaintiff.
29. Defendant First Palmetto Bank f/k/a First Palmetto Savings Bank, FSB is named a defendant herein by virtue of an action filed against Jimani, LLC, in the Office of

the Clerk of Court for Richland County on March 14, 2014, bearing case no. 2014-CP-40-1707 wherein First Palmetto Bank f/k/a First Palmetto Savings Bank, FSB is seeking a deficiency judgment against Jimani, LLC. Any judgment entered as a result of the action will be subsequent and junior to Plaintiff's Mortgage.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

The Plaintiff should have judgment of foreclosure of the Mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Defendant(s) named herein and all persons whosoever claiming under him, them or it be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.
2. Plaintiff's Mortgages constitute first and second liens on the subject property with the reservation of Plaintiff to proceed on its third mortgage as referenced hereinabove.
3. There is due to the Plaintiff on the obligations and Mortgages set forth in the Complaint the sum of \$2,350,945.48 representing the total debt due Plaintiff as set out in the Findings of Fact *supra*.
4. The attorney fees included herein are fair and reasonable given (1) the nature of these proceedings, (2) the time actually devoted to the matter and the complexity of the foreclosure involving two notes and mortgages spanning three counties; (3) the professional standing of attorney who regularly represents clients in matters of this type as a partner in an AV rated firm; and (4) for the beneficial results that client has received.

5. The amount due in the preceding paragraph (the "Total Debt" as set forth hereinabove) shall accrue interest at the rate of 3.500% per annum and together with such interest shall constitute the total debt due the Plaintiff.

6. The amount due shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

7. That on or before the date of sale of the property hereinafter described, Plaintiff or Plaintiff's attorney, is to be paid the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

8. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the Master in Equity for Richland, Kershaw, and Lexington Counties at public auction, at the county courthouse in their respective jurisdictions (Richland County: 1701 Main Street, Columbia, South Carolina; Kershaw County: 1121 Broad Street, Camden, South Carolina; Lexington County: 205 East Main Street, Lexington, South Carolina), County and State aforesaid, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on some other day appointed by the Court), on the following terms, that is to say:

A. FOR CASH: The Master in Equity for Richland, Kershaw, and Lexington County will require, at the time of the bid, a deposit of five (5%) percent on the amount of the bid (in cash or equivalent) same to be applied on the purchase price if compliance is made; but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to Plaintiff's debt. Should the successful bidder at the

regularly conducted sale fail or refuse to make the required deposit at the time of bid or comply with the other terms of the bid within twenty (20) days, then the property may be re-sold on the same terms and conditions on some subsequent sales day, but at the risk of the defaulting bidder(s).

B. Interest on the bid shall be paid through the day of compliance at the rate of 3.500%.

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

D. Plaintiff to pay for any statutory commission on sale from the proceeds of sale, and Purchaser to pay for deed preparation, costs of recording the deed and deed stamps.

9. A personal or deficiency judgment being demanded, the bidding will remain open after the date of sale for thirty (30) days.

10. That the Master in Equity for Richland, Lexington, and Kershaw County, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within twenty (20) days after date of sale, then the Master in Equity for Richland, Kershaw, and Lexington County may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

11. That the Master in Equity for Richland, Lexington, and Kershaw County will apply the proceeds of sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

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

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

12. That Plaintiff shall have judgment of foreclosure. That Plaintiff shall have judgment against Defendant Galleria Irmo, LLC for the full amount found to be due Plaintiff on the Notes and Mortgages, which judgment shall be reduced by the net proceeds of sale pursuant to S.C. Code Ann §29-3-650, as amended, as determined by this Court in a subsequent Order for Deficiency Judgment. Plaintiff may waive any of its rights prior to sale, including its right to a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure. Plaintiff's waiver shall be made in writing.

13. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity for Richland, Lexington, and Kershaw County only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

14. Should the Plaintiff, Plaintiff's attorney or agent fail to appear on sales day, the property shall not be sold, but shall be readvertised and sold at some convenient sales day thereafter when the Plaintiff, Plaintiff's attorney or agent is present.

15. In the event the successful bidder is other than the Defendant in possession herein, upon the presentation of a Writ of Assistance, the Sheriffs of Richland, Kershaw, and Lexington County are ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in such peaceable possession. Pursuant to Rule 70, SCRCP, the Clerk, upon

application of the successful bidder is hereby directed to execute a Writ of Assistance. All valid tenant rights pursuant to Protecting Tenants at Foreclosure Act of 2009 shall be protected.

16. That the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Clerk of Court or Register of Deeds in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master in Equity for Richland, Lexington, and Kershaw County, who executes such deed as grantor.

17. The Master in Equity for Richland, Lexington, and Kershaw County, shall direct the Clerk of Court/Register of Deeds to release of record the mortgage lien being foreclosed, after the Order Confirming Sale and Disbursements has been executed and filed, which mortgage lien is described as follows:

- i. That certain Mortgage given by Galleria Irmo, LLC and Jimani, LLC to Security Federal Bank recorded on October 31, 2011, the said First Mortgage was recorded in the Office of the Register of Deeds for Richland County in Mortgage Book 1718 at Page 202.
- ii. That certain Mortgage given by Galleria Irmo, LLC and Jimani, LLC to Security Federal Bank recorded on October 28, 2011 the said First Mortgage was recorded in the Office of the Register of Deeds for Kershaw County in Mortgage Book 2858 at Page 183.
- iii. That certain Mortgage given by Galleria Irmo, LLC and Jimani, LLC to Security Federal Bank recorded on October 31, 2011 the said First Mortgage was recorded in the Office of the Register of Deeds for Lexington County in Mortgage Book 15140 at Page 99.
- iv. That certain Mortgage given by Galleria Irmo, LLC and Jimani, LLC to Security Federal Bank recorded on October 28, 2011 the said Second Mortgage was recorded in the Office of the Register of Deeds for Lexington County in Mortgage Book 15140 at Page 110.
- v. That certain Mortgage given by Galleria Irmo, LLC to Security Federal Bank recorded on October 28, 2011, the said Second Mortgage was recorded in the Office of the Register of Deeds for Kershaw County in Mortgage Book 2858 at Page 194.

18. The undersigned Master in Equity for Richland County, will retain jurisdiction to do all the necessary acts incident to this foreclosure including, but not limited to, the issuance of a Supplemental Order to evidence additional debt incurred if the sale of the property is delayed

by the filing of a bankruptcy petition, transfer of service of the Notes and Mortgages by the Plaintiff, or an attempt of the parties to reach a settlement, the issuance of a Supplemental Order to correct a harmless error in the action that does not substantially affect the rights of the parties, the issuance of a Writ of Assistance, disposing of any surplus funds pursuant to Rule 71(c), SCRCF, and hearing any issues involving appraisal proceedings under §29-3-680 et seq of the South Carolina Code of Laws (1976) as amended.

19. Mortgaged property to be sold by Master in Equity for Richland County:

RICHLAND COUNTY (Mortgage Book 1718 at Page 202)

Lot 8, Greenbrook:

All that certain piece, parcel or lot of land, together with any improvements thereon, situate, lying and being west of the City of Columbia, County of Richland, State of South Carolina, being shown and designated as Lot 8 on a final plat of Greenbrook Subdivision, prepared by Baxter Land Surveying Co., Inc., dated August 28, 2003, and recorded in Record Book 923, at Page 69, Office of the Register of Deeds for Richland County. Reference being made to said plat for a more complete and accurate descriptions of metes and bounds, be all measurements a little more or less.

Being the same property conveyed to Jimani, LLC by deed from Jimmy Williamson Homes, LLC recorded October 12, 2007, in the Office of the ROD for Richland County in Book 1366 at page 172.

TMS No. 07306-02-49

Address: 36 Greenbrook Court, Columbia, South Carolina 29210

Lots 16 and 17, Greenbrook:

All those certain pieces, parcels or lots of land, together with any improvements thereon, situate, lying and being west of the City of Columbia, County of Richland, State of South Carolina, being shown and designated as Lots 16 and 17 on a final plat of Greenbrook Subdivision, prepared by Baxter Land Surveying Co., Inc., dated August 28, 2003, and recorded in Record Book 923, at Page 69, Office of the Register of Deeds for Richland County. Reference being made to said plat for a more complete and accurate descriptions of metes and bounds, be all measurements a little more or less.

LESS AND EXCEPTING THE FOLLOWING AS TO LOT 17: *All that certain piece, parcel or lot of land, together with improvements thereon, if any,*

situate, lying and being west of the City of Columbia, School District No. 1A, in the County of Richland, State of South Carolina, being shown and designated as .05 acres in the northeast corner ("Area to be conveyed to Lot 18") on a plat prepared for James W. Derrick, Jr., by Cox and Dinkins, dated January 4, 2007, recorded in Book 1282, Page 3957.

Being the same property conveyed to Jimani, LLC by deed from Jimmy Williamson Homes, LLC recorded March 26, 2007, in the Office of the ROD for Richland County in Book 1295 at Page 3962.

TMS No. 07306-02-58 (Lot 16) & 07306-02-59 (Lot 17)

Address: 23 Greenbrook Court (Lot 16) & 19 Greenbrook Court (Lot 17), Columbia, South Carolina 29210

20. Mortgaged property to be sold by Master in Equity for Kershaw County:

KERSHAW COUNTY (Mortgage Volume 2858 at Page 183)

Lot 62, Woodtrace:

All that piece, parcel or lot of land with improvements thereon, situate lying and being in the City of Elgin, County of Kershaw, State of South Carolina, as shown and designated as Lot 62 of the Woodtrace Subdivision, Phase 2, on that Plat dated January 22, 2002, and recorded in the Office of the Register of Deeds for Kershaw County, South Carolina, in Plat Book B92 at Page 3. Reference made to said plat for a more complete and accurate description of said lot, all measurements being a little more or less.

Being the same property conveyed to Jimani, LLC by deed from Jimmy Williamson Homes, LLC recorded August 15, 2007, in the Office of the ROD for Kershaw County in Book 2222 at Page 196.

TMS No. 359-03-03-062

Address: 227 Elmwood Blvd, Elgin, South Carolina 29045

Lot 2, Woodtrace:

All that certain piece, parcel or lot of land, together with any improvements thereon, if any, situate, lying and being in the County of Kershaw, State of South Carolina, located approximately 2.5 miles South of Elgin, the same being shown and designated as Lot 2 on a plat of Woodtrace Development Phase I, prepared by Daniel Riddick & Associates, Inc., dated January 22, 2002, and recorded in the Office of the ROD for Kershaw County in Plat Book B43 at Page 2, and being more particularly shown on a plat prepared for Jimani, LLC, by Robert H. Lackey Surveying, Inc., dated December 12, 2006, recorded in Plat Book 2090 at Page

110. Reference being made to said latter plat for a more complete and accurate description of metes and bounds, be all measurements a little more or less.

Being the same property conveyed to Jimani, LLC by deed from Jimmy Williamson Homes, LLC recorded December 18, 2006, in the Office of the ROD for Kershaw County in Book 2090 at Page 111.

TMS No. 359-03-00-002 SGU

Address: 6 Shaggy Bark Lane, Elgin, South Carolina 29045

20. Mortgaged property to be sold by Master in Equity for Lexington County:

LEXINGTON COUNTY:

7325 St. Andrews Road:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the Town of Irmo, County of Lexington, State of South Carolina, being shown and delineated as containing 0.950 acres on Boundary Survey prepared for D & D Properties of Columbia, LLC, by Bostick Surveying dated December 3, 2007, recorded in Record Book 12543, Page 149. Said plat being incorporated herein by reference for a more complete and accurate description; be all measurements a little more or less.

AND ALSO, EASEMENT PARCEL:

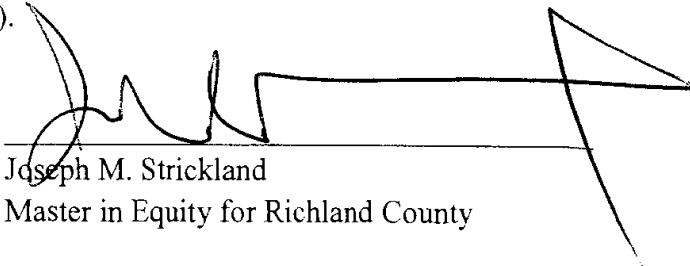
A non-exclusive easement for ingress, egress, access and parking over and across the property shown as "Egress to St. Andrews Road" on Boundary Survey prepared for D & D Properties of Columbia, LLC, by Bostick Surveying dated December 3, 2007, recorded in Record Book 12543, Page 149, and also shown as that certain shaded, cross-hatched area identified as "Offsite Access Area" on boundary Survey prepared for D and D Properties of Columbia, LLC, by Power Engineering Company, Inc., dated December 18, 2006, recorded in Record Book 11639, Page 330.

TMS No.: 001920-02-001

Address: 7325 St. Andrews Road, Irmo, South Carolina 29063

21. The Note and Mortgage are not subject to the Home Affordable Modification Program ("HMP").

22. Plaintiff has complied with Administrative Order of the Supreme Court of South Carolina dated May 2, 2011 (2011-05-02-01).



Joseph M. Strickland
Master in Equity for Richland County

October 15, 2014.
Richland County, South Carolina

Attorney for Plaintiff:
Jeffrey L. Silver
S.C. Bar No. 5104
Tyler, Cassell, Jackson, Peace & Silver, LLC
1331 Elmwood Avenue, Suite 300
Post Office Box 11656
Columbia, South Carolina 29211
(803) 252-7689

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. M. B. B. B.
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND
COUNTY OF KERSHAW
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-4329

2014-CP-28-1006

2014-CP-32-3972

FILED

MAR -3 P 12:33

DETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Security Federal Bank,

Plaintiff,

vs.

Galleria Irmo, LLC, Jimani, LLC, Sincerely
Yours, Inc., Branch Banking and Trust
Company of South Carolina n/k/a Branch
Banking and Trust Company, South
Carolina Bank and Trust, NA n/k/a SCBT,
and First Palmetto Bank f/k/a First Palmetto
Savings Bank, FSB,

Defendants,

ORDER FOR DEFICIENCY
JUDGMENT

I have determined the existence of a deficiency after sale of the property which is the subject of this action. It is now proper for this amount to be entered as a monetary judgment.

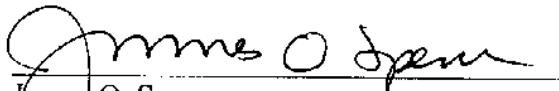
IT IS THEREFORE ORDERED that the Plaintiff have judgment against the Defendant Galleria Irmo, LLC and Jimani, LLC with interest thereon at 3.500% from December 1, 2014, being the date of the foreclosure sale, as follows:

CALCULATIONS FOR DEFICIENCY JUDGMENT

Judgment amount in Decree of Foreclosure	\$1,897,805.58
Plus Accrued Interest from October 15, 2014 to December 1, 2014 @ 3.500%	\$8,478.80
Plus Costs Incurred - not included in Decree	
a. Master's Commission - Kershaw County	\$1,818.00
b. Master's Commission - Richland County	\$2,500.00
c. Master's Commission - Lexington County	\$3,915.00
b. Advertisement of Notice of Sale - 3 Counties	\$1,509.39
c. Bidding Agent's Fee	\$290.00
d. Deed Recording Fee (6)	\$60.00
e. Satisfaction Recording Fee (6)	\$30.00
TOTAL DUE	\$1,916,406.77
Less bid at foreclosure - Kershaw County	-\$181,800.00
Less bid at foreclosure - Richland County	-\$391,500.00
Less bid at foreclosure - Lexington County	-\$846,000.00
TOTAL BIDS	\$1,419,300.00

TOTAL DEFICIENCY JUDGMENT: \$497,106.77

IT IS SO ORDERED.


James O. Spence
Master in Equity for Lexington County

Feb 27, 2015.
Lexington County, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
COUNTY OF KERSHAW
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO.: 2014-CP-40-4329
2014-CP-28-1006
2014-CP-32-3972

ORIGINAL

FILED

Security Federal Bank,

2015 MAR -3 P 12:33

DETH R. L. KENNEDY
CLERK OF COURT
LEXINGTON SC

Galleria Irmo, LLC, Jimani, LLC, Sincerely Yours, Inc.,
Branch Banking and Trust Company of South Carolina n/k/a
Branch Banking and Trust Company, South Carolina Bank and
Trust, NA n/k/a SCBT, and First Palmetto Bank f/k/a First
Palmetto Savings Bank, FSB,

DEFENDANTS,

Submitted by:

TYLER, CASSELL, JACKSON
PEACE & SILVER, LLC
Jeffrey L. Silver
1331 Elmwood Avenue, Suite 300 (29201)
Post Office Box 11656
Columbia, South Carolina 29211

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

DISPOSITION TYPE (CHECK ONE):

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial/hearing before the court. The issues have been tried or heard and decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☒ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Security Federal Bank	Galleria Irmo, LLC	\$ 497,106.77
If applicable, describe the property, including tax map information and address, referenced in the order: TMS No.: 001920-02-001 Address: 7325 St. Andrews Road, Irmo, South Carolina 29063		

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

James O. Jones
James O. Jones
Master in Equity for Richland County Lexington
Court

3068
C-06

Feb. 25, 2015

For Clerk of Court Office Use Only



Lexington County Eleventh Judicial Circuit Public Index



ELECTRONICALLY FILED - 2020 Sep 15 9:22 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003825

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Switch View

Security Federal Bank VS Irmo Galleria LLC

Case Number:	2014CP3203972	Court Agency:	Common Pleas	Filed Date:	10/30/2014
Case Type:	Common Pleas	Case Sub Type:	Transcript Judg 740	File Type:	Non-Jury
Status:	Judgment	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Judgment	Disposition Date:	10/30/2014	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:	2014CP3203972	Court Roster:			

Case Parties **Judgments** **Tax Map Information** **Associated Cases** **Actions** **Financials**

For:	Security Federal Bank	Against:	Irmo Galleria LLC	Judg. Amount:	\$497,106.77	Judgment Date:	03/03/2015
Description:	Judgment/Judgment	Disposition:		Disp. Date:		Date Entered/Last Changed	10/31/2014 03/04/2015
Notes:	None						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-28-1170

The Bank of South Carolina

Betsy Olivia Knight-Truesdell, Individually
and as Personal Representative of the Estate
of David Jeffrey Trusdell a/k/a Jeff
Truesdell et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Larry D. Cohen

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
The Bank of South Carolina	Betsy Olivia Knight-Truesdell, as Personal Representative of the Estate of David Jeffrey Trusdell a/k/a Jeff Truesdell	\$192,818.84
		\$
		\$

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

ALL that piece, parcel or lot of land, lying and being situate near Lugoff in former School District No. 29, Wateree Township, Kershaw County, South Carolina, containing Nineteen (19) acres, more or less, and being bounded as follows: NORTHWEST by property now or formerly of Donald Leroy Truesdell;

ORIGINAL

EAST by property of Stephen C. Truesdell; SOUTHEAST by property of Katherine E. Cowles, et al; and WEST by property of Robert E. Johnson, et al.

AND ALSO

ALL rights of Mortgagor in and to an easement and right-of-way for ingress and egress leading from the tract above described and conveyed westwardly through Deerfield Subdivision to State Road S-28-36.

BEING the same property conveyed to David Jeffrey Truesdell by deed of Donald Leroy Truesdell, dated September 12, 1991 and recorded October 8, 1991 in the Clerk of Court's Office for Kershaw County in Book 0049 at Page 120.

AND ALSO

ALL those pieces, parcels or tracts of land lying, and being situate in the Lugoff Community, Wateree Township, Kershaw County, South Carolina, containing a total of two and ninety-six hundredths (2.96) acres, more or less, and being shown as Parcel 1 and Parcel 2 on that plat prepared by J. Walker and Associates, dated January 16, 1997, and recorded in the Office of the Clerk of Court for Kershaw County in Plat Book A-102, at Page 004. Said parcels together, in the shape of a "flag" lot, are bound as follows: NORTHWEST by other property of Grantee, David Jeffrey Truesdell; EAST by property of Katherine E. J. Cowles and H. Drakeford Johnson and Area 1 as shown on said plat to be partitioned to Lawrence H. McCallum; SOUTH by Area 1 before mentioned and by property of First Baptist Church of Camden and WEST by property of Gladys G. Truesdell, by property of Johnson and by King's Grant subdivision, property of Lechtworth.

BEING the same property conveyed to David Jeffrey Truesdell by deed of Lawrence H. McCallum, Jr., dated January 28, 1998 and recorded January 30, 1998 in the Clerk of Court's Office for Kershaw County in Book 597 at Page 86.

TMS NO. 296-00-00-002

A/K/A 62 Pine Grove Road, Tract A., Lugoff, S.C.

PARCEL B

ALL that piece, parcel or lot of land, lying and being situate near Lugoff in former School District No. 29, Wateree Township, Kershaw County, South Carolina, containing twenty-one (21) acres, more or less, and bounded as follows: NORTH by property now or formerly of H. McCallum, et al; EAST by property of Stephen C. Truesdell; SOUTHEAST by property of David Jeffrey Truesdell; SOUTH by property of Edens, and WEST by Deerfield Subdivision, property of Mitch Rabon Realty.

AND ALSO

ALL rights of Mortgagor in and to an easement and right-of-way for ingress and egress leading from the tract above described and conveyed westwardly through Deerfield Subdivision to State Road S-28-36.

BEING the same property devised to Stephen C. TRUESDELL under the Last Will and Testament of Donald L. Truesdell who died on September 21, 1993, as will appear by reference to Kershaw County Probate Court File 93-ES-28-00263, and as confirmed by Deed of Distribution dated December, 1994, and recorded in said Clerk of Court's Office in Book 315 at Page 310.

AND ALSO

A perpetual non-exclusive right-of-way and easement for vehicular and pedestrian travel and for the construction, repair and maintenance of power, water, sewer, and other utility lines over, upon and across the property of Grantors, William B. McCallum, Lawrence H. McCallum, Jr., and Betty Jane McCallum Fort, twenty-five (25) feet in width, commencing at the southwestern corner of Grantors' property (point "B" on Exhibit "A" hereto attached and made a part hereof) and continuing eastwardly, within and along the southern and southwestern boundary of said Grantors property to the property line of the property of Stephen C. Truesdell (point "A" on Exhibit "A") [Exhibit "A" is

attached to the instrument entitled, "Title to Real Estate," dated October 11, 2005, recorded in the Office of the Clerk of Court in Book 01849 at Page 51 on October 13, 2005].

Being the same property conveyed to Stephen C. Truesdell by Deed of Easement by William B. McCallum, Lawrence H. McCallum, Jr., and Betty Jane McCallum Fort, dated October 11, 2005 and recorded October 13, 2005 in the ROD Office for Kershaw County in Book 1849 at Page 51.

TMS NO 296-00-00-001

A/K/A 62 Pine Grove Road. Tract B, Lugoff, S.C.

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
THE BANK OF SOUTH CAROLINA,
Plaintiff,

v.

BETSY OLIVIA KNIGHT-TRUESDELL,
INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
DAVID JEFFREY TRUESDELL A/K/A
JEFF TRUESDELL, DECEASED, JEFF
MARTIN, STEPHEN C. TRUESDELL,
STATE FARM BANK, F.S.B. AND GAYLE
T. LILLY,
Defendants.

COURT OF COMMON PLEAS

CASE NO. 2012-CP-28-1170

DEFICIENCY DEMANDED

MASTER'S DECREE AND
JUDGMENT OF FORECLOSURE
AND SALE



ORIGINAL

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CLERK OF COURT
KERSHAW COUNTY, S.C.

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the above entitled matter was referred to the undersigned Master-in-Equity for Kershaw County to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment in the action. Any appeal from the decision of the Master-in-Equity shall be directly to the South Carolina Court of Appeals.

Pursuant to the order of reference, a hearing was held, attended by the attorneys of record, testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT

1. On December 31, 2011, mortgagor Jeffrey David Truesdell a/k/a Jeff Truesdell died testate while domiciled in Kershaw County, South Carolina.
2. On September 28, 2012, a Lis Pendens was filed with the Kershaw County Probate Court under Case No. 2012-ES-28-00007.

Handwritten signature/initials: #1/12

3. On October 1, 2012, a Lis Pendens was filed with the Kershaw County Clerk of Court under Case No. 2012-LP-28-319.

4. The Summons and Verified Complaint were filed in the Probate Court for Kershaw County on September 28, 2012, under Case No. 2012-ES-28-00007.

5. On December 14, 2012, an Order Granting Removal to Circuit Court was entered by the Probate Court for Kershaw County.

6. Service was made upon the Defendants named in this judgment as shown by the proofs of service filed herein.

7. Defendant Betsy Olivia Knight-Truesdell, individually, and as Personal Representative of the Estate of David Jeffrcy Truesdell a/k/a Jeff Truesdell and State Farm Bank, F.S.B., are in default as shown by affidavits filed herein.

8. According to an affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.

9. The Defendants were notified of the time, date and place of hearing in this matter.

10. For value received, the late Jeff Truesdell a/k/a David Jeffrey Truesdell and Jeff Martin made, executed and delivered a Promissory Note (the "Note") dated October 19, 2009, promising thereby to pay to the order of The Bank of South Carolina, in the original principal sum of One Hundred Seventy-Five Thousand and 00/100 (\$175,000.00) Dollars, together with interest at the rate of 7.0% per annum. Other terms and conditions are stated in the Note on file with the Kershaw County Clerk of Court.

11. To better secure the payment of the Note, Jeffrey Truesdell and Stephen C. Truesdell

made, executed and delivered to The Bank of South Carolina, a mortgage (the "Mortgage"), in writing, dated October 19, 2009, covering certain real property located in Kershaw County and described in Paragraph 17, *infra*. The Mortgage was recorded on October 21, 2009, and is of record in the Office of the Register of Deeds for Kershaw County, in 2590 at Page 32.

12. Subsequently, Jeff Truesdell, Jeff Martin and Stephen C. Truesdell executed and delivered to The Bank of South Carolina, a Modification Agreement dated November 7, 2010, recorded on December 1, 2010 in the Office of the Register of Deeds for Kershaw County in Book 2744 and at Page 147, which extended the maturity date of the Note until November 17, 2013.

13. The Mortgage constitutes a first priority mortgage lien on the property.

14. Payments due on the Note have not been made as provided therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney herein for collection.

15. The loan that is the subject of this foreclosure action is not owned, securitized or guaranteed by Fannie Mae (FNMA) or Freddie Mac (FMLC) or held by a servicer who has signed an agreement to participate in the Home Affordable Modification Program (HMP).

16. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and the attending hearings; the professional standings of Plaintiff's attorney; the fee customarily charged in the jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that Plaintiff has incurred attorneys' fees in this matter of \$14,380.00 through December 31, 2014 and

costs in the amount of \$2,066.69 as of December 31, 2014. I further find that sum of \$14,380.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed through December 31, 2014. I further find that costs in the amount of \$2,066.69 is a reasonable sum through December 31, 2014.

17. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Note and Mortgage, is as follows:

(a)	Principal amount due as of March 19, 2015:	\$136,494.16
(b)	Interest from March 8, 2012 to March 19, 2015 at 7.0% per annum:	37,811.72
(c)	Late Charges:	1,905.11
(d)	Delinquent Property Taxes:	161.16
(e)	Costs of Collection through December 31, 2014:	2,066.69
(f)	Attorneys' Fees through December 31, 2014:	<u>14,380.00</u>
	Total Debt secured by Note and Mortgage including interest to date shown:	\$192,818.84
	Per Diem interest after March 19, 2015:	\$29.77

Pursuant to the terms of the Note and Mortgage, interest on the Total Debt after March 19, 2015 to the date of entry of judgment shall accrue at the per diem rate of \$29.77, and shall be added to the Total Debt, above, to comprise the amount of the judgment debt entered herein, and interest after the date of entry of judgment shall accrue at the statutory rate of 7.25% per annum.

18. By Administrative Order of the Honorable Jean H. Toal, Chief Justice of the South

Carolina Supreme Court, dated May 22, 2009, guidelines were established to insure that eligible homeowners are afforded the benefits available under the Home Affordable Modification Program ("*HMP*"), the procedures for handling issues relating to the HMP are handled uniformly throughout the State, and mortgage foreclosure actions are not unnecessarily dismissed or delayed while HMP issues are resolved. The mortgage which is the subject of this foreclosure action is unimproved land and as such, the HMP guidelines are inapplicable.

19. Plaintiff does not waive but demands immediate personal judgment against Defendant Betsy Olivia Knight-Truesdell as Personal Representative of Estate of David Jeffrey Truesdell, Deceased.

20. The Court finds that Defendant Jeff Martin was dismissed from this action by virtue of a "Stipulation of Dismissal as to Jeff Martin Only" entered by the Kershaw County Clerk of Court on April 10, 2015.

21. The Court finds that Defendants Stephen C. Truesdell, Gayle T. Lilly and Betsy Olivia Knight-Truesdell, individually, and State Farm Bank, F.S.B., are not personally liable to Plaintiff for any amounts owed, but any interest they may have in the mortgaged property shall be extinguished through the mortgage foreclosure and sale.

22. Defendants claim or may claim liens upon or interests in the mortgaged property; and in the event there is a surplus from the sale of the mortgaged property, the validity, priority, and amount of such lien claims will be determined at a hearing subsequent to the sale, in accordance with Rule 71 (c), SCRCF. The Defendants with such claims or liens are as follows:

A. Defendant Betsy Olivia Knight-Truesdell, individually, may claim some interest in this action or the mortgaged property as a devisee under the Last

Will and Testament of David Jeffrey Truesdell. Any interest of Defendant Betsy Olivia Knight-Truesdell, individually in this action or the mortgaged property is subordinate to Plaintiff's first mortgage lien.

- B. Defendant State Farm Bank, F.S.B. a/k/a State Farm Bank may claim some interest in this action or the mortgaged property by virtue of a judgment dated June 7, 2012 and entered into the records of the Kershaw County Clerk of Court under Case Number 2011-CP-28-00764 on June 7, 2012 against Jeff Truesdell in the original amount of \$21,526.45. The judgment lien of Defendant State Farm Bank, F.S.B. is junior in priority to Plaintiff's first mortgage lien.
- C. Defendant Gayle T. Lilly may claim some interest in this action or the mortgaged property by virtue of a Statement of Creditor's Claim in the original amount of \$4,347.07, entered into the records of the Kershaw County Probate Court under Case Number 2012-ES-28-00007 on April 25, 2012. The Claim of Defendant Gayle T. Lilly is junior in priority to Plaintiff's first mortgage lien.
- D. Defendant Stephen C. Truesdell may claim some interest in this action or the mortgaged property by virtue of a fee simple undivided interest in the mortgaged property and certain easements. The interest of Defendant Stephen C. Truesdell is junior in priority to Plaintiff's first mortgage lien.
- E. Defendant Stephen C. Truesdell may claim some interest in this action or the mortgaged property by virtue of a Statement of Creditor's Claim in the



original amount of \$175,000.00, entered into the record in the Kershaw County Probate Court under Case Number 2012-ES-28-00007 on April 25, 2012. The interest or claim of Defendant Stephen C. Truesdell is junior in priority to Plaintiff's first mortgage lien.

23. Plaintiff reserves its right to supplement its request for attorneys' fees and costs after the completion of the foreclosure sale.

CONCLUSIONS OF LAW

I, therefore, conclude the following:

1. That Plaintiff's Motion for Summary Judgment against Defendant Stephen Truesdell and Gayle T. Lilly is granted.

2. That Plaintiff is the owner and holder of the Mortgage which constitutes a first priority mortgage lien on the mortgaged property described in Paragraph 17, *infra*.

3. That Plaintiff should have judgment of foreclosure of its Mortgage for all amounts due under the Note, including interest, costs and disbursements and attorneys' fees as aforesaid.

4. The Plaintiff is entitled to have the mortgaged property, and any and all rights it holds ordered sold at public auction after due advertisement. The sale shall be made subject to taxes and assessments constituting a lien against the mortgaged property.

5. That pursuant to S.C. Code Ann. § 29-3-650 (1976) Plaintiff is entitled to an immediate personal judgment, against Defendant Betsy Olivia Knight-Truesdell as Personal Representative of Estate of David Jeffrey Truesdell, Deceased, for the total amount shown in Paragraph 17, *supra*, with said judgment subject to a credit in an amount equal to the proceeds from the sale of the mortgaged property described below.

6. A trial court should grant a motion for summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), S.C. R. Civ. P.; *Regions Bank v. Schmauch*, 354 S.C. 648, 659-60, 582 S.E.2d 432, 438 (Ct. App. 2003); *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998).

7. “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998).

8. Under Rule 56(c), S.C. R. Civ. P., the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001). Once the party moving meets its initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing a genuine issue for trial. Rule 56(c), S.C. R. Civ. P.; *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990); *Peterson v. W. Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999).

9. In an action on a promissory note, where the promissory note is attached to the complaint and execution of the promissory note is uncontested, the plaintiff is entitled to recover on the note in the absence of the pleading and proof of an affirmative defense. S.C. Code Ann. §



36-3-308; *Conran v. Yeager*, 263 S.C. 417, 420, 211 S.E.2d 228, 229 (S.C. 1975). The same principle is applicable to a guaranty. *National Equipment, Ltd. v. David Jones Sales Trucking Division, Inc.*, 268 S.C. 551, 554, 236 S.E.2d 125, 126 (S.C. 1977).

10. Hear, the pleadings, the Affidavit of Douglas H. Sass, the Answer of Defendants Stephen C. Truesdell and Gayle T. Lilly establish the execution of the Note, creating the debt sued upon, the execution and the delivery of the Mortgage securing the debt, the default thereunder and the amount's due thereon.

11. Defendants Stephen C. Truesdell and Gayle T. Lilly have offered no specific facts or Evidence which raises an issue of fact. Based upon the Affidavits on file, Defendants Stephen C. Truesdell and Gayle T. Lilly's failure to controvert Plaintiff's Verified Complaint, Plaintiff is entitled to summary judgment as a matter of law.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That there is due to the Plaintiff on its Note and Mortgage the sum of \$192,818.84, representing the Total Debt due to the Plaintiff as set out in Paragraph 17, *supra*, together with interest thereon at the per diem rate of \$29.77 after March 19, 2015 to the date of entry of judgment and then interest at the statutory rate of 7.25% per annum.

2. The proceeds of the foreclosure sale shall be credited to the Total Debt shown in Paragraph 17, *supra*.

3. That the amount due in the preceding paragraph (the "Total Debt" as set forth in Paragraph 17, *supra*, and later accrued interest and costs) shall constitute the total judgment debt due to Plaintiff and shall bear interest hereafter at the rate of 7.25% per annum.

4. To the extent Plaintiff advances money after March 19, 2015 to preserve the

mortgaged property, such advances may be added to Plaintiff's Total Debt.

5. It is anticipated that Plaintiff will pay the costs of advertising the sale of the mortgaged property, and any costs associated with this shall be added to Plaintiff's Total Debt.

6. To the extent Plaintiff incurs additional attorneys' fees and costs of collection or foreclosure after December 31, 2014, such amounts may be supplemented by affidavit and added to the Total Debt without further court hearing.

7. That the Defendants liable for the aforesaid Mortgage debt shall, prior to the date and time of the sale of the subject property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

8. That on default of payment prior to the date and time of sale, the mortgaged premises, hereinafter described, shall be sold by the Master-in-Equity for Kershaw County at public auction, at the Kershaw County Courthouse, in the City of Camden, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:

- A. FOR CASH: The undersigned Master-in-Equity for Kershaw County shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and applied to the costs and then to the Plaintiff's debt.
- B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.25% per annum.
- C. The sale shall be subject to taxes and assessments, existing easements and



easements and restrictions of record.

D. Purchaser to pay for the deed and the cost of recording the deed.

9. That if the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the Master-in-Equity for Kershaw County only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff's indebtedness.

10. That if the Plaintiff or its representative fail to appear and bid at the foreclosure sale, any such sale shall be null and void and of no effect.

11. That the undersigned Master-in-Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, or any other person may be a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) days after the date of the sale, then the undersigned Master-in-Equity may re-advertise the premises for sale on the next, or some other subsequent, sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

12. That the undersigned Master-in-Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any guardian *ad litem* fee or fees of attorneys appointed under Order of Court; and

NEXT: To the payment of the amount to the Plaintiff, or the Plaintiff's



Attorney, of the amount of the Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71 (c), SCRPC.

13. That it is further ORDERED, ADJUDGED AND DECREED that, in the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of Kershaw County is hereby directed to eject and remove from the premises the occupant(s) of the property sold, together with any and all personal property located thereon, and to put the successful bidder, or his assigns, in full, quiet and peaceable possession.

14. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

15. That it is further ORDERED, ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder or the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Office of the Clerk of Court of Kershaw County is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not containing in said deed.

16. That the undersigned Master in Equity shall retain jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance, disposing of any surplus funds pursuant to Rule 71 (c), SCRPC.



17. That the following is a description of the premises herein ordered to be sold:

PARCEL A

ALL that piece, parcel or lot of land, lying and being situate near Lugoff in former School District No. 29, Wateree Township, Kershaw County, South Carolina, containing Nineteen (19) acres, more or less, and being bounded as follows: NORTHWEST by property now or formerly of Donald Leroy Truesdell; EAST by property of Stephen C. Truesdell; SOUTHEAST by property of Katherine E. Cowles, et al; and WEST by property of Robert E. Johnson, et al.

AND ALSO

ALL rights of Mortgagor in and to an easement and right-of-way for ingress and egress leading from the tract above described and conveyed westwardly through Deerfield Subdivision to State Road S-28-36.

BEING the same property conveyed to David Jeffrey Truesdell by deed of Donald Leroy Truesdell, dated September 12, 1991 and recorded October 8, 1991 in the Clerk of Court's Office for Kershaw County in Book 0049 at Page 120.

AND ALSO

ALL those pieces, parcels or tracts of land lying, and being situate in the Lugoff Community, Wateree Township, Kershaw County, South Carolina, containing a total of two and ninety-six hundredths (2.96) acres, more or less, and being shown as Parcel 1 and Parcel 2 on that plat prepared by J. Walker and Associates, dated January 16, 1997, and recorded in the Office of the Clerk of Court for Kershaw County in Plat Book A-102, at Page 004. Said parcels together, in the shape of a "flag" lot, are bound as follows: NORTHWEST by other property of Grantee, David Jeffrey Truesdell; EAST by property of Katherine E. J. Cowles and H. Drakeford Johnson and Area 1 as shown on said plat to be partitioned to Lawrence H. McCallum; SOUTH by Area 1 before mentioned and by property of First Baptist Church of Camden and WEST by property of Gladys G. Truesdell, by property of Johnson and by King's Grant subdivision, property of Lechtworth.

BEING the same property conveyed to David Jeffrey Truesdell by deed of Lawrence H. McCallum, Jr., dated January 28, 1998 and recorded January 30, 1998 in the Clerk of Court's Office for Kershaw County in Book 597 at Page 86.

TMS NO. 296-00-00-002
A/K/A 62 Pine Grove Road, Tract A., Lugoff, S.C.

PARCEL B

ALL that piece, parcel or lot of land, lying and being situate near Lugoff in former School District No. 29, Wateree Township, Kershaw County, South Carolina, containing twenty-one (21) acres, more or less, and bounded as follows: NORTH by property now or formerly of H. McCallum, et al; EAST by property of Stephen C. Truesdell; SOUTHEAST by property of David Jeffrey Truesdell; SOUTH by property of Edens, and WEST by Deerfield Subdivision, property of Mitch Rabon Realty.

AND ALSO

ALL rights of Mortgagor in and to an easement and right-of-way for ingress and egress leading from the tract above described and conveyed westwardly through Deerfield Subdivision to State Road S-28-36.

BEING the same property devised to Stephen C. TRUESDELL under the Last Will and Testament of Donald L. Truesdell who died on September 21, 1993, as will appear by reference to Kershaw County Probate Court File 93-ES-28-00263, and as confirmed by Deed of Distribution dated December, 1994, and recorded in said Clerk of Court's Office in Book 315 at Page 310.

AND ALSO

A perpetual non-exclusive right-of-way and easement for vehicular and pedestrian travel and for the construction, repair and maintenance of power, water, sewer, and other utility lines over, upon and across the property of Grantors, William B. McCallum, Lawrence H. McCallum, Jr., and Betty Jane McCallum Fort, twenty-five (25) feet in width, commencing at the southwestern corner of Grantors' property (point "B" on Exhibit "A" hereto attached and made a part hereof) and continuing eastwardly, within and along the southern and southwestern boundary of said Grantors property to the property line of the property of Stephen C. Truesdell (point "A" on Exhibit "A") [Exhibit "A" is attached to the instrument entitled, "Title to Real Estate," dated October 11, 2005, recorded in the Office of the Clerk of Court in Book 01849 at Page 51 on October 13, 2005].

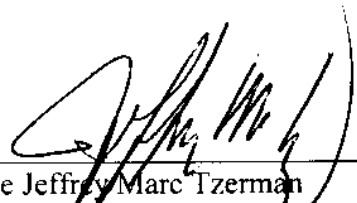
Being the same property conveyed to Stephen C. Truesdell by Deed of Easement by William B. McCallum, Lawrence H. McCallum, Jr., and Betty Jane McCallum Fort, dated October 11, 2005 and recorded October 13, 2005 in the ROD Office for Kershaw County in Book 1849 at Page 51.

TMS NO 296-00-00-001

A/K/A 62 Pine Grove Road. Tract B, Lugoff, S.C.

18. Pursuant to S.C. Code Ann. § 29-3-650 (1976), the Kershaw County Clerk of Court is hereby directed to enter and docket this judgment in the Office of the Kershaw County Clerk of Court in the same manner as other judgments. Upon the sale of the mortgaged premises by this Court an order shall issue crediting upon the judgment debt the amount paid to the Plaintiff from the proceeds of the sale.

AND IT IS SO ORDERED!



Judge Jeffrey Marc Tzerman
Kershaw County Master-in-Equity

4th Day of May 2015
Camden, South Carolina

Letter to Ms. Joyce McDonald
April 29, 2015
Page two of two

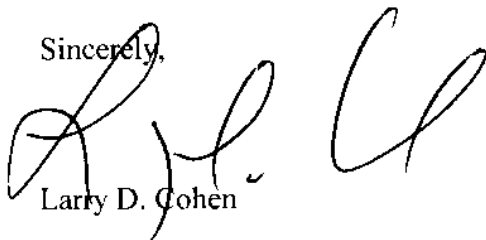
9. Certificate of Service;
10. Our Check No. 15163 in the amount of \$25.00 for your motion fee; and
11. Our Check No. 15164 in the amount of \$35.00 for Judge Tzerman's fee.

Please return a file-stamped copy of these documents in the stamped self-addressed envelope provided.

Please send your file to Judge Tzerman along with the original documents enclosed.

Thank you. If you have any questions, please do not hesitate to contact me.

Sincerely,



Larry D. Cohen

LDC/rtb
Enclosures

cc: Charles B. Baxley, Esquire
Catherine T. Johnston, Esquire
John Edward Haas, Personal Representative
Betsy Olivia Knight-Truesdell
Trace Dillion, Esquire

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-28-1170

THE BANK OF SOUTH CAROLINA

JOHN E. HAAS, AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF DAVID JEFFREY TRUESDELL A/K/A
JEFF TRUESDELL, DECEASED

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Larry D. Cohen

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 49(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Order of Deficiency Judgment

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
The Bank of South Carolina	John E. Haas, as Personal Representative of the Estate of David Jeffrey Truesdell a/k/a Jeff Truesdell, Deceased	\$113,029.12
		\$
		\$

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

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

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
THE BANK OF SOUTH CAROLINA,

Plaintiff,

v.

JOHN E. HAAS AS PERSONAL AS
REPRESENTATIVE OF THE ESTATE OF
DAVID JEFFREY TRUESDELL A/K/A
JEFF TRUESDELL, DECEASED, BETSY
OLIVIA KNIGHT-TRUESDELL, JEFF
MARTIN, STEPHEN C. TRUESDELL,
STATE FARM BANK, F.S.B. AND GAYLE
T. LILLY,

Defendants.

COURT OF COMMON PLEAS

CASE NO. 2012-CP-28-1170

ORDER FOR DEFICIENCY
JUDGMENT

FILED FOR RECORD
2015 SEP 15 PM 12:02
JOYCE MC DONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

 ORIGINAL

Pursuant to the Master's Decree and Judgment of Foreclosure and Sale of the Master-in-Equity for Kershaw County, South Carolina, entered by the Clerk of Court for Kershaw County, South Carolina on May 4, 2015, Plaintiff The Bank of South Carolina, is entitled to a deficiency against Defendant John E. Haas as Personal Representative of the Estate of David Jeffrey Truesdell a/k/a Jeff Truesdell, Deceased, as follows:

Amount of judgment as entered by the Court: \$192,818.84

Per diem interest from March 20, 2015 to the date of entry of judgment on May 4, 2015 at the rate of \$29.77 per day (46 days): \$1,369.42

Interest at the rate of 7.25% per annum from the date of entry of judgment after May 4, 2015 to the date of the final foreclosure sale on August 5, 2015 (93 x \$38.29): \$3,560.97

County Commission: \$890.00

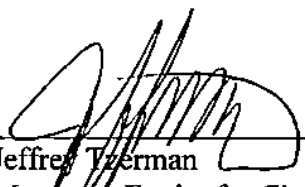
7/1/20

Plaintiff's attorneys' fees incurred after December 31, 2014:	\$2,386.50
Plaintiff's costs incurred after December 31, 2014:	\$1,003.39
Total judgment:	\$202,029.62
Less credit from foreclosure sale:	(\$89,000.00)
TOTAL DEFICIENCY JUDGMENT:	\$113,029.12

Plus, interest at the rate of 7.25% per annum from the date of entry of the deficiency judgment.

IT IS SO ORDERED.

Date: Aug 31, 2015
Camden, South Carolina


Jeffrey Tzerman
Master-in-Equity for Charleston County

Submitted by:

Larry D. Cohen
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ATTORNEY FOR PLAINTIFF
THE BANK OF SOUTH CAROLINA



Kershaw County Fifth Judicial Circuit Public Index



ELECTRONICALLY FILED - 2020 Sep 15 9:22 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003825--

[Kershaw County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Switch View					
Bank of South Carolina VS John E Haas Pr , defendant, et al					
Case Number:	2012CP2801170	Court Agency:	Common Pleas	Filed Date:	12/21/2012
Case Type:	Common Pleas	Case Sub Type:	Use AP Case Type 940	File Type:	Non-Jury
Status:	Judgment	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Judgment	Disposition Date:	05/04/2015	Disposition Judge:	Tzerman, Jeffrey Marc
Original Source Doc:		Original Case #:			
Judgment Number:	2012CP2801170	Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials							
For:	Bank of South Carolina	Against:	Haas, John E Pr	Judg. Amount:	\$113,029.12	Judgment Date:	09/15/2015
Description:	Judgment/Deficiency	Disposition:		Disp. Date:		Date Entered/Last Changed	09/15/2015
Notes:	None						
Judgment Details							
Claims Code		Detail Desc.		Detail Amount		Detail Date	
None							
For:	Bank of South Carolina	Against:	Truesdell Estate of, David Jeffrey	Judg. Amount:	\$113,029.12	Judgment Date:	09/15/2015
Description:	Judgment/Deficiency	Disposition:		Disp. Date:		Date Entered/Last Changed	09/15/2015
Notes:	None						
Judgment Details							
Claims Code		Detail Desc.		Detail Amount		Detail Date	
None							
For:	Bank of South Carolina	Against:	Truesdell, Jeff Aka	Judg. Amount:	\$113,029.12	Judgment Date:	09/15/2015
Description:	Judgment/Deficiency	Disposition:		Disp. Date:		Date Entered/Last Changed	09/15/2015
Notes:	None						
Judgment Details							
Claims Code		Detail Desc.		Detail Amount		Detail Date	
None							

CHARLESTON - COMMON PLEAS - CASE#2020CP1003825

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-10-5311

Wells Fargo Bank, N.A., Successor by Merger to
Wachovia Bank, National Association

Provider Investments, LLC, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Robert C. Byrd
Parker Poe Adams & Bernstein LLPAttorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$ N/A
		\$
		\$

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

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

Circuit Court Judge

Judge Code

3062

Date

7/17/13

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Robert C. Byrd

Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wells Fargo Bank, N.A., as Successor by
Merger to Wachovia Bank, N.A.,

Plaintiff,

vs.

Provider Investments, LLC; 1038 Jenkins
Road Property Owners Association, Inc.; Justin
Thomas McConnell; Thomas C. McConnell;
and Lisa L. McConnell,

Defendants.

IN THE CIRCUIT COURT

Case No. 2011-CP-10-5311

**MASTER-IN-EQUITY'S ORDER AND
JUDGMENT OF FORECLOSURE
AND SALE**

**(Deficiency requested as to defendants
Provider Investments, LLC, Thomas C.
McConnell and Lisa L. McConnell; not
HAMP eligible)**

2013 JUL 18 PM 4:10
FILED
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Pursuant to Rules 53 and 71, SCRCP, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said reference, a hearing was held on July 2, 2013, and attended by the following persons:

Robert C. Byrd – Attorney for the Plaintiff

Based on the evidence presented at the hearing, I hereby find, conclude and order as follows:

FINDINGS OF FACT

1. The Lis Pendens was filed on July 20, 2011.
2. The Summons, Complaint and Notice of Intent to Refer were filed on July 27, 2011.

3. Service was made upon the defendants in this action, as is shown by the proofs of service filed herein.

4. Defendant 1038 Jenkins Road Property Owners Association, Inc., filed an Answer and Cross-Claim.

5. Defendant Provider Investments, LLC filed a Reply to Co-Defendant 1038 Jenkins Road Property Owners Association, Inc.'s Cross-Claim on August 31, 2011.

6. Defendant Provider Investments, LLC filed an Answer.

7. The Consent Order of Reference was entered on May 24, 2012.

8. The Amended Lis Pendens, Amended Summons and Amended Complaint were filed on October 10, 2012.

9. Defendant 1038 Jenkins Road Property Owners Association, Inc., filed an Amended Answer.

10. The Consent Order Amending Complaint was entered on October 31, 2012.

11. Defendants Provider Investments, LLC, Justin Thomas McConnell, Thomas C. McConnell and Lisa L. McConnell filed an Amended Answer on November 30, 2012.

12. The Plaintiff filed a Motion to Strike Jury Demand on December 12, 2012.

13. The Consent Order of Reference was entered on April 29, 2013.

14. All parties were notified of the date, time and place of the hearing in this matter.

15. Defendant Provider Investments, LLC (the "Borrower"), for consideration, made, executed and delivered a certain Promissory Note dated January 6, 2006 (the "Note"), payable to the order of the Plaintiff in the original principal sum of \$279,000.00, together with interest as provided therein. Other terms and conditions are stated in the Note, which is of record herein.

16. To secure payment of the indebtedness evidenced by the Note, in accordance with the terms and conditions thereof, the Borrower, for consideration, made, executed and delivered to the Plaintiff a certain Mortgage and Assignment of Rents dated January 6, 2006 (the "Mortgage"), covering certain real property located in Charleston County, South Carolina and described more fully therein. The Mortgage was recorded in the RMC Office for Charleston County on January 13, 2006, in Book N-569 at Page 546. Other terms and conditions are stated in the Mortgage, which is of record herein.

17. In order to induce the Plaintiff to make of the aforesaid loan, and to further secure the same, defendants Justin Thomas McConnell, Thomas C. McConnell and Lisa L. McConnell (the "Guarantors"), who are or were principals of the Borrower and who benefitted directly from the said loan, for consideration, each executed a written Unconditional Guaranty dated January 6, 2006, respectively, (the "Guaranties"), whereby the said defendants absolutely, unconditionally and irrevocably guaranteed to the Plaintiff the full and prompt payment of all obligations of the Borrower to the Plaintiff. Other terms and conditions are stated in the Guaranties, which are of record herein. Subsequent to the filing of this action, the Plaintiff settled with defendant Justin Thomas McConnell, who is being dismissed from the action.

18. The obligations under the terms and conditions of the Note are in default for, among other reasons, the Borrower's failure to repay the indebtedness in accordance with the terms thereof, including without limitation the failure to repay the loan in full at maturity on January 6, 2011.

19. The Plaintiff is entitled to foreclosure of its Mortgage.

20. In the loan documents, the defendant agreed to pay all reasonable costs and expenses of collection, including but not limited to reasonable attorneys fees. I find and

conclude that the sum of Sixteen Thousand Four Hundred and No/100 Dollars (\$16,400.00) is a reasonable amount to award as Plaintiff's attorneys fees for services performed and anticipated to be performed until final adjudication of the within action, and that the sum of Nine Hundred Thirty-Eight and 50/100 Dollars (\$938.50) is a reasonable amount to award as legal costs. In reaching this conclusion, I have carefully considered the nature, extent and difficulty of the legal services provided by Plaintiff's counsel in this commercial foreclosure action, the time and labor necessarily devoted by Plaintiff's counsel to the case, the professional standing of Plaintiff's counsel and his firm, the fees customarily charged in Charleston County for similar legal services, and the beneficial results obtained by Plaintiff's counsel in this matter.

21. The amount due and owing on the loan evidenced by the Note as of July 2, 2013, including attorney's fees and costs of collection, is as follows:

(1)	Principal Due	\$ 236,262.36
(2)	Interest Due 07/02/13@ 6.85%	\$ 43,055.45
(9)	Attorneys Fees	\$ 16,400.00
(10)	Legal Costs	\$ <u>938.50</u>

Total Debt Secured by Mortgage: \$ 296,656.31

Interest for the period from July 2, 2013, through the date of this judgment at the rate of 6.85% per annum shall be added to the above stated Total Debt Secured by Mortgage to comprise the amount of the judgment debt entered herein, and interest after the date of judgment at the same rate shall be added to such judgment debt to comprise the amount of the debt through the date to which such interest is computed.

22. As a deficiency judgment is demanded, the bidding will remain open for thirty (30) days after the sale, unless waived by the Plaintiff, in writing, prior to the sale.

CONCLUSIONS OF LAW

1. The Plaintiff should have judgment of foreclosure of its Mortgage.
2. The subject property should be ordered sold at public auction after due advertisement.
3. Defendant Justin Thomas McConnell shall be dismissed from the action.
4. The Plaintiff should have a personal judgment against the Borrower and defendants Thomas C. McConnell and Lisa L. McConnell for any deficiency remaining after the sale, unless waived by the Plaintiff, in writing, prior to the sale.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on the loan secured by the Mortgage set forth in the Amended Complaint the sum of Two Hundred Ninety-Six Thousand Six Hundred Fifty-Six and 31/100 Dollars (\$296,656.31), representing the "Total Debt Secured By Mortgage" due the Plaintiff as set out in paragraph 21 hereinabove, together with interest after the aforesaid date at the rate of 6.85% per annum.
2. The said amount due the Plaintiff shall bear interest hereafter at the rate of 6.85% per annum.
3. The party or parties liable for the aforesaid debt, shall, on or before the date of sale of the subject property hereinafter described, pay to the Plaintiff or its attorneys the amount of the debt owed as aforesaid, together with the costs and disbursements of this action.
4. On default of payment at or before the time herein indicated, the mortgaged property be sold at public auction, on the following terms, that is to say:

a. FOR CASH: The undersigned Master-in-Equity will require a deposit of five (5%) percent on the amount of the bid, in cash or its equivalence, same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.

b. The sale shall be subject to taxes, assessments, existing easements, and easements and restrictions of record.

c. Purchaser to pay for deed stamps and cost of recording the deed.

d. That if the Plaintiff is the successful bidder at said sale for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the undersigned Master-in-Equity only the amount of the costs and expenses, crediting the balance of the bid on its indebtedness.

5. As a deficiency judgment is demanded, the bidding will remain open for thirty (30) days after the sale, unless waived by the Plaintiff, in writing, prior to the sale.

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

7. That the undersigned Master-in-Equity shall apply the proceeds of the sale of the property as follows:

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

NEXT: To the payment to Plaintiff or its attorney of the amount of debt owed to Plaintiff and interest, so much thereof as the purchase money will pay on the same; and

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

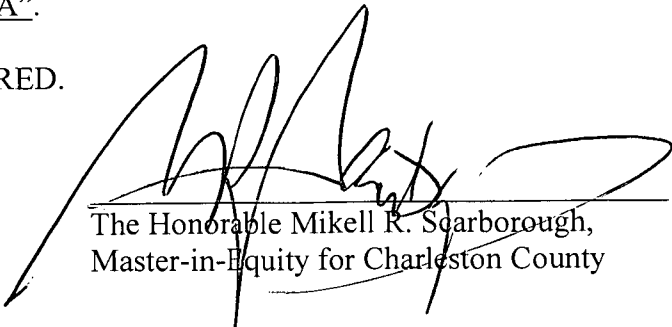
8. That the defendants named herein and all persons whosoever claiming under the defendants be forever barred and foreclosed of all right, title, interest and equity of redemption in the subject property, or any part thereof.

9. That the deed(s) of conveyance made pursuant to said sale shall contain the names of only the Plaintiff, the defendant who was the titleholder of the property at the time of the filing of the Amended Lis Pendens, and the grantee; and the RMC is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deeds.

10. That the undersigned Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure and to hear any post-judgment matters, including, but not limited to, the issuance of a Writ of Assistance.

11. A description of the property encumbered by the Mortgage and herein ordered to be sold is attached hereto as Exhibit "A".

AND IT IS SO ORDERED.



The Honorable Mikell R. Scarborough,
Master-in-Equity for Charleston County

Charleston, South Carolina

July 17 2013

EXHIBIT "A"

Unit number 111/112 in 1038 Jenkins Road Horizontal Property Regime located in the City of Charleston, County of Charleston and State of South Carolina, created by Master Deed dated May 11, 2005, with appended By-laws and Exhibits including Plat and plot plans which Master Deed including the By-laws and Exhibits recorded in the Office of the RMC for Charleston County in Book O536 at page 598, et. seq., as amended by First Amendment to Master Deed, dated January 3, 2006 and recorded in the RMC Office for Charleston County in Book M569, page 316. The Master Deed, By-laws, Plat and plat Plan above-mentioned, and the records thereof, are incorporated herein and by this reference are made a part hereof.

BEING the same property conveyed to Provider Investments, LLC by deed of C&M, LLC dated January 6, 2006, and recorded January 13, 2006 office of the Register of Deeds for Charleston County, South Carolina in Book M-569 at Page 218.

TMS#: 351-14-00-101

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wells Fargo Bank, N.A., as Successor by
Merger to Wachovia Bank, N.A.,

Plaintiff,

vs.

Provider Investments, LLC; 1038 Jenkins
Road Property Owners Association, Inc.; Justin
Thomas McConnell; Thomas C. McConnell;
and Lisa L. McConnell,

Defendants.

IN THE CIRCUIT COURT

Case No. 2011-CP-10-5311

RECORD OF HEARING

FILED
2013 JUL 18 PM 4:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY

.....
Charleston, South Carolina – July 2, 2013
.....

Pursuant to the Consent Order of Reference granted in the above-entitled cause, a final hearing was held before The Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, on the 2nd day of July, 2013, attended as follows:

Robert C. Byrd, Esquire – Attorney for the Plaintiff

Mr. Byrd, attorney for the Plaintiff, called attention to the following matters:

- (1) The filing of the Lis Pendens on July 20, 2011;
- (2) The filing of the Summons, Complaint and Notice of Intent to Refer on July 27, 2011;
- (3) The proofs of service filed with the Clerk of Court showing due and legal service of the pleadings upon the defendants;

(4) The Answer Cross-Claim filed by defendant 1038 Jenkins Road Property Owners Association, Inc.;

(5) The Reply to Co-Defendant 1038 Jenkins Road Property Owners Association, Inc.'s Cross-Claim filed on behalf of defendant Provider Investments, LLC;

(6) The Answer filed by defendant Provider Investments, LLC;

(7) The Consent Order of Reference entered on May 24, 2012, whereby the matter was referred with finality to the Master-in-Equity for the purposes stated therein;

(8) The filing of the Amended Lis Pendens, Amended Summons and Amended Complaint on October 10, 2012;

(9) The Amended Answer filed on behalf of defendant 1038 Jenkins Road Property Owners Association, Inc.;

(10) The Consent Order Amending Complaint entered on October 31, 2012;

(11) The Amended Answer filed on behalf of defendants Provider Investments, LLC, Justin Thomas McConnell, Thomas C. McConnell and Lisa L. McConnell;

(12) The Plaintiff's Motion to Strike Jury Demand; and

(13) The Consent Order of Reference entered on April 29, 2013, whereby the matter was re-referred with finality to the Master-in-Equity for the purposes stated therein;

WHEREUPON, Mr. Byrd stated to the Court as follows:

(1) The defendants were duly notified of the date, time and place of this hearing.

(2) From the records in his possession and from examination of the public records of Charleston County, it appears that defendant Provider Investments, LLC (the "Borrower"), for consideration, made, executed and delivered a certain Promissory Note dated January 6, 2006 (the "Note"), payable to the order of the Plaintiff in the original principal sum of \$279,000.00, together with interest as provided therein. A copy of the Note was identified, offered and received into evidence as Exhibit "A".

(3) To secure payment of the indebtedness evidenced by the Note, in accordance with

the terms and conditions thereof, the Borrower, for consideration, made, executed and delivered to the Plaintiff a certain Mortgage and Assignment of Rents dated January 6, 2006 (the "Mortgage"), covering certain real property located in Charleston County and described more fully therein. The Mortgage was recorded in the RMC Office for Charleston County on January 13, 2006, in Book N-569 at Page 546. A copy of the Mortgage was identified, offered and received into evidence as Exhibit "B".

(4) In order to induce the Plaintiff to make of the aforesaid loan, and to further secure the same, defendants Justin Thomas McConnell, Thomas C. McConnell and Lisa L. McConnell (the "Guarantors"), who are or were principals of the Borrower and who benefitted directly from the said loan, for consideration, each executed a written Unconditional Guaranty dated January 6, 2006, respectively, (the "Guaranties"), whereby the said defendants absolutely, unconditionally and irrevocably guaranteed to the Plaintiff the full and prompt payment of all obligations of the Borrower to the Plaintiff. Copies of the Guaranties were identified, offered and received into evidence as Exhibit "C".

(5) The obligations under the terms and conditions of the Note are in default for, among other reasons, the Borrower's failure to repay the indebtedness in accordance with the terms thereof, including without limitation the failure to repay the loan in full at maturity on January 6, 2011. The Borrower has received all notices required by law.

(6) The amount due and owing on the loan evidenced by the Note, as of July 2, 2013, excluding costs of collection and attorney's fees, is as follows:

(1)	Principal Due	\$236,262.36
(2)	Interest as of 07/02/13@ 6.85%	<u>\$ 43,055.45</u>
TOTAL:		\$279,317.81

(7) The Plaintiff is entitled to foreclosure of its Mortgage.

(8) Upon examination of the records in Charleston County, there were no persons other than the parties to this action having any subordinate liens or claims against the subject properties, by way of assessment or otherwise, as of the date of the filing of the Lis Pendens.

(9) The interests, if any, of the defendants are junior and subordinate to the lien of Plaintiff's Mortgage, and Plaintiff is entitled to a judgment barring the defendants and all persons claiming by or through the defendants from any and all right, title and interest in or to the subject property, and each and every part.

(10) The loan documents provide for the payment of all costs of collection, including reasonable attorneys fees. The Plaintiff respectfully requests that the Court award attorney's fees in the amount of \$16,400.00 and costs in the amount of \$938.50, as supported by the Affidavit of Attorneys Fees and Costs submitted herewith.

(11) Demand was made for full payment of the aforesaid loan, but payment has not been received.

(12) Plaintiff does not waive, but specifically demands the right to a judgment for any deficiency remaining after the sale of the subject Property, expressly reserving the right to waive the same prior to the sale.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-10-5311

Wells Fargo Bank, N.A., as Successor by Merger to Wachovia
Bank, N.A.,Provider Investments, LLC; 1038 Jenkins Road Property
Owners Association, Inc.; Justin Thomas McConnell;
Thomas C. McConnell; and Lisa L. McConnell;

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Robert C. Byrd, Esquire
Parker Poe Adams & Bernstein LLPAttorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Order for Deficiency Judgment

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Wells Fargo Bank, N.A., as Successor by Merger to Wachovia Bank, N.A.	Provider Investments, LLC, Thomas C. McConnell and Lisa L. McConnell	\$114,534.79
		\$
		\$

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

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

Circuit Court Judge

Judge Code

November 2013

Date

For Clerk of Court Office Use Only

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

Robert C. Byrd, Esquire

Parker Poe Adams & Bernstein LLP

200 Meeting Street, Suite 301

Charleston, SC 29401

ATTORNEY(S) FOR THE PLAINTIFF(S)

David K. Haller, Esquire

Haller Law Firm, P.C.

115 River Landing Drive, Suite 102

Charleston, SC 29492

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Wells Fargo Bank, N.A., as Successor by
Merger to Wachovia Bank, N.A.,

Plaintiff,

vs.

Provider Investments, LLC; 1038 Jenkins
Road Property Owners Association, Inc.; Justin
Thomas McConnell; Thomas C. McConnell;
and Lisa L. McConnell,

Defendants.

IN THE CIRCUIT COURT

Case No. 2011-CP-10-5311

ORDER FOR
DEFICIENCY JUDGMENT

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 DEC 11 PM 3:57

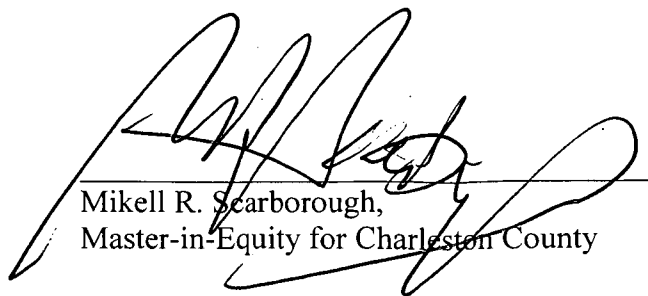
FILED

Pursuant to the Master-in-Equity's Order and Judgment of Foreclosure and Sale entered on July 18, 2013, the Plaintiff is entitled to have a personal judgment against defendants Provider Investments, LLC, Thomas C. McConnell and Lisa L. McConnell, jointly and severally, as follows:

a.	Amount of Judgment as of 07/02/13	\$296,656.31
b.	Interest from 07/02/13 to 10/03/13 @ 6.85% (94 days x \$55.67 per day)	<u>\$ 5,232.98</u>
	TOTAL JUDGMENT DEBT AS OF 10/03/13:	\$301,889.29
	Less Funds Delivered to Plaintiff:	<u>\$187,354.50</u>
	TOTAL DEFICIENCY AS OF 10/03/13:	<u>\$114,534.79</u>

NOW, THEREFORE, IT IS HEREBY ORDERED that the Plaintiff, Wells Fargo Bank, N.A., Successor by Merger to Wachovia Bank, National Association, shall have judgment against defendants **Provider Investments, LLC, Thomas C. McConnell and Lisa L. McConnell**, jointly and severally, in the sum of One Hundred Fourteen Thousand Five Hundred Thirty-Four and 79/100 Dollars (\$114,534.79) plus post-judgment interest after entry of judgment at the rate provided by law.

AND IT IS SO ORDERED.

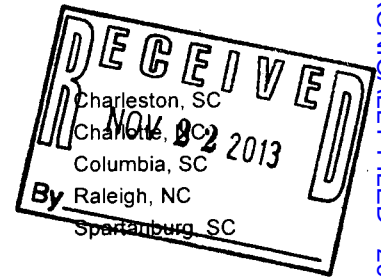


Mikell R. Scarborough,
Master-in-Equity for Charleston County

November 19/5, 2013
Charleston, South Carolina



Michelle Hewitt
Paralegal
Telephone: 843.727.2652
Direct Fax: 843.727.2680
michellehewitt@parkerpoe.com



November 22, 2013

VIA HAND DELIVERY

The Honorable Mikell R. Scarborough
Charleston County Master-in-Equity
100 Broad Street, Suite 266
Charleston, South Carolina 29401

RE: **Wells Fargo Bank, N.A., as Successor by Merger to Wachovia Bank, N.A. v.
Provider Investments, LLC, et al.**
Case No.: 2011-CP-10-5311

Dear Judge Scarborough:

Enclosed please find the **original** Order for Deficiency Judgment. If everything meets with your approval, we would appreciate you signing the Order and returning the same to us by means of the self-addressed, stamped envelope which is enclosed.

With best personal regards, we remain

Sincerely,

Michelle Hewitt

/mrh

Enclosure(s)

cc: David K. Haller, Esquire

PPAB 2257260v1



[Charleston County Home Page](#) [Clerk of Court Home Page](#) [Magistrates Court](#) [SC Judicial Home Page](#) [Search Tips](#)

Switch View

Wells Fargo Bank N A as Successor VS Provider Investments LLC

Case Number:	2011CP1005311	Court Agency:	Common Pleas	Filed Date:	07/27/2011
Case Type:	Common Pleas	Case Sub Type:	Foreclosure 420	File Type:	Non-Jury
Status:	Judgment	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Ended by Non Jury	Disposition Date:	07/18/2013	Disposition Judge:	Scarborough, Mike R.
Original Source Doc:		Original Case #:			
Judgment Number:	2011CP1005311	Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

For:	Wells Fargo Bank N A as Successor	Against:	Provider Investments LLC	Judg. Amount:	\$114,534.79	Judgment Date:	12/11/2013
Description:	Judgment/Deficiency	Disposition:		Disp. Date:		Date Entered/Last Changed	12/18/2013 --
Notes:	None						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

For:	Wells Fargo Bank N A as Successor	Against:	McConnell, Thomas C	Judg. Amount:	\$114,534.79	Judgment Date:	12/11/2013
Description:	Judgment/Deficiency	Disposition:		Disp. Date:		Date Entered/Last Changed	12/18/2013 --
Notes:	None						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

For:	Wells Fargo Bank N A as Successor	Against:	McConnell, Lisa L	Judg. Amount:	\$114,534.79	Judgment Date:	12/11/2013
Description:	Judgment/Deficiency	Disposition:		Disp. Date:		Date Entered/Last Changed	12/18/2013 --
Notes:	None						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

For:	1038 Jenkins Road Property Owners Association Inc	Against:	Provider Investments LLC	Judg. Amount:	\$7,901.42	Judgment Date:	07/18/2013
Description:	Judgment/Default	Disposition:		Disp. Date:		Date Entered/Last Changed	07/23/2013 --
Notes:	None						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

EXECUTION AGAINST PROPERTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
 _____)

CASE NO. 2010-CP-10-00139

TO THE SHERIFF OF CHARLESTON COUNTY:

Judgment was rendered on the 6th day of December, 2010, in Case Number 2010-CP-10-00139 in the Charleston County Court of Common Pleas in favor of the Plaintiffs Karmatic, LLC as successor in interest to United Community Bank, Successor by Merger to Tidelands Bank against Defendant Genevieve Stratos in the amount of Fifty-Five Thousand Two Hundred Ninety-Seven and 24/100 Dollars (\$55,297.74), as appears on the Judgment Roll, filed in the Office of the Clerk of Court of Charleston County Common Pleas.

AND WHEREAS, the said judgment was docketed in your County on the 8th day of December, 2010, in the sum of Fifty-Five Thousand Two Hundred Ninety-Seven and 24/100 Dollars (\$55,297.74), with interest and attorney's fees and costs until paid in full, is now actually due thereon.

THEREFORE, WE COMMAND YOU to satisfy the said judgment out of the personal property of the said judgment debtor, Genevieve Stratos, within your Charleston County, or if sufficient personal property cannot be found, then out of the real property in your County belonging to Genevieve Stratos on the date when the said judgment was so docketed, or at any time thereafter, in whose hands whomsoever the same may be, and duly return this execution according to law to the Clerk of Court's Office for Charleston County Court of Common Pleas.

For Karmatic, LLC
 Against Genevieve Stratos

Dated this 22nd day of
 November, 2019

/S/ Edward M. Farmer, Jr.
 Edward M. Farmer, Jr. (101620)
 Farmer Law Firm, LLC
 361 N. Shelmore Blvd
 Mount Pleasant, SC 29464
 Attorney for the Plaintiff

 Clerk of Court
 Dated this ____ day of November, 2019.



Common Pleas

Case Caption: United Community Bank Successor , plaintiff, et al VS Southrail Enterprises Llc Etc , defendant, et al

Case Number: 2010CP1000139

Type: Execution/Issued

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of Court, by AMR

Electronically signed on 2019-11-25 10:21:36 page 2 of 2

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TIDELANDS BANK,)
Plaintiff,)
vs.)
SOUTHRAIL ENTERPRISES, LLC.;)
VALMAR NUNES; GENEVIEVE)
STRATOS; and MARTIN)
PROPERTIES, LLC;)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-10-139

**ORDER FOR DEFICIENCY
JUDGMENT**

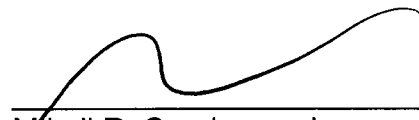
FILED
2010 DEC -8 PM 1:36
JULIA J. ARMSTRONG
CLERK OF COURT

THIS MATTER came before the undersigned upon referral for foreclosure and the Plaintiff reserving its right to a deficiency judgment; and

IT APPEARING TO THE COURT that upon consideration of the Master's Order of Sale and Disbursement in the above case, and upon the Order of Foreclosure entered August 13, 2010;

IT IS ORDERED that the Plaintiff have judgment against the Defendant, Southrail Enterprises, LLC., Valmar Nunes, and Genevieve Stratos, in the sum of \$55,297.74, plus interest accruing thereon from and after November 18, 2010, at the legal rate of interest for judgments.

AND IT IS SO ORDERED.


Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina

6 day of December, 2010

DEFICIENCY CALCULATION

Total debt due Plaintiff as of August 3, 2010 (including accrued interest on outstanding loan)	\$345,024.13
+ Additional accrued interest @ 6.50% per annum (\$31.45 per diem) on outstanding loan principal (from August 3, 2010 to August 13, 2010)	<u>\$314.50</u>
= Total judgment amount as of August 13, 2010)	\$345,338.63
+ Accrued Interest on total judgment amount @ 7.25% from August 13, 2010 to November 18, 2010 (97 days) (i.e., date of 2 nd sale)	<u>\$6,653.68</u>
= Total judgment amount as of November 18, 2010	<u><u>\$351,992.31</u></u>
= Total judgment amount as of November 18, 2010	\$351,992.31
- Credit for Plaintiff's Bid Amount	\$299,916.30
+ Additional costs paid by Plaintiff to MIE	<u>\$2,500.00</u>
+ Advertising costs	<u>\$721.73</u>
= Deficiency judgment as of November 18, 2010	<u><u>\$55,297.74</u></u>

¹Interest accruing on deficiency judgment amount at legal rate of interest.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2020-CP-10-03825
	)	
GENEVIEVE STRATOS,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT KARMATIC, LLC'S
v.	)	ANSWER
	)	
CHARLESTON COUNTY SHERIFF'S	)	
OFFICE AND KARMATIC, LLC,	)	
	)	
Defendants.	)	
	)	
	)	

Defendant Karmatic, LLC, ("Defendant"), answers the Complaint herein as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted, modified, or explained is hereby denied.
2. Defendant admits paragraphs 1 and 2 upon information and belief.
3. Answering paragraph 3, Defendant admits Plaintiff filed an affidavit. Defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraphs 3 and therefore denies the same and demand strict proof thereof.
4. Defendant admits paragraphs 4 and 5.
5. Defendant admits paragraphs 6 and 7 upon information and belief.
6. Answering paragraph 8, Defendant repeats and realleges the foregoing paragraphs as if again set forth herein.
7. Answering paragraph 9, Defendant admits so much of that paragraph that is intended to allege that the judgment which Defendant seeks to enforce and which is at issue in

this matter was entered against Plaintiff in the lawsuit described therein. Any inconsistent allegations are denied.

8. With regards to the allegations of paragraph 10, Defendant would reference the judgment referenced therein, which speaks for itself, and denies any allegations inconsistent therewith. Further answering paragraph 10, Defendant specifically denies that the judgment described therein constituted a money judgment enforceable against Plaintiff.

9. With regards to the allegations of paragraph 11, Defendant would reference the judgment referenced therein, which speaks for itself, and denies any allegations inconsistent therewith.

10. With regards to the allegations of paragraph 12, Defendant would reference the Order referenced therein, which speaks for itself, and denies any allegations inconsistent therewith. Defendant admits that Order was not appealed.

11. Answering paragraphs 13 and 14, Defendant admits that a foreclosure sale reducing the amount owed to Tideland Bank had taken place by December 8, 2010. Defendant further admits that, on December 8, 2010, a judgment in the amount of \$55,297.74 plus interest accruing from November 18, 2010, was entered against Plaintiff. Defendant denies all remaining and inconsistent allegations of those paragraphs.

12. With regards to the allegations of paragraph 15, Defendant would reference the judgment referenced therein, which speaks for itself, and denies any allegations inconsistent therewith.

13. Answering paragraph 16, Defendant admits that, at the time Plaintiff's Complaint was filed, that more than 10 years had passed since the entry of the August 16, 2010, judgment.

AS TO THE FIRST CAUSE OF ACTION

14. Answering paragraph 17, Defendant repeats and realleges the foregoing paragraphs as if again set forth herein.

15. Paragraphs 18 and 19 state legal conclusions to which no response is required. To the extent a response is required, Defendant denies the same and demands strict proof thereof. Defendant specifically denies that a money judgment was entered against Plaintiff by virtue of the August 16, 2010, judgment.

16. Answering paragraph 20, Defendant denies that it has taken any affirmative action to collect on a stale judgment, or on the judgment entered on August 16, 2010. Defendant admits that it seeks to collect on the money judgment entered against Plaintiff on December 8, 2010. Defendant denies all remaining and inconsistent allegations of that paragraph.

17. Paragraphs 21 through 23 are denied.

18. Answering paragraphs 24 through 27, Defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations of those paragraphs and therefore denies the same and demand strict proof thereof.

19. Answering paragraph 28, Defendant denies that the Charleston County Sheriff's Office sought to move forward with the execution and enforcement of the August 16, 2010, judgment and states affirmatively that it was the December 8, 2010, which the Charleston County Sheriff's Office sought enforce. Defendant denies all remaining and inconsistent allegations of that paragraph.

20. Answering paragraph 29, Defendant admits that it has sought to enforce the December 8, 2010, judgment after being sued by Plaintiff in a separate lawsuit alleging aiding and abetting breach of fiduciary duty. Defendant denies all remaining and inconsistent allegations of that paragraph.

21. Answering paragraph 30, Defendant would reference the document referenced therein, which speaks for itself, and denies any allegations inconsistent therewith.

22. Paragraph 31 states a legal conclusion to which no response is required. To the extent a response is required, Defendant craves reference to the statute described therein, which speaks for itself, and denies any allegations inconsistent therewith.

23. Defendant denies paragraphs 32 through 37.

AS TO THE SECOND CAUSE OF ACTION

24. Answering paragraph 38, Defendant repeats and realleges the foregoing paragraphs as if again set forth herein.

25. Defendant denies paragraph 39.

FOR A SECOND DEFENSE
(Failure to State a Claim)

26. Pursuant to South Carolina Rule of Civil Procedure 12(b)(6), Plaintiff has failed to state facts sufficient to constitute a cause of action against this Defendant.

FOR A THIRD DEFENSE
(Failure to Mitigate Damages)

27. Plaintiff has a duty to make reasonable efforts to mitigate any alleged damages or otherwise protect itself from injury. On information and belief, the Plaintiff has failed to perform these duties and is therefore precluded from any recovery against this Defendant.

FOR A FOURTH DEFENSE
(Waiver)

28. Plaintiff has knowingly and voluntarily waived its legal rights under which it seeks damages in this action.

FOR A FIFTH DEFENSE
(Unclean Hands)

29. Plaintiff's claims are barred by the equitable doctrine of unclean hands.

FOR A SIXTH DEFENSE
(Reservation of Additional and Further Defenses)

30. Defendant reserves any additional and further defenses as may be revealed by additional information through the course of discovery and investigation in a manner that is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Complaint herein and asserted defenses thereto, Defendant prays that this Court grant the following relief:

- (a) Dismiss Plaintiff's Complaint;
- (b) Grant such additional relief as this Court deems just and proper.

ROSEN HAGOOD, LLC

By: s/ Elizabeth J. Palmer
Elizabeth J. Palmer
epalmer@rosenhagood.com
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726

ATTORNEY FOR DEFENDANT
KARMATIC, LLC

Charleston, South Carolina
October 26, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
TIDELANDS BANK,

Plaintiff,

vs.

SOUTHRAIL ENTERPRISES, LLC.;
VALMAR NUNES; GENEVIEVE
STRATOS; MARTIN PROPERTIES,
LLC; AND COLONY NORTH
PROPERTY OWNERS ASSOCIATION,
INC.;

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-10- 139

SUMMONS
(Mortgage Foreclosure)
(Non-Jury)

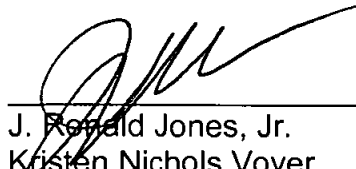
2010 JAN -8 AM 10:28
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and **REQUIRED** to answer the Complaint of the Plaintiff in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the subscriber at his office at 126 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492, within thirty (30) days after the service thereof, except as to the United States of America who shall have sixty (60) days, exclusive of the day of such service; and, if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the said Complaint.

CLAWSON & STAUBES, LLC


J. Ronald Jones, Jr.
Kristen Nichols Voyer
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
Telephone: (843) 577-2026
Facsimile: (843) 722-2867

Attorneys for the Plaintiff

Charleston, South Carolina
January 7, 2010.

It is our understanding that you are not currently in bankruptcy. If you are in bankruptcy, then please disregard this Summons in its entirety and have your attorney contact our office as soon as possible.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TIDELANDS BANK,

Plaintiff,

vs.

SOUTHRAIL ENTERPRISES, LLC.;
VALMAR NUNES; GENEVIEVE
STRATOS; MARTIN PROPERTIES,
LLC; AND COLONY NORTH
PROPERTY OWNERS ASSOCIATION,
INC.;

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-10- 139

COMPLAINT
(Mortgage Foreclosure)
(Non-Jury)

BY
JULIE J. ARSTRONG
CLERK OF COURT

2010 JAN -8 AM 10:29

FILED

The Plaintiff herein, complaining of the Defendants above-named, alleges and respectfully shows unto this Honorable Court:

1. That Tidelands Bank (the "Plaintiff") is a banking institution authorized to do business in the State of South Carolina.

2. That the Defendant, Southrail Enterprises, LLC, is, upon information and belief, a limited liability company organized and operating under the laws of the State of South Carolina.

3. That the Defendants, Valmar Nunes, and Genevieve Stratos, are, upon information and belief, residents of Charleston County, South Carolina, and are neither infants nor incompetent and not in the military service.

4. That the Defendant, Martin Properties, LLC, is, upon information and belief, a limited liability company organized and operating under the laws of the State of South Carolina.

5. That the Defendant, Colony North Property Owners Association, Inc., is, upon information and belief, a corporation organized and operating under the laws of the State of South Carolina.

6. That the subject of this action is real property located in Charleston County, South Carolina.

FOR A FIRST CAUSE OF ACTION

(Foreclosure of Mortgage)

7. That the Plaintiff reiterates and realleges each and every foregoing paragraph and allegation as if set forth verbatim herein.

8. That on or about July 30, 2007, for value received, the Defendant, Southrail Enterprises, LLC., made, executed and delivered to Tidelands Bank, the Plaintiff, a Promissory Note (the "Note"), and in addition, made, executed and delivered Renewal Notes dated August 23, 2008, and January 30, 2009. Copies of the Notes are attached hereto collectively as **Exhibit "A"** and are incorporated herein by reference.

9. That simultaneously therewith, the Defendant, Southrail Enterprises, LLC., executed a Mortgage of Real Estate (the "Mortgage") wherein it pledged as collateral certain real property commonly described as Lot 13-C South Rail Road, North Charleston, South Carolina, to secure repayment of all indebtedness under the Note. A copy of the Mortgage to the Plaintiff is attached hereto as **Exhibit "B"** and is incorporated herein by reference. Said real property being more particularly described as follows:

ALL that certain piece, parcel or tract of land, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, and designated as Lot 13-C, 4.71 Acres, more or less, on a plat entitled, "SUBDIVISION PLAT OF LOT 13 COLONY NORTH INDUSTRIAL TRACT TO CREATE LOTS 13-A, 13B AND 13-C OWNED BY SOUTHERN CONCRETE PRODUCTS, LLC ABOUT TO BE CONVEYED TO DEAN LOWDER, CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by 2 A D Surveying Co., Inc., dated July 11, 2002 and recorded in the RMC Office for Charleston County in Plat Book EF, at Page 732. Said Tract having such size, shape, courses, distances, buttings and boundings, as will by reference to said plat more fully will appear.

SUBJECT TO any and all easements, restrictions, rights-of-way and other matters of record.

TMS No.: 484-00-00-144

10. That thereafter, the Mortgage was recorded on August 7, 2007, in the RMC/ROD Office for Charleston County in Book A635 at Page 232.

11. That the Mortgage secures commercial or other non-residential property and

is not subject to modification under the Home Affordable Modification Program.

12. That under the terms of the Note and Mortgage, the Defendant, Southrail Enterprises, LLC., promised to pay the Plaintiff the sum of \$300,000.00 Dollars plus interest.

13. That the Mortgage provides that the mortgagor will promptly pay the principal and interest evidenced by the Note at the time and in the manner therein provided.

14. That according to the terms and conditions of the Note and Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable, at the option of the holders, and the mortgagee shall have power to sell said premises according to law and this Mortgage may be foreclosed and any such expenses and fees as may be incurred including the fees of any attorney employed by the mortgagee in any litigation or proceeding affecting said premises, shall be paid by the mortgagor and secured by this instrument. And it is further agreed that in case the debt secured by the Mortgage or any part thereof is collected by suit or action, or the Mortgage be foreclosed, or put into the hands of an attorney for collection, suit, action or foreclosure, the said mortgagor shall be chargeable with all costs of collection including reasonable attorneys fees, which charges and fees together with all costs and expenses, are hereby secured and may be recovered in any suit or action hereupon or hereunder.

15. That the Defendant, Southrail Enterprises, LLC., is presently in default under the terms of the Note and Mortgage, and the Plaintiff elects to declare the entire balance of the indebtedness due and payable and that there is due on the Note and Mortgage as of October 30, 2009, the sum of \$310,083.47 Dollars, together with interest accruing from said date at the rate of 6.5% as set forth by the note per annum, and also in the amount to be incurred as the costs and disbursements of this action including reasonable attorneys fees.

FOR A SECOND CAUSE OF ACTION

(Suit on Guaranty)

16. That the Plaintiff reiterates and realleges each and every foregoing paragraph and allegation as if set forth verbatim herein.

17. The Defendants, Valmar Nunes and Genevieve Stratos, in order to induce Tidelands Bank to loan funds evidenced by the Note and Mortgage referred to herein, executed agreements personally guaranteeing payment of all obligations of Southtrail Enterprises, LLC, plus costs, fees and any other obligation due the Plaintiff under the Note and Mortgage. A copy of the Guaranty Agreements executed by Valmar Nunes and Genevieve Stratos are annexed hereto as **Exhibit "C"**, and are incorporated herein by reference.

18. The Guaranty Agreements guarantees payment of all obligations, are unconditional and joint and several. Notice of default has been given to Valmar Nunes and Genevieve Stratos and the same has been refused.

19. Under the terms of the Guaranty Agreements, Valmar Nunes, and Genevieve Stratos are liable for the full amount due under the Note and documents evidencing the loan agreement as set forth herein.

20. Tidelands Bank is entitled to judgment against the Defendants, Valmar Nunes and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Valmar Nunes and Genevieve Stratos, for any deficiency in this action remaining after the sale of the mortgaged premises.

AS TO ALL CAUSES OF ACTION

21. That the Plaintiff reiterates and realleges each and every foregoing paragraph and allegation as if set forth verbatim herein.

22. That the Plaintiff is entitled to reasonable attorneys fees for its attorneys, together with the costs and disbursements of this action.

23. That the Mortgage provides that if the taxes are paid by the Mortgagee, the same may be added to the amount due and all such payments are secured thereby.

24. That the Plaintiff's Mortgage constitutes a first (1st) lien on the subject real property, subject only to the lien for unpaid Charleston County ad valorem taxes, if any, on the subject real property

25. That the Defendants below named claim or may claim to have some interest in or lien upon the premises covered by the Plaintiff's Mortgage, or some part thereof, by

virtue of the matters and things set forth below, but any such interest in or lien upon the said premises is junior and subordinate to the lien of the Plaintiff's Mortgage or does not attach to the property which is the subject of this action, or has been paid in full and not satisfied of record. Said liens or interests are of record in the RMC/ROD Office or Clerk of Court's Office for Charleston County and are described as follows:

- (a) The Defendant, Martin Properties, LLC, by virtue of a mortgage, given by Southrail Properties, LLC, in the amount of \$300,000.00, dated July 30, 2007, and recorded August 7, 2007, in Book A635 at Page 242; and
- (b) The Defendant, Colony North Property Owners Association, Inc., by virtue of the restrictive covenants recorded in Book G148 at Page 412 and any amendments thereto.

26. That the Plaintiff does not waive, but specifically demands judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes, and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes, and Genevieve Stratos, for any deficiency in this action remaining after the sale of the mortgaged premises.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters herein above alleged and grant relief unto the Plaintiff in the following particulars, to-wit:

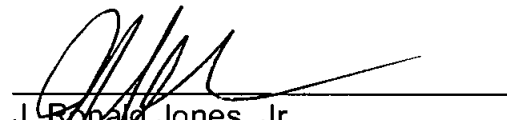
- a. That the amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court together with attorneys fees and costs of this action;
- b. That the Mortgage of the Plaintiff be declared a first (1st) lien on the subject real property, subject only to the lien for unpaid Charleston County ad valorem taxes, if any, on the subject real property, and that the Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon together with any taxes or insurance premiums or other sums which may be due plus reasonable attorneys fees and the costs of this action;
- c. That the mortgaged premises be sold under the direction of this Court and that the Defendant and all persons claiming by, through or under him, them

or it be barred and forever foreclosed of any right, title and interest and equity of redemption in and to the said mortgaged premises or any part thereof; and that the proceeds of the sale be applied as follows:

- i. First to the costs and expenses of the within action and sale;
 - ii. Second to the payment and discharge of the amount due on the Note and Mortgage of the Plaintiff together with attorneys fees as aforesaid; and
 - iii. Third, the surplus, if any, be distributed according to law.
- d. That the Plaintiff have a judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes, and Genevieve Stratos, for the full amount found to be due to the Plaintiff on the Note and Mortgage held by the Plaintiff, with the right to enter personal judgment against the Defendants, Southrail Enterprises, LLC., Valmar Nunes, and Genevieve Stratos, for any deficiency in this action remaining after the sale of the mortgaged premises.

That this Court grant unto the Plaintiff such other and further relief as may be just and equitable.

CLAWSON & STAUBES, LLC



J. Ronald Jones, Jr.
Kristen Nichols Voyer
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
Telephone: (843) 577-2026
Facsimile: (843) 722-2867

Attorneys for the Plaintiff

Charleston, South Carolina
January 7, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

TIDELANDS BANK,)

Plaintiff,)

vs.)

SOUTHRAIL ENTERPRISES, LLC.;)
VALMAR NUNES; GENEVIEVE)
STRATOS; MARTIN PROPERTIES,)
LLC; AND COLONY NORTH)
PROPERTY OWNERS ASSOCIATION,)
INC.;)

Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-10-139

CORPORATE VERIFICATION

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2010 JAN -8 AM 10:29

FILED

I Anthony R. Young, being duly sworn, deposes and says: That (s)he is an authorized representative of Tidelands Bank, Plaintiff herein; that (s)he has read the foregoing Complaint and knows the contents thereof, and that the same is true of his/her own knowledge, except as to the matters, therein stated upon information and belief, and as to those (s)he believes it to be true.

By: Anthony R. Young

Title: Vice President

Sworn to before me this
23 day of December, 2009.

[Signature]
Notary Public for South Carolina

My Commission Expires: 7/13/2012

2009-0020, 040

Southrail Enterprises, LLC 1810 Tennyson Row Mount Pleasant, SC 29466	Tidelands Bank 875 Lowcountry Blvd Mt. Pleasant, SC 29464	Loan Number <u> </u> Date <u>07/30/2007</u> Maturity Date <u>08/02/2008</u> Loan Amount \$ <u>300,000.00</u> Renewal Of <u> </u>
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of Three Hundred Thousand Dollars Dollars \$ 300,000.00

- ☒ **Single Advance:** I will receive all of this principal sum on 07/30/2007. No additional advances are contemplated under this note.
- ☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On I will receive the amount of \$ and future principal advances are contemplated.
- Conditions: The conditions for future advances are

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

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

INTEREST: I agree to pay interest on the outstanding principal balance from 07/30/2007 at the rate of 8.750 % per year until 07/31/2007

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

☒ **Index Rate:** The future rate will be .50% above the following index rate: Wall Street Journal Prime Rate

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

☒ **Frequency and Timing:** The rate on this note may change as often as every Day beginning 07/31/2007

A change in the interest rate will take effect on the same day

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

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

☒ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a Actual/365 basis.

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

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

☐ at a rate equal to

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the late amount with a minimum of \$10.00 and a maximum of \$500.00

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

☒ **Interest:** I agree to pay accrued interest in 11 Monthly interest payments beginning 08/02/2007 and with the principal

☒ **Principal:** I agree to pay the principal in one final payment of principal and interest in the amount of \$302,260.41 due on 08/02/2008

☐ **Installments:** I agree to pay this note in payments. The first payment will be in the amount of \$ and will be due . A payment of \$ will be due thereafter. The final payment of the entire unpaid balance of principal and interest will be due

ADDITIONAL TERMS:

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date): PHEM on Lot 13-C South Rail Road, North Charleston, SC 29420

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

PURPOSE: The purpose of this loan is Business: Purchase vacant land

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

Genevieve Stratos
 Genevieve Stratos Member

Valmar Nunes
 Valmar Nunes Member

Signature for Lender

Scott M. Garcia
 Scott M. Garcia

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

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

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

[illegible]

Southern Enterprises, LLC
1810 Tennyson Row
Mount Pleasant, SC 29466

TideLand Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

Loan Number [REDACTED]
Date 08/21/2008
Maturity Date 12/02/2008
Loan Amount \$ 229,916.30
Renewal (Y) 140294900

BORROWER'S NAME AND ADDRESS
It includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS
"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of Two Hundred Ninety Nine Thousand Nine Hundred Sixteen Dollars and Thirty Cents Dollars \$ 229,916.30

☒ **Single Advance:** I will receive all of this principal sum on 08/21/2008. No additional advances are contemplated under this note.
☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On 08/21/2008 I will receive the amount of \$ 229,916.30 and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

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

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

INTEREST: I agree to pay interest on the outstanding principal balance from 08/21/2008 at the rate of 6.000 % per year until Paid in Full.

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

☒ **Index Rate:** The future rate will be 50% above the following index rate: Wall Street Journal Prime Rate

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

☒ **Frequency and Timing:** The rate on this note may change as often as EVERY pay beginning 08/22/2008.

A change in the interest rate will take effect on the same day.

☒ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than 6.000 % or less than 6.000 %. The rate may not change more than 6.000 % each _____

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

☒ The amount of each scheduled payment will change.

☒ The amount of the final payment will change.

ACCUAL METHOD: Interest will be calculated on a Actual/365 basis.

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

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

☒ At a rate equal to WSJ prime rate plus 5% (five percent) upon written default.

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the late amount with a maximum of \$10.00 and a maximum of \$500.00.

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount shown: _____

PAYMENTS: I agree to pay this note as follows:

☒ **Interest:** I agree to pay accrued interest in 2 monthly interest payments beginning 10/02/2008 and with the principal.

☒ **Principal:** I agree to pay the principal in one final payment of principal and interest in the amount of \$301,395.33 due on 12/02/2008.

☐ **Installments:** I agree to pay this note in _____ payments. The first payment will be in the amount of \$ _____ and will be due _____ A payment of \$ _____ will be due _____ thereafter. The final payment of the entire unpaid balance of principal and interest will be due _____

ADDITIONAL TERMS: This is a variable rate loan and the payment amounts may change. Mortgage in the amount of \$300,000.00 dated 7/30/2007, recorded on 8/7/2007 in Charleston County Official Records Book A635, Page 232. This note is a promissory note but does not satisfy Promissory Note dated 7/30/2007 for loan #140294900.

☒ **SECURITY:** This note is separately secured by Indeciso separate document by type and date:
FROM on lot 13-C South Rail Road, North Charleston, SC 29420.

This section is for your record and failure to get a separate security document does not mean the agreement was not signed this note.

Signature for Lender

Scott M. Garcia

PURPOSE: The purpose of this loan is Business Purchase vacant land.

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

Gennaro Stratos

Member

Jahmal Nunez

Valmar Nunez

Member

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

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

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

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

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

SEC 011: I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

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

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

(1A): OF PARTICIPATION	PRINCIPAL ADVANCE	BORROWER'S INITIALS	PRINCIPAL PAYMENTS

DEFAULT: I will be in default if any one or more of the following occurs: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the property insured, if required; (3) I fail to pay, or keep any principal, on any debt or agreement I have with you; (4) any other creditor or mine attempts to collect any debt I owe him through court proceedings; (5) I file, or declare insolvency, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities

(1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).

(3) You may demand security, additional security, or additional portion to be obligated to pay this note as a condition for not using any other remedy.

(5) You may use any remedy you have under state or federal law. By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare

COLLECTION COSTS AND ATTORNEY'S FEES: I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay

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

- (1) demand payment of amounts due (prearrestment);
- (2) obtain official certification of nonpayment (pretrial); or

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

together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by

FINANCIAL INFORMATION: I agree to provide you, upon request, my financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are true and

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice before a foreclosure hearing and to accept the lender's appraisal of the property as the basis for the loan.

PRINCIPAL BALANCE	INTEREST DATE	INTEREST PAYMENTS	INTEREST PAID

✓N image 2 of 2
ess

Southall Enterprises, LLC
1810 Tennyson Ave
Mount Pleasant, SC 29464

Defiance Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

Loan Number [REDACTED]
Date 01/30/2009
Maturity Date 06/02/2009
Loan Amount \$ 299,916.30
Renewal CI 140294900

BORROWER'S NAME AND ADDRESS
It includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS
"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Two Hundred Sixty-Nine Thousand Nine Hundred Sixteen Dollars and Thirty Cents. Dollars \$ 299,916.30

☒ Single Advance: I will receive all of this principal sum on 01/30/2009. No additional advances are contemplated under this note.
☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On [] I will receive the amount of \$ [] and future principal advances are contemplated.

Conditions: The conditions for future advances are:

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

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditional

INTEREST. I agree to pay interest on the outstanding principal balance from 01/30/2009 at the rate of 6.50000 % per year until Paid in full.

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

☒ Index Rate: The future rate will be 1.00% above the following index rate: Wall Street Journal Prime Rate

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

☒ Frequency and Indexing: The rate on this note may change as often as every day beginning 01/31/2009.

A change in the interest rate will take effect on the same day.

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than 6.500 % or less than 6.500 % The rate may not change more than [] % more.

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

☒ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a Actual/365 basis.

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

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

☒ at a rate equal to WSJ prime rate plus 5% (five percent) upon written default notice.

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the late amount with a minimum of \$10.00 and a maximum of \$500.00.

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which [] are [] are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

☒ Interest: I agree to pay accrued interest in 3 Monthly Interest payments beginning 03/02/2009 and with the principal.

☒ Principal: I agree to pay the principal in one final payment of principal and interest in the amount of \$307,572.00 due on 06/02/2009.

☐ Installments: I agree to pay this note in [] payments. The first payment will be in the amount of \$ [] will be due [] thereafter. The final payment of the entire unpaid balance of principal and interest will be due []

ADDITIONAL TERMS: This is a variable rate loan and the payment amounts may change. Mortgage in the amount of \$300,000.00 dated 07/30/2007, recorded on 08/17/2007 in Charleston County Official Records at 635, Pg 732. This note renews but does not satisfy Preliminary Note dated 07/30/2007 & 08/21/2008 for loan #140294900.

☒ SECURITY: This note is separately secured by (describe separate document by type and date): PMS on Lot 13-C South Ball Road, North Charleston, SC 29420.

PURPOSE: The purpose of this loan is Business: Purchase vacant land. --

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

Signature for Lender

Deborah A. Stalton

Member

Valerie Munoz

Member

This document was prepared by (name, address, phone):

Tidelands Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

BK A 635PG232

LLF FILE NO.: RE07-323

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE

(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 07/30/2007 and the parties and their addresses are as follows:

MORTGAGOR: Southrail Enterprises, LLC
1810 Tennyson Row
Mount Pleasant, SC 29466

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER: Tidelands Bank
875 Lowcountry Blvd
Mt. Pleasant, SC 29464

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

See Attached Exhibit "A"

RECORD & RETURN TO:
The Lafond Law Firm, P.A.
120 S. Magnolia Street
Summerville, SC 29483

The property is located in Charleston at Lot 13-C South
(County)
Rail Road, North Charleston, South Carolina 29420
(Address) (City) (Zip Code)

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



3. MAXIMUM OBLIGATION LIMIT. The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 300,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

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

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

Promissory Note of even date and amount.

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

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

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

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

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

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

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

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

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

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

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

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

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

JP

VN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- ☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

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

- ☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- ☒ **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.
- ☐ **Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- ☐ **Additional Terms.**

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

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

Entity Name: Southrail Enterprises, LLC

Entity Name: _____

Genevieve Stratos 07/30/2007 (Seal)
(Signature) Genevieve Stratos (Date)
Member

Valmar Nunes 07/30/2007 (Seal)
(Signature) Valmar Nunes (Date)
Member

Signed, Sealed and delivered in the presence of:

(Witness) DAISY L. GODFREY

(Witness) BENJAMIN A. LAFOND

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

BK A 635PG239

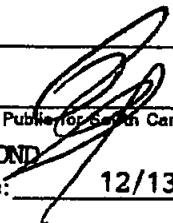
PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF DORCHESTER) ss.

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

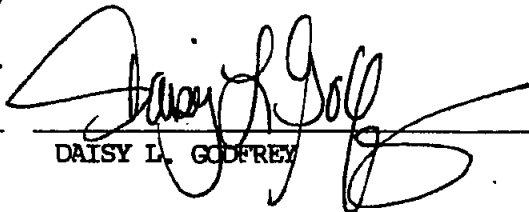
Sworn to and subscribed before me this 30th day

of July, 2007


Notary Public for South Carolina

BENJAMIN A. LAFOND

My commission expires: 12/13/09


DAISY L. GODFREY

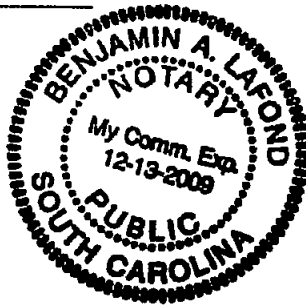


EXHIBIT "A"

BK A 635PG240

ALL that certain piece, parcel or tract of land, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, and designated as Lot 13-C, 4.71 Acres, more or less, on a plat entitled, "SUBDIVISION PLAT OF LOT 13 COLONY NORTH INDUSTRIAL TRACT TO CREATE LOTS 13-A, 13-B AND 13-C OWNED BY SOUTHERN CONCRETE PRODUCTS, LLC ABOUT TO BE CONVEYED TO DEAN LOWDER, CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by 2 A D Surveying Co., Inc., dated July 11, 2002 and recorded in the RMC Office for Charleston County in Plat Book EF, at Page 732. Said Tract having such size, shape, courses, distances, buttings and boundings, as will by reference to said plat more fully will appear.

SUBJECT TO any and all easements, restrictions, rights-of-way and other matters of record.

BEING the same property conveyed to the Mortgagor herein by deed of Martin Properties, LLC dated July 30, 2007, and recorded in the RMC Office for Charleston County simultaneously herewith.

TMS No.: 484-00-00-144

BK A 635PG241

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



FILED

August 7, 2007

11:29:41 AM

BK A 635PG232

Charlie Lybrand, Register
Charleston County, SC

Filed By:

Lafond Law Firm

120 South Magnolia St
Summerville

SC 29483

Number of Pages:

10

DESCRIPTION	AMOUNT

	\$ 15.00
Postage	

TOTAL	\$ 15.00

DRAWER:

A - BJA

DO NOT STAMP BELOW THIS LINE

GUARANTY

Mt. Pleasant
(City)

South Carolina
(State)

July 30, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Tidelands Bank

(herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of Southrail Enterprises, LLC

1810 Tennyson Rpw Mount Pleasant, SC 29466

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

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: Promissory Note dated 07/30/2007, Loan # 140224900 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

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

The Undersigned further acknowledges and agrees with Lender that:

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

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

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

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 300,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

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

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

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

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

Valmar Nunes
Valmar Nunes

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

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under § 1111(b)(2) of the United States Bankruptcy Code.

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

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

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

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

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

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

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

GUARANTY

Mt. Pleasant
(City)

South Carolina
(State)

July 30, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Tidelands Bank

(herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of Southrail Enterprises, LLC

1810 Tonnyson Row Mount Pleasant, SC 29466

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

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: Promissory Note dated 07/30/2007, Loan # 140294900 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

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

The Undersigned further acknowledges and agrees with Lender that:

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

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

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

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 300,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

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

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

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

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

Genevieve Stratos
Genevieve Stratos

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

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under 51111(b)(2) of the United States Bankruptcy Code.

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

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

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

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

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

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

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

CLAWSON & STAUBES, LLC
ATTORNEYS AT LAW

J. RONALD JONES, JR.
Licensed in SC and NC
Certified Specialist in Bankruptcy
and Debtor/Creditor Law
rjones@clawsonandstaubes.com

January 6, 2010

Reply to Charleston Office
File No.: 2009-0020.040jrj

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Tideland Bank v. Southrail Enterprises, LLC., Valmar Nunes, and
Genevieve Stratos
Case No.: 2009-CP-10-

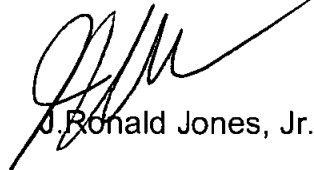
Dear Clerk of Court:

Please find enclosed an original and copies of the Civil Action Cover Sheet, Lis Pendens, Summons, Notice and Complaint to be filed regarding the above-captioned mortgage foreclosure, along with our check in the amount of \$150.00 to cover the cost of filing. We would appreciate you filing the originals and returning the stamped copies to our office in the enclosed envelope.

With best regards, we remain

Yours very truly,

CLAWSON & STAUBES, LLC



J. Ronald Jones, Jr.

JRJ/jcj
Enclosures

cc: Tideland Bank

Charleston Office:
126 Seven Farms Dr., Suite 200
Charleston, SC 29492-8144
(o) 843.577.2026
(f) 843.722.2867

Charlotte Office:
756 Tyvola Rd., Suite 130
Charlotte, NC 28217-3535
(o) 704.940.9128
(f) 704.522.9033

clawsonandstaubes.com

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
TIDELANDS BANK,)
)
Plaintiff,)
)
vs.)
)
SOUTHRAIL ENTERPRISES, LLC.;)
)
VALMAR NUNES; GENEVIEVE)
)
STRATOS; and MARTIN)
)
PROPERTIES, LLC;)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2010-CP-10-139

**ORDER OF DEFAULT
AND REFERENCE**

FILED
2010 MAY 11 PM 12:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

IT APPEARING TO THE COURT from the Affidavit of Default of J. Ronald Jones, Jr., of the firm of CLAWSON & STAUBES, LLC, Attorney for the Plaintiff, filed herein, that all of the Defendant(s) have been duly served and that the Defendant(s), Southrail Enterprises, LLC., Valmar Nunes, Genevieve Stratos, and Martin Properties, LLC, are in default.

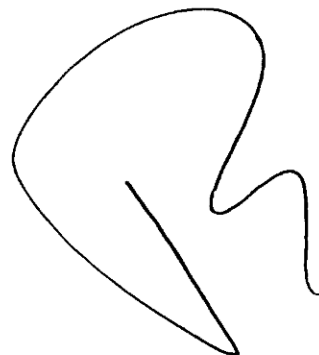
IT APPEARING TO THE COURT that this mortgage foreclosure proceeding is a matter that is equitable in nature involving the foreclosure of real property in Charleston County, South Carolina.

Now, on motion of J. Ronald Jones, Jr., of the firm of CLAWSON & STAUBES, LLC, Attorney for the Plaintiff, and after careful consideration of the record in this case, it is:

ORDERED, ADJUDGED AND DECREED that the Defendant(s), Southrail Enterprises, LLC., Valmar Nunes, Genevieve Stratos, and Martin Properties, LLC, are hereby declared to be in default.

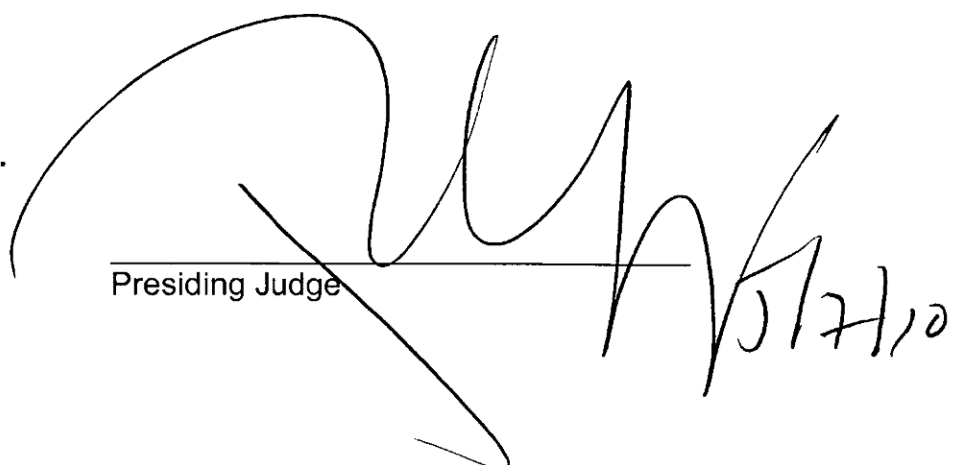
AND IT IS FURTHER ORDERED, that the above entitled action be, and the same is hereby referred to the Master in Equity for Charleston County, to direct entry of final judgment in this action under Rule 53 of the South Carolina Rules of Civil Procedure; and

IT IS FURTHER ORDERED that any appeal from the final judgment entered by the Master-in-Equity shall be made pursuant to §14-11-85, Code of Laws of South Carolina, 1976, as amended; and



10-7508

AND IT IS SO ORDERED.



Presiding Judge

Charleston, South Carolina
April _____, 2010

WE SO MOVE:



J. Ronald Jones, Jr.
CLAWSON & STAUBES, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
Telephone: (843) 577-2026
Facsimile: (843) 722-2867

PAID
DATE 4-27-2010
AMOUNT \$125.00
MIKELL R. SCARBOROUGH
MASTER IN EQUITY
BY: 

Tidelands Bank

☒ Plaintiff

v.

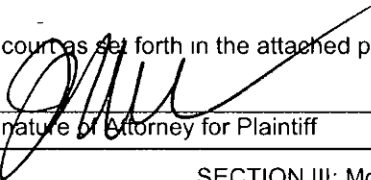
Southrail Enterprises, LLC., Valmar Nunes, and Genevieve Stratos

☐ Defendant

Check box above indicating submitting party

CASE NO. 2010-CP-10-139

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

<u>Name, SC Bar No. and Address of Plaintiff's Attorney</u> J. Ronald Jones, Jr. Bar No. 0066091 CLAWSON & STAUBES, LLC 126 Seven Farms Drive, Suite 200 Charleston, SC 29492		<u>Name, SC Bar No. and Address of Defendant's Attorney</u> 	
Telephone: (843) 577-2026 Fax: (843) 722-2867		Telephone: Fax:	
E-Mail: rjones@clawsonandstaubes.com Other:		E-Mail: Other:	
☐ MOTION HEARING REQUESTED (Attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (Complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (Complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Order of Default			
Estimated Time Needed:		Court Reporter Needed: ☐ YES ☐ NO	
SECTION II: Motion Type			
☒ Written motion attached ☐ Form Motion --			
I hereby move for relief or action by the court as set forth in the attached proposed order.			
 _____ Signature of Attorney for Plaintiff		April 23, 2010 _____ Date Submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00			
☐ EXEMPT: (Check Reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or reduced to writing from motion made in open court per judge's instructions ☐ Other: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP) ☐ Name of Court Reporter: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE: _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ (Print Name)		DATE FILED	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11/2003)

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

IN THE COMMON PLEAS COURT
10th JUDICIAL CIRCUIT

3 GENEVIEVE STRATOS,
4
5 Plaintiff,

6 vs.

CASE NO. 2020-CP-10-3825

7 CHARLESTON COUNTY SHERIFF'S OFFICE, and KARMATIC, LLC,
8 Defendants.

9
10 WEBEX
11 HEARING BEFORE: HONORABLE JENNIFER McCOY

12 DATE: September 4, 2020

13 LOCATION: Charleston County Judicial Center
14 100 Broad Street
Charleston, SC

15 TRANSCRIBED BY: KYMBERLEE WILLIAMS,
16 Registered Professional Reporter

17
18 APPEARANCES:

19 ATTORNEYS FOR THE PLAINTIFF
20 JUSTIN S. KAHN, ESQ.
and ELLIS KAHN, ESQ.

21 ATTORNEYS FOR THE DEFENDANT
22 ELIZABETH J. PALMER, ESQ.
and EDWARD L. KNISLEY, ESQ.

1 MR. JUSTIN KAHN: Do you mind if I record this with
2 my phone? Is that okay?

3 THE COURT: Justin, yeah, I don't have a problem
4 with that.

5 MR. JUSTIN KAHN: I just wanted to check, 'cause I
6 figure there's rules on that.

7 THE COURT: Usually my answer would probably be no.

8 MR. JUSTIN KAHN: That way she can't join, I can
9 play it back for her.

10 THE COURT: That will be fine.

11 MR. JUSTIN KAHN: I don't know if it looks like my
12 father. I don't know if Genevieve is going to join or not. We
13 can start whenever you want. I don't want to mess up your
14 time.

15 THE COURT: You're not messing anything up. I've
16 obviously reviewed what you've sent over so far, Ms. Palmer. I
17 was able to review most of what you sent over as well as a
18 couple more exhibits that you sent over this morning.
19 Obviously, we're not on record, so to speak, with a court
20 reporter this morning, which you-all were made aware of before
21 we set this temporary injunction hearing for this morning.

22 I would just tell you that, you know, anything that
23 you want to be filed, if it hasn't been and would need to be
24 filed to be made part of any record. Just with that, there is
25 no need to move anything, obviously, today into an exhibit or

1 anything like that because we're not on the record.

2 Having said that, we are being recorded as best we
3 can by this Weber platform that the court system has encouraged
4 us to use, so we'll have that. And I've authorized Mr. Kahn to
5 record his own recording of today's video session as well.

6 I am happy to hear from you, Mr. Kahn. I know this
7 is obviously your motion for temporary injunctive relief that
8 I'm happy to hear from you first. What I'm going to do, even
9 though there's not a court reporter, I feel fine, it's easier
10 for us in order to hear each other, if we mute each other. I'm
11 going to do that as well right now.

12 MR. JUSTIN KAHN: Thank you. It will throw me off
13 if The Court doesn't interrupt.

14 The big thing, I think the issues -- I think
15 somebody is coming on. Let me tell my father. Can you mute
16 yourself, Dad. I think you're feeding back.

17 THE COURT: Good morning, Mr. Ellis. I see you're
18 joining us now as well. If you can, if you're just joining us,
19 if you can mute yourself while Mr. Kahn speaks first. That
20 will help me hear him a little bit better.

21 MR. JUSTIN KAHN: It looks like my client has
22 joined us. Genevieve, if you can maybe mute so it doesn't feed
23 back when I'm speaking. Putting on mute button. It may not.

24 Good morning. Basically, the question before The
25 Court, other than whether or not it's appropriate to issue an

1 injunction is: When was the judgment entered? And I'm going
2 to sort of go out of order based on a filing that the Defendant
3 Karmatic made last night. In Karmatic's memo in opposition,
4 they state as follows on page 4 of its memo: If Plaintiff's
5 argument were correct, interest would have been accruing from
6 August 16, 2010, the date of the foreclosure Order.

7 So, basically, the way this sort of has been framed
8 for The Court is: Was the August date the date of the judgment
9 or was December the date of the judgment?

10 And the defense, Karmatic, appears to agree with
11 us. If we're right, we can show interest began accruing at the
12 judgment rate in August, then that was the date of the
13 judgment.

14 In support of their memo -- and they attached the
15 judgment from December. That December judgement actually has
16 two pages. They left off the second page. If The Court --
17 actually what I'll do, I have the Weber camera here. What I'm
18 going to do show The Court what I'm talking about. It's
19 actually Exhibit D to our Complaint. I'm going to put this
20 under our camera and see if I can let The Court see. Let me
21 see if I can do this right. What I'm going to show The Court,
22 hopefully, this is -- it's rotated. Let's see if I can rotate
23 it again.

24 I can't tell if The Court is seeing it right side
25 up or not. It's Exhibit D to our --

1 THE COURT: I'm going to take my video off and turn
2 my screen a little bit so my video is going to be off, but I
3 can hear you.

4 MR. JUSTIN KAHN: Basically what happened, the
5 Defendant Karmatic has attached only Page 1 of the Order for
6 Deficiency from December saying that this is a separate Order
7 and judgement, and it's not really the judgement or has nothing
8 to do with the August judgement.

9 The Defendant failed to attach page 2 of this Order
10 as part of their filing. I've attached that as part of our
11 summons and Complaint. If we look at page 2 of the deficiency
12 calculation, it specifically states the total judgment amount
13 as of August 3, 2010. Judge Scarborough specifically
14 references it as being a judgment from August.

15 Judge Scarborough also finds that there is interest
16 on the total judgment at 7.25 percent. That is the rate of
17 judgment.

18 And I've gone to Supreme Court Order 2010-01-04-01,
19 which is an Order from January 4, 2010 on the Supreme Court's
20 Website entitled Interest Rate on Money Decrees and Judgments.
21 And the last sentence says: For the period January 15, 2010
22 through January 14, 2011, the legal rate of interest for
23 judgments and money decrees is 7.25 percent compounded
24 annually.

25 The point of that is Judge Scarborough's December

1 Order specifically states what we are claiming as being
2 correct, which is the August judgement, which is the date the
3 judgement was first entered against Mrs. Stratos and other
4 people. And that this deficiency judgement merely reduces the
5 amount of money owed. That's it in a nutshell.

6 I'll go through the rest of the argument. I wanted
7 to sort of jump in there first to point out that the defense
8 concedes that. If we are correct, interest would've been
9 accruing from August, the date of the foreclosure Order. And
10 the point is that the December Order for Deficiency Judgment,
11 the Page 2 that they did not include, specifically shows
12 exactly what we are arguing, which is that the judgement was in
13 effect in August.

14 Now, let me get into sort of the rest of the
15 argument. I hate to do this, I'm sort of reading from what I
16 have created as a proposed order. I think The Court will be
17 familiar with the law of injunctions. I'm not going to go
18 through with that. I think the sides don't agree.

19 We both agree the Plaintiff is going to have to
20 show irreparable harm, a likelihood of success on the merits,
21 and there's no adequate remedy at law.

22 In terms of the findings of fact that I'm going
23 through to sort of give the background to The Court, I don't
24 think there's any dispute that the Plaintiff, Ms. Stratos, owns
25 property on Edisto Island and -- now, the next question for The

1 Court to determine is whether or not, on August 16, 2010 at
2 9:52 a.m. is, was there a judgment entered against Mrs. Stratos
3 and others? And the answer is yes.

4 We've attached to our filings a copy of the index
5 showing that. And the Order itself sets forth the judgment
6 amount, the amount due. The Order entered August 16, 2010,
7 specifically states that this Judgment is to comprise the
8 amount of the judgment debt entered herein.

9 The Court can take judicial notice of the entry of
10 the final judgement on August 16, 2010, at 9:52 a.m. via the
11 Charleston County Court Clerk's Website. And I've attached --
12 that is part of an exhibit to a prior submission, as part of
13 our Memo in Support.

14 Basically, the defense is that the August 10th
15 Order only addressed two things; that a foreclosure sale take
16 place and the Plaintiff would be liable if there was a
17 deficiency. That's not correct. They're not correct for
18 several reasons.

19 First, the Complaint itself filed in the matter,
20 which The Court can take judicial notice of -- I'll send The
21 Court a copy of it -- specifically sought a judgment against
22 the Defendants for the full amount found to be due and a
23 judgment against the Defendants. That's in the Complaint, page
24 6, paragraph D.

25 As part of the testimony provided to The Court

1 referenced in the Master's Order and was attached to it, which
2 was on August 16, 2010, it has language like this that The
3 Court can reference. If The Court needs to go through, I think
4 the defense as well, both sides submitted that Judgement with
5 the testimony. It's Defense Exhibit 1, which is the Order,
6 Deficiency Demanded. And we have it as well. I'll just use
7 the defense one. It's the same thing. Double checking.
8 Actually, part of our summation. I'm sorry.

9 In our submissions, we have the testimony provided
10 to The Court referenced in the Master's Order. And it
11 specifically states on the Plaintiff's testimony, page 4: --
12 And the Plaintiff in that matter would be Tidelands Bank. It
13 says: Tidelands Bank is entitled to judgement against the
14 Defendants -- on page 4 of that same testimony provided to The
15 Court in the matter -- that the Plaintiff does not waive,
16 specifically demands judgement against Genevieve Stratos and
17 others. In the Master's Order itself, on August 16, 2010,
18 fines are, states as follows.

19 The first page of the Order states that for the
20 purpose, the whole purpose of the matter being referred was for
21 the purpose of, quote, making a final decision in this matter,
22 which decision shall be appealable. That's on page 1 of the
23 Order.

24 Again, this is just -- forgetting real estate law,
25 the issue is, is this is a judgement or not? And the fact is

1 that the judge's order makes it clear: This is a final
2 decision in the matter. Because it's a final decision, it is a
3 judgement.

4 On page 3 of the Order it talks about -- that the
5 attorneys are going to get attorney's fees for preparing the
6 judgment and forwarding the judgment.

7 On page 4 of the Order, paragraph 23, The Court
8 says: The total due and owing -- it talks about the total debt
9 through the date of this judgement. And, again, it talks about
10 the judgment debt entered herein, page 4, paragraph 23 of the
11 August Order, which is exhibit 1 from the defense. We have it
12 as well.

13 It also talks about the fact that the Plaintiff
14 specifically demands judgement. The whole point is that it
15 repeatedly says, even on page 6 of the Order: The Plaintiff
16 should have judgement of foreclosure of its mortgage.

17 And I counted up the number of times in the Order
18 The Court stated, ordered, adjudged, and decreed was 13 times,
19 making it clear that the Order was a judgement.

20 And in paragraph -- The Court eventually held, on
21 page 7 of the Order at the second full paragraph: It is
22 further ordered, adjudged and decreed, if the amount due in the
23 preceding paragraph, which the total debt set forth in
24 paragraph 23 shall constitute the total judgment debt due the
25 Plaintiff and shall bear interest hereafter at the legal

1 interest rate for judgments.

2 The point is -- I don't mean to keep repeating
3 myself. I feel like I have to. The Order itself was clear
4 that this document represented it was the judgement.

5 And then going back to the Plaintiff's argument --
6 I'm sorry, the defense's argument says: If the Plaintiff's
7 arguments were correct, interest would have been accruing from
8 the August 16th thing. That's exactly what we show on the
9 deficiency judgement on the second page where the judge lays
10 out giving credit for the sale.

11 Let's just do a big picture what's going on here.
12 You've got a situation where the bank is attempting to
13 foreclose on a note and mortgage and collect on a judgement to
14 the extent that the sale won't satisfy it. What Judge
15 Scarborough did was he found, based on the evidence submitted,
16 there was a total judgment due of 300-something-thousand
17 dollars, and he found that judgment was immediately due and
18 owing and, in the Clerk of Court's office, was entered at 9:52
19 a.m. on August 16th, a judgment was entered.

20 That judgement and the Order makes clear that what
21 will happen is, from that point in time, should anybody want to
22 pay on that judgement and pay the full amount, then the
23 property won't be sold.

24 If they don't pay, then the property will be sold
25 as part of a sale, and the amount of that sale will be credited

1 to the judgement that existed as of August. And that's all
2 that's going on.

3 What happened was, temporarily, the property was
4 sold and after money came in and, in December, when Judge
5 Scarborough issued his subsequent -- or I'll call it his Order,
6 all he was doing was giving credit to the judgement against the
7 Defendants for the amount of the property being sold and said:
8 Here's what's left over, here's the residual or the residue of
9 what remains from the August judgement.

10 The reason why I'm raising some of this, for
11 reasons that aren't quite clear to me -- aren't quite clear to
12 me is the defense is now citing -- when I say the defense, it's
13 not the Sheriff's Office. It's Karmatic. The defense has
14 quoted to The Court, in raising some issue with South Carolina
15 Code Section 29-3-650, that section is entitled Court May
16 Render Judgment and Order Sale At Same Time. And that statute
17 specifically authorizes the court to render judgement against
18 the parties -- I'm reading directly from the statute -- liable
19 for the payment of the debt secured by the mortgage and direct
20 at the same time the sale of the mortgaged premises.

21 This next sentence I've italicized in what I will
22 be submitting to The Court as a proposed order: *Such judgment*
23 *so rendered may be entered and docketed in the Clerk's Office*
24 *in the same manner as other judgements.* And we know that's
25 what happened here because I've provided The Court with a copy

1 of the Clerk's Office and that time showing that this judgement
2 was entered at a specific time and that amount was entered.

3 It says: Upon the sale of the mortgaged premises
4 the officer making the sale under the Order of the court shall
5 credit upon the judgement so rendered for the debt the amount
6 paid to the Plaintiff from the proceeds of the sale. All that
7 statute says is: Look, once this judgement for foreclosure and
8 the amount determined is determined, that can be entered as a
9 judgement. And then later on when the sale takes place, any
10 credit for that sale will be credited and that's what the
11 deficiency judgement is that the defense is citing from
12 December.

13 The whole point is the statute authorized the court
14 to enter a judgment and order. The sale of the property to
15 credit against the judgment, and that's what happened here.

16 Now, the next section they cite is 29-3-660, which
17 talks about the deficiency judgement. Again that language is
18 completely consistent with exactly what happened here. Should
19 there be a deficiency, the quote, residue, end quote, shall
20 represent the remainder of the judgment. That's all that
21 happened here. That's just the leftover amount. That
22 55-something-thousand dollars is just what's leftover from the
23 original judgment from August.

24 THE COURT: Mr. Justin Kahn, I don't want to cut
25 you off. I agree with you. The judgment was enrolled on

1 August 16th. I'm most interested in what Ms. Palmer has to
2 say. I didn't mean to cut you off. Believe it or not, I
3 actually have dealt with this issue a time or two in my
4 relatively short tenure on the bench thus far.

5 It is clear that our courts have, time and time
6 again, enforced this right line ten-year statute of limitations
7 to apply to judgements at the time -- to begin at a time that
8 the judgement is enrolled. They did it even most recently in
9 Gordon versus Lancaster, 425 S.C. 386. They are very hesitant
10 to toll these, what they call, active energy ten-year
11 requirements.

12 So with that, I'm going to switch it over to
13 Ms. Palmer and let her make her stand. Go ahead.

14 MS. PALMER: Thank you, Your Honor. We're not
15 arguing that they should be, that there is a tolling or
16 anything like that. What we have here are two different
17 Orders. We've got the foreclosure Order which says, if there
18 is a deficiency, the Plaintiffs or the Plaintiff in this case
19 is going to be liable. And then we have a second Order, which
20 was the deficiency Order.

21 As Your Honor knows, there are two different
22 methods of obtaining a deficiency judgement in our state. The
23 first is under 29-3-650, which allows The Court to grant a
24 money judgment for the entire amount due against the debtor and
25 at the same time order the foreclosure of the property or the

1 foreclosure sale.

2 In that situation, after the sale, the amount of
3 the proceeds is credited to the judgment that's already been
4 rendered. In that situation, The Court orders, issues a
5 judgment against -- a money judgment against the debtor for the
6 full amount.

7 For purposes of contrasting, exhibit 5 that I
8 submitted this morning is an Order that was issued in that type
9 of case where you see that the Plaintiff has been, you know, a
10 judgement entered against the Plaintiff for that full amount
11 and the property has been ordered to be sold.

12 The second way that you can get a deficiency
13 judgment is under 29-3-660, which allows the court to order
14 foreclosure and then, after that, the court determines the
15 deficiency and enters an order, deficiency judgement is an
16 order of deficiency judgment.

17 I've also -- exhibit 6 that I submitted this
18 morning, that's just our Form 4-C. The civil judgement in a
19 civil action. If you look at that form, numbers 10 and 12, it
20 shows there are different processes. One is where you have a
21 full judgement at the time the sale is ordered. The second is
22 where the sale is ordered and later there is a deficiency
23 judgment issued against the debtor.

24 In this case, if you look at the foreclosure Order,
25 there is not any language in there imposing a money judgement

1 against the Plaintiff. It just says: In the case there should
2 be a deficiency judgement, there will be a later order entered.

3 These are two separate Orders. The first
4 foreclosure Order, that August Order does not -- put it this
5 way. If you took that August Order, it would be incapable of
6 being executed against because there's no finding that the
7 Plaintiff is liable for any amount.

8 There's only liability for a money amount from the
9 Plaintiff. At this later December Order, which is an Order of
10 deficiency judgement, a stand-alone Order which says that
11 interest on that judgement, on that Order will accrue from
12 November 18th, which was the date of the foreclosure sale.

13 So, Your Honor, we submit that is an independent
14 separate Order. I mean, the Order for deficiency judgment that
15 was issued in December, that itself is a final Order that
16 would've been capable of appeal, should the Plaintiff have
17 elected to do so. There's no way to say that this is an Order
18 that was issued under 650 because it's not saying -- even if
19 you look at the second page, which I inadvertently left off. I
20 didn't realize that had not been submitted -- the deficiency
21 calculation that Judge Scarborough did at the top, the total
22 debt due Plaintiff as of August 3rd. It doesn't say the total
23 judgement owed by Plaintiff. It's the total debt.

24 So the total debt is calculated. At no point was
25 the total debt entered as a judgement against the Plaintiff in

1 this case. It wasn't until this December Order that there was
2 a sum of money that was entered as a judgement against her.

3 And so we would submit that we are only trying to
4 execute against this December Order, which is the first time
5 that there was any specific monetary amount adjudicated to be
6 due from the Plaintiff. That's all I have, Your Honor.

7 THE COURT: All right. Let me ask y'all this,
8 Mr. Kahn, you're essentially, for today's purpose, you're
9 seeking me to essentially put off the Sheriff's sale. That's
10 the reason for the temporary relief, at least, is to put off
11 the Sheriff's sale until this is further hashed out; is that
12 correct?

13 MR. JUSTIN KAHN: That's correct, Your Honor.

14 THE COURT: Cut to the chase of what we're doing
15 this morning, I see in your Complaint you're seeking, in part,
16 declaratory judgment on some of these issues that we're talking
17 about today.

18 MR. JUSTIN KAHN: Right.

19 THE COURT: It seems like to me, unless I'm looking
20 at this wrong, y'all tell me if I am, we're essentially
21 fighting over which is the judgement, which is the official
22 enrollment of the judgement? Is it the August or the December
23 Order; right?

24 MR. JUSTIN KAHN: That's correct.

25 THE COURT: I don't know that I have the answer to

1 that question this morning. I think what I've been presented,
2 at least enough to put off the Sheriff's sale for now until we
3 can come back and answer the question a little bit more
4 carefully. I'll certainly be more than happy to entertain a
5 little bit more law thrown at me on that particular issue now
6 that we sort of narrowed it down. I mean, I know you've all
7 briefed this. I'll maybe look at it a little bit closer.

8 I think, at least, enough has been positive for me
9 to put off the sale for now. I can reschedule this for another
10 hearing relatively soon. Because I don't think a supplemental
11 hearing on this issue is going to, at this point, prejudices
12 either party as long as I do it before December.

13 Let's see. I should be back here the week of
14 September 14th. I'm not going to nail anybody down to a date
15 and time right now. I know y'all need to consult your
16 calendars. We can look at that week for follow-up hearing.

17 For today's purposes I think there's at least
18 enough of an issue presented that would give me valid reason to
19 postpone the Sheriff's sale and the advertisers that start
20 Monday.

21 MR. JUSTIN KAHN: Your Honor, with your permission,
22 I'll submit a proposed order to The Court. I'll copy the other
23 side. You can chop out pieces you feel are right or wrong.
24 That way, at least, you'll have something to go by.

25 THE COURT: Okay. That's fine with me. I mean, I

1 don't mean to sort of punt this. I want to get it right. An
2 interesting legal issue, I think, deserves a little bit more
3 follow-up attention.

4 MS. PALMER: Your Honor, is there anyway -- is
5 there an earlier date that we can do it? Because the Sheriff's
6 Office, obviously, has to get the three advertisements in the
7 paper. It's not just postponing. Didn't get it done. We have
8 a December 8th date deadline for this judgement expiring.

9 THE COURT: I mean, week after next isn't soon
10 enough? Next week is Labor Day. Short court week. I don't
11 have any kind of access to a court reporter. I think it's
12 going to require a court reporter. I don't typically win those
13 battles with court administration. The soonest I can offer
14 you, the week of the 14th. If you want to come up with a day
15 and time together and get back to my law clerk, that will be
16 fine. Obviously we'll try to accommodate you best we can that
17 week. I don't mind. Whatever day you pick that week is fine
18 with me.

19 MR. JUSTIN KAHN: It seems to me, as long as we
20 have a month, which is I think the time; three weeks to
21 advertise, a week to sale is my recollection.

22 THE COURT: We'll certainly make it a priority. I
23 think week after next should give you time.

24 Mr. JUSTIN KAHN, if you don't mind submitting some
25 sort of proposed order, if I need to change it, I will. If you

1 can e-file it.

2 Hayden, what you do you think? Chime in on that.
3 Is it better to e-file or e-mail in a Word doc?

4 MR. GROOMS: E-file.

5 THE COURT: Yeah, it will get to me. It's best
6 just to e-file it.

7 MR. JUSTIN KAHN: Okay. I just wanted to put it in
8 a format you can modify. Whatever is better for you. Doesn't
9 matter to me.

10 THE COURT: It's great. E-filing is great. When
11 you upload those Word doc to the e-filing system, I can go in
12 that and do whatever I need to do to it before I sign it. It's
13 great.

14 MR. JUSTIN KAHN: What I'll do, I'll go on and
15 e-mail it right now so the other side can have a copy too so
16 they don't have to wait for me to upload.

17 THE COURT: Perfect. Since it's Friday of a
18 holiday weekend. I'm sure they would appreciate that.

19 MR. JUSTIN KAHN: I just hit send.

20 THE COURT: Thank you very much. We'll see you
21 week after next. Y'all take care.

22 MR. JUSTIN KAHN: Thank you.

23 (The hearing was concluded.)

24

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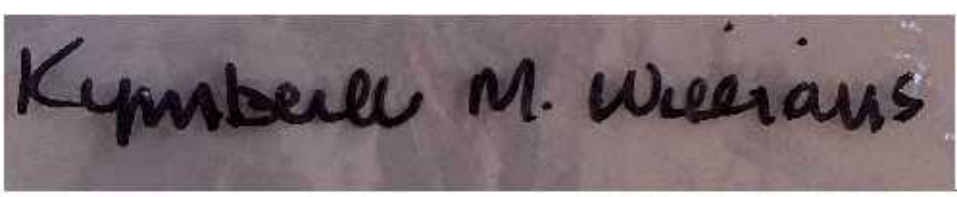
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CERTIFICATE OF REPORTER

I, Kymberlee Williams, Registered Professional Reporter, do hereby certify that the foregoing transcript is a true, accurate, and complete record of the proceedings held via Weber without a court reporter present.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 20th day of November, 2020 at Charleston County, South Carolina.

A rectangular box containing a handwritten signature in black ink. The signature reads "Kymberlee M. Williams" in a cursive script.

Kymberlee Williams, CSR/RPR
State of South Carolina
Official Circuit Court Reporter

1	State of South Carolina	)	In the Court
2	County of Charleston	)	Of Common Pleas
3	Genevieve Stratos,	)	Case No.: 2020-CP-10-03825
4	Plaintiff,	)	
5	vs.	)	Transcript of Record
6	Charleston County	)	
7	Sheriff's Office, and	)	
8	Karmatic, LLC,	)	
9	Defendants.	)	

10
11 September 15, 2020
12 Charleston, South Carolina

13 BEFORE:

14 The Honorable Jennifer McCoy, Judge

15
16 APPEARANCES:

17 Justin S. Kahn, Esquire
18 Attorney for the Plaintiff

19 Edward Knisley, Esquire
20 Attorney for Defendant Charleston County
Sheriff's Office

21 Elizabeth J. Palmer, Esquire
22 Attorney for Defendant Karmatic, LLC

23

24

25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

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1 Thereupon, the following proceedings were had,

2 THE COURT: Okay. I think we can get started. Our
3 court reporter is present and he has asked me to remind
4 everybody and I'm gonna do the same, when you're not
5 speaking, please mute yourself, uhm, somehow to cut down
6 on the feedback. Uhm, before we get started, uhm, I will
7 ask the attorneys beginning with Mr. Kahn to state their
8 full name for the record and the parties they are here
9 representing.

10 MR. KAHN: Sure. My name is Justin Kahn. I'm here
11 on behalf of the plaintiff Genevieve Stratos.

12 COURT REPORTER: You're muted, Ms. Palmer.

13 THE COURT: Ms. Palmer, I can't hear you for some
14 reason. It might be on that - in your actual computer.

15 COURT REPORTER: She was muted, Judge. She was
16 muted.

17 THE COURT: I still can't hear you.

18 MR. KAHN: Probably has to do with some kind of
19 audio setting to let the computer, the Webex thing know
20 it's your head phones you're trying to talk through as
21 opposed to your computer. There's a setting for that
22 somewhere.

23 THE COURT: I wish I could be more helpful.

24 MS. PALMER: All right. Can you hear me now?

25 THE COURT: We can hear you now, Ms. Palmer.

1 MS. PALMER: I was trying to use my earbuds. We had
2 an HVAC emergency last night and we've got people
3 drilling upstairs. I could use the earbuds to cut down
4 on exterior noise, but hopefully it will be okay for now.

5 THE COURT: I think I can hear you. Just go ahead
6 and you can give the introduction part.

7 MS. PALMER: Absolutely. Elizabeth Palmer for
8 defendant Karmatic, LLC.

9 MR. KNISLEY: Edward Knisley, K-n-i-s-l-e-y for the
10 defendant Charleston County Sheriff's Office.

11 THE COURT: Okay. And we are back, uhm, on the
12 second hearing, uhm, regarding this preliminary
13 injunction being sought by Mr. Kahn's client. Uhm, I
14 have reviewed the submissions that were filed, uhm, with
15 the Court prior to today and those are all part of the
16 record for purposes, uhm, of appeal. Uhm, Mr. Kahn, I'll
17 hear from you first. Uhm, we are kind of reconvened
18 today I believe on the sole issue of when the judgment
19 was actually considered to be in place for purposes of
20 the ten year statute of limitations, uhm, but I'm happy
21 to hear from you. Go ahead.

22 MR. KAHN: Thank you, Your Honor. Uhm, Justin Kahn
23 on behalf of Genevieve Stratos. The Court set a hearing
24 for today to - for what I understand to quote "determine
25 the issue of the date of judgment" end quote. Uhm, in

1 response to the Court's request we have submitted
2 additional argument along with an affidavit of the Clerk
3 of Court for Charleston County and the clerk's affidavit
4 specifically addresses the issue of the fact that the
5 judgment in the amount of \$345,000.00 was entered on
6 August 16th, 2010 against my client and others. Uhm, it
7 now appears from the filings I got this morning from
8 submissions from the other side, they appear to concede
9 that the judgment was entered in August, but now they've
10 sort of changed tact and are suggesting that somehow
11 something happened in December which is a new judgment
12 and to try to address that there are a couple things I've
13 got to say, uhm, about that, but before we do that,
14 I want to sort of tick through, and I've submitted a memo
15 in the form of a proposed order of all the facts that
16 support the idea that the judgment was entered in August.

17 The order itself that's filed August 13th - I'm
18 sorry - filed August 16th on page 7 specifically states
19 that Mrs. Stratos was gonna have to pay a sum certain
20 amount of money and that order on paragraph 7 - I'm sorry
21 - page 7 specifically states it is further ordered,
22 adjudged and decreed that the amount due in the preceding
23 paragraph which is the total debt in paragraph 23, quote
24 "shall constitute the total judgment debt due the
25 plaintiff and shall bear interest hereafter at the legal

1 rate of interest for judgments."

2 In the next paragraph it states that my client had
3 an opportunity to pay that judgment debt before the sale
4 should she wish to, but the order itself is clear that it
5 did represent a judgment, the Clerk of Court confirms
6 that, and I think significantly I'll try to address some
7 of the defense's arguments or issues.

8 First, let's just back up real quick. The Court
9 ought to consider that the client's former lawyer created
10 a company to buy a judgment to come after the client. As
11 part of that this company is stuck with what it bought.
12 It bought a judgment from August of 2010. That judgment
13 had a credit applied to it based on a sale that was
14 ordered which decreased the August judgment to 50 some
15 odd thousand dollars, but the corporation does not now
16 get to do a redo or get to restart the clock on the
17 judgment that was entered in August. The case Gordon is
18 very clear on that. The Court should note that this
19 corporation as part of its filings did not cite the
20 controlling case in South Carolina on this issue, Gordon.
21 I didn't see that in the submissions this morning.

22 The court - the company seems to try to dance around
23 a bunch of issues by relying on and citing a bunch of
24 other master's orders. Candidly having gone through the
25 hundred pages that they've attached, but in buzzing

1 through them and doing a word search those orders seem to
2 cite a statute, whatever it is that ends in 650 that they
3 now argue is somehow controlling and is what the master
4 in this case meant to do somehow. The master in this
5 case, when the judgment was entered in August, never
6 cited that statute, uhm, so they don't get the benefit of
7 using -- It's almost like a hearsay issue in a weird way.
8 They don't get the benefit of citing to other orders to
9 say, and I'm sure there's some Latin expression for the
10 idea that, uhm, if it's not in this order, they can't use
11 the language in other orders, uhm, against us.

12 Also, if we take a step back, in the end, uhm, this
13 is, I don't want to say it's not a unique issue, but my
14 client was sued only on the guarantee not as part of the
15 foreclosure, so the underlying lawsuit that was brought
16 was on the guarantee against my client, not seeking a
17 foreclosure against her. So the judgment issue that the
18 corporation that originally brought it, uhm, was only for
19 the guarantee against her and they obtained a judgment
20 against her on that guarantee as part of this August
21 order which is completely different than all these other
22 orders that I have seen submitted by the other side.

23 And let's also keep in mind a couple of other
24 things. The - this Karmatic seems to now have shifted
25 their argument. When we first, uhm, had the first

1 hearing, Karmatic argued that if there was a judgment in
2 August, uhm, then the - there would be some interest
3 accruing thereon from August and somehow they're arguing
4 because that did not happen, there was no judgment from
5 August as the Court may recall in the second page of
6 their first memo, and they have now again shifted.
7 They're now saying there was a judgment in August. There
8 happened to be another one in December and no case law
9 allows, uhm, or somehow this thing from December is a new
10 judgment from which the ten year clock starts anew or
11 starts - starts.

12 And it seems to me, and I have a whole bunch of
13 other things to say, but my recollection is the Court
14 understood the Gordon case from the last hearing, uhm,
15 and I believe in all of our arguments in our memo we have
16 the affidavit from the Clerk of Court saying the judgment
17 was entered in August of 2010. I don't know how much the
18 Court -- I'm glad to address additional issue if the
19 Court has it and I promise you I have more to say, but
20 I'm reluctant to say more because, uhm, I think it's self
21 explanatory.

22 Gordon is very clear. The ten years is ten years
23 from the judgment and the courts cannot extend it and
24 that's exactly what they're seeking to do here. They're
25 seeking to take and have credit given, uhm, when the

1 credit was given to treat the deficiency as somehow a new
2 judgment and that's just not what the law is because
3 otherwise every time somebody paid on a judgment, the ten
4 years would keep extending and that's not the law.

5 Uhm, if the Court has questions, I'm glad to answer
6 them but, uhm -- Oh, just a couple other sort of bullet
7 points. They cite some Form 4(C) that was created in
8 2017. As far as I can tell that wasn't used in 2010 so
9 again, who cares. The Court has to look at the order in
10 this case and the judgment in this case. The absolute
11 evidence is, and they've now conceded is the judgment was
12 entered against my client in August of 2010 and the time
13 period for enforcing it has expired and that's what we're
14 asking the Court to hold and I think that's, unless the
15 Court has any questions, I'll stop.

16 THE COURT: Okay. I don't have any yet, but I'll
17 give you a chance to respond. Ms. Palmer, happy to hear
18 from you.

19 MS. PALMER: Thank you, Your Honor. Uhm, our
20 argument really hasn't shifted. I think just had a
21 little bit more time to spend on it and one of the things
22 that I, you know, I've done a lot of research on this
23 trying to find, you know, a case specifically on point
24 and I'm sure Mr. Kahn has as well otherwise, you know, if
25 either one of us found something, we would be giving it

1 to you right now.

2 Uhm, but one of the things that I saw was on the
3 Master in Equity's website itself and I think it
4 succinctly states what I did not very artfully
5 communicate at the least hearing which is the difference
6 between the two methods of obtaining a deficiency
7 judgment in South Carolina and those are, you know, under
8 Sections 29-3-650 and 29-3-660, so 650 and 660, uhm, and
9 that website which is cited in our memo that we submitted
10 this morning is that, first, the first method under 650,
11 the Court may enter a personal judgment for the total
12 debt after the hearing, the hearing on the foreclosure,
13 uhm, and then the net proceeds are credited.

14 Alternatively, and this is the second way under 660,
15 the Court can order that a deficiency judgment be granted
16 after the sale. And this is the important part. After
17 the sale the Court determines the amount of the
18 deficiency and enters a personal judgment for that
19 amount. That is what we have here. Uhm, I realize that
20 the Clerk of Court has submitted an affidavit saying that
21 there was a \$300,000.00 personal judgment entered against
22 the plaintiff in August of 2010. I don't know where that
23 comes from. Uhm, you look at the - read the August 2010
24 order line by line, it states, as many of these other
25 orders do, what the total amount due is. Uhm, it says

1 that the plaintiff, in the conclusions of law, the
2 plaintiff should have judgment of foreclosure. It does
3 not state that a personal judgment of the full total
4 amount due is to be entered against the plaintiff in this
5 case. What it says is that if the proceeds of the sale
6 are insufficient, then and only then shall there be
7 judgment against this plaintiff.

8 And, uhm, Mr. Kahn mentioned the orders that I've
9 cited in my memo. I spent a lot of time trying to find
10 examples of the differences between these orders when
11 they're issued under 650 and a full judgment is entered
12 or a personal judgment is entered for the full amount due
13 at the same time that the foreclosure is ordered and the
14 orders that are issued under 660 which I contend is what
15 happened here where foreclosure is order and after the
16 foreclosure sale, a personal judgment for that deficiency
17 is entered.

18 Uhm, and so when you compare the language of these
19 orders, I've cited all of these in my memo, the first one
20 in the memo is Wells Fargo Bank versus Singleton case out
21 of Charleston County. This foreclosure order is attached
22 as exhibit 1. This is the language that you see when a
23 Court under 650 is granting judgment for the total amount
24 due at the same time as foreclosure. Plaintiff shall be
25 granted judgment against borrower in the amount of

1 \$507,467.17 the total debt. Such judgment shall be
2 entered and docketed in the Clerk of Court's Office
3 immediately and in the same manner as other judgment
4 pursuant to South Carolina Code Annotated Section
5 29-3-650. Upon sale of the subject property this
6 judgment shall be credited the amount paid to plaintiff
7 from the proceeds of the sale.

8 Uhm, another example that is in this memo is the
9 Bank of South Carolina case. It's attached as exhibit 6
10 and that language is, that pursuant to South Carolina
11 Code Annotated Section 29-3-650 plaintiff is entitled to
12 an immediate personal judgment against defendant that
13 being Olivia Knight Truesdale as personal representative
14 of the Estate of David Jeffrey Truesdale, deceased, for
15 the total amount shown in paragraph 17. And I'll
16 represent paragraph 17 is the section of these orders
17 which often have calculating the total amount due.

18 There is nothing in the August 2010 order entering a
19 money judgment against plaintiff. This order that we are
20 looking at, the August 2010 order, it gave judgment of
21 foreclosure and it withheld entering any personal
22 judgment against the plaintiff. And one thing to
23 consider is this: Under, uhm, South Carolina 15-39-80, I
24 believe, that pertains to prior execution. To have an
25 execution you have to have the judgment with an actual

1 amount due. You cannot find an amount due, a judgment, a
2 money judgment amount due in this August 2010 order. So
3 how could the ten years on a judgment begin to run before
4 it's even capable of being executed on? All that the
5 August 2010 order says is, is that if there's a
6 deficiency after the sale a judgment would be entered
7 against the plaintiff and that's what happened. You
8 know, it's possible that there would have been a surplus
9 and no judgment against the plaintiff would have ever
10 been entered.

11 Uhm, so, you know, there are a lot of questions I
12 have about how the index works because I know that when
13 you pull up this case on the index, it shows the date of
14 judgment as August 16th of 2010. Now, that's the date
15 also of disposition of the case which we know it went on
16 after that. The foreclosure sale was after that. And
17 interestingly the cases, all the cases that I've cited in
18 my memo, even the ones that were done under 650 where the
19 total judgment amount, total that was ordered as a
20 personal judgment at the same time as the foreclosure,
21 each of those cases, the public index shows the date of
22 judgment as being the deficiency judgment date. Even in
23 the ones under 650.

24 So, you know, I don't know exactly how all that
25 works and how all that is entered, but I think it's a

1 clerical thing, uhm, but what I would submit is that
2 regardless of what that shows, we've got to look to the
3 four corners of these orders and we've got to look to the
4 law, specifically Section 29-3-660 which gives the Court
5 the power to do what it did here which it adjudicated
6 payment after the sale and that this - and, I mean, this
7 is against other person and may enforce such judgment as
8 in other cases. This judgment entered after the
9 foreclosure sale may be enforced as a judgment as in any
10 other case.

11 And, uhm, in Federal Land Bank of Columbia versus
12 Davant, and that cite is 292 South Carolina 172, the
13 Court of Appeals recognized that this Section 660 quote,
14 "specifically authorizes the entry of a deficiency
15 judgment when the mortgage debt remains unsatisfied after
16 the sale of the mortgaged premises." So you look at the
17 four corners of the August 2010 order, there's no
18 indication that there is any money judgment entered
19 against the plaintiff. Then you turn to the four corners
20 of the December 2010 order and it specifically states it
21 is entering judgment, personal judgment against the
22 plaintiff. That's the first time that we see that.
23 That's the first time a money judgment has been entered
24 against the plaintiff such that it could even be executed
25 against.

1 Uhm, so that's our position and, you know, I don't
2 think that that's really any different that the position
3 that we, uh, presented at the last hearing. I certainly
4 am open to any questions from the Court, but would ask
5 that if this injunction issues today, that, uhm, the
6 plaintiff be required to put up appropriate security or
7 bond. Right now with interest this judgment is somewhere
8 around \$95,000.00, uhm, to date. My client apparently
9 hasn't pursued collecting that interest, uhm, but, you
10 know, if this injunction issues, there's no way that this
11 matter is gonna be resolved by the time the December 2010
12 judgment expires and we'll be left with no remedy for
13 that and so, you know, even though the issuance of
14 security or bond is not discretionary, I mean, we're
15 entitled to it, uhm, I would just ask that the Court keep
16 in mind that the timing here renders this, you know, an
17 unusual situation.

18 THE COURT: Okay. Uhm, just one question real quick
19 before you respond, Mr. Kahn, uhm, to Ms. Palmer. Uhm,
20 when did your client buy this judgment? You know, I
21 don't mean to put you on the spot. It's not necessarily
22 relevant.

23 MS. PALMER: I think Mr. Kahn probably knows. I
24 think --

25 MR. KAHN: It was November 4th --

1 MS. PALMER: I believe in November of '19.

2 MR. KAHN: November 4th of 2019 I believe is the
3 date and that was in part of our complaint and
4 attachments I believe.

5 THE COURT: Okay. Yeah. I thought I saw it
6 somewhere. Okay. Again, that's not relevant. I don't
7 know why -- I'm just kind of wrapping my head around
8 that, the big picture. Okay. All right. Well, Mr.
9 Kahn, certainly happy to hear from you by way of a
10 response.

11 MR. KAHN: Sure. A couple of - I think three
12 things. Number 1, she keeps talking about foreclosure
13 actions. This was not a foreclosure action against my
14 client. It was a suit on a guarantee that is
15 specifically asked for in the complaint and the order
16 specifically has a separate section dealing with a
17 guarantee. Uhm, so all this foreclosure language and
18 statutes goes out the window. This was a suit on a
19 guarantee that my client signed. The Court found
20 specifically that she was required as of the date of the
21 order, she was obligated to pay that total amount due
22 under that guarantee. So all this foreclosure stuff goes
23 out the window. Uhm, separately, I'm gonna try to share,
24 uhm, this - a moment ago my friend here said she can't
25 find any amount due. Well, if the Court looks at page 4,

1 paragraph 23, this is in the order from August. This is
2 the order. It specifically has a sum certain that is
3 repeatedly referenced in paragraph 23. Has the Court
4 seen this? I can't -- When I put this up, does the Court
5 see it?

6 THE COURT: Yes. I'm sorry. I can see it. Yes.

7 MR. KAHN: So when she says there is no sum certain,
8 paragraph 23 answers that. There is a specific sum
9 certain. It says the amount due and owing under the note
10 and mortgage is this amount. That's in paragraph 23.
11 And within the same order it says, and I'll try to scoot
12 to it on page 7 of the order, as to my -- and it finds
13 that that specific amount in paragraph 23 shall
14 constitute a total judgment debt due and bear interest
15 hereafter at the legal rate of interest for judgments.

16 The Court found this was a judgment. I mean, it
17 says this is the amount that's due. And it further finds
18 that my client is required to pay, ordered, adjudged and
19 decree that the defendants including my client on or
20 before the date herein pay that amount of money. So how
21 can she say there isn't a sum certain due or found to be
22 owed by my client? The Court specifically found under
23 paragraph 23 a sum certain amount was due and that amount
24 is the same amount that the Clerk of Court notes was
25 entered, uhm, as being owed, that three forty-five

1 twenty-four thirteen in August.

2 So number 1, this is a suit on guarantee.
3 Foreclosure stuff goes out the window. As to the
4 guarantee, the Court found a specific sum certain was due
5 by my client and there's a question, my friend suggested
6 there's some sort of question. Again with the deficiency
7 order from December, the Court has to recall it says
8 total judgment. Uhm, it's got the, uhm, it's got the
9 total judgment amount as of August 13th. I mean, the
10 Court itself in this order says that was the total
11 judgment amount as of August 13.

12 So I don't -- Again, and all the Court do was gave
13 credit to the foreclosure sale as to everybody, but that
14 doesn't change - that doesn't change any of the -- I
15 didn't say anything, court reporter. Sorry. I saw you
16 waving. I accidentally muted myself. That doesn't change
17 anything. All -- Again, I feel like I'm chasing, as
18 another lawyer in my office says, I'm chasing a stopped
19 bus. I mean, everything points to a judgment on the
20 guarantee, a sum certain was determined in August, the
21 Clerk of Court picked up that amount, the Judge
22 references that amount, and interest began accruing on
23 that judgment from August. The fact that subsequently a
24 credit was given on the sale doesn't change the fact that
25 it was a original August judgment that matters.

1 So that's sort of summarizing that. And the only
2 reason I want to, unless the Court has any questions,
3 I want to sort of touch on this other thing about the
4 bond because again one of the frustrating things for me
5 is in terms of - again, this all circles back to a lawyer
6 is coming after his client on a judgment. This is a
7 court of equity. There is - it is beyond inappropriate
8 for this Court to sanction what is taking place.

9 In addition to that, uhm, Ms. Palmer references some
10 \$95,000.00 amount and I'm assuming she doesn't know this,
11 but an additional 20 some thousand dollars has already
12 been paid on this judgment by another defendant and they
13 are nowhere getting credit for that. That is the sort of
14 vengeance that's taking place here. That the lawyer who
15 is coming after the client is not even providing the
16 Court with evidence that additional amounts has been paid
17 on this judgment before they bought it. Uhm, earlier in
18 2019 another defendant paid 20 something thousand dollars
19 to the bank. They haven't told to Court about that. I
20 can certainly provide the Court with those documents,
21 uhm, but the burden is on them to establish that amount
22 and they have utterly failed to do it.

23 Uhm, I think I'll be quiet now, unless the Court has
24 questions. It circles back to this is easy to
25 distinguish from everything else. This is a action on a

1 guarantee, not a foreclosure. As to the guarantee the
2 Court found in paragraph 23 a sum certain amount was due
3 and owing and he found my client and others were
4 responsible as of that date to pay it. The fact that
5 later on there would be credit given to that judgment
6 doesn't change anything in terms of when the clock
7 starts. And coming back to the original question the
8 Court asked which was determine the issue about the date
9 of the judgment, the date of the judgment was August,
10 therefore, time for coming after my client has expired.

11 THE COURT: Okay. Uhm, I would say based on my
12 research as well as that presented, uhm, by attorneys for
13 both sides, and I appreciate everybody for being so
14 prepared this morning, it really makes my job so much
15 easier, but I do, I'm still, I'm sticking with, uhm, my
16 first sort of inclination that the August date really is
17 the controlling date, uhm, notwithstanding all of the
18 excellent arguments made by defense counsel this morning
19 and a couple weeks ago. Uhm, I just - there's really, as
20 you both have found, there's really no - not a lot of law
21 in here and there's certainly nothing I found that has
22 indicated that any sort of subsequent amendments to a
23 judgment sort of restarts the clock so to speak. I
24 really think that ten year, uhm, time window is hard and
25 fast and it's there for a reason. I mean, in theory

1 somebody might could keep having judgments re-amended,
2 re-amended, and then ten years - I mean, when would we --
3 I think there's a reason we have a hard line on that ten
4 year rule.

5 Uhm, I'm interested in this bond requirement. To be
6 honest with you, this doesn't come up a whole lot. I'm
7 not real familiar with the logistics of all this, uhm, in
8 terms of the bond to be paid. Uhm, I don't want to keep
9 kind of kicking this can down the road and keep coming
10 back on different issues. I don't think another hearing
11 is necessary to determine a bond amount. I do think a
12 bond amount is probably appropriate given, uhm, the
13 issues that we're ruling on and the status of the case
14 and the fact that, you know, the defense's argument that
15 they're really gonna be, or giving up this, uhm, their
16 position by virtue of my ruling today. I mean, I
17 understand that this thing is expiring under their
18 argument in December.

19 So having said that, uhm, Ms. Palmer, are you - I
20 know you just kind of presented the judgment amount is
21 94,000 and change or something in your memorandum. Is
22 there something else? Are you aware of this sort of
23 setoff amount that's already been paid into that? Uhm,
24 do you want to maybe get some sort of a more -- You want
25 to kind of confirm that and get back to me with another

1 figure so that we can determine an appropriate bond
2 amount?

3 MS. PALMER: Sure. I was not aware of that. That's
4 not something I would keep from the Court.

5 THE COURT: No. I didn't think you would obviously.
6 Yeah. I didn't mean to put you on the spot. If you want
7 to kind of -- Go ahead.

8 MS. PALMER: You know, executions, they - the amount
9 of a debt is typically changing day to day. Uhm, the
10 execution in this, you know, typically you see an
11 execution and the judge - the Sheriff will ask, you know,
12 the day of the sale when everything is being, you know,
13 account - all the accounting is being done, you figure
14 out what the per diem interest is up until that day. So,
15 I mean, it is always sort of a moving amount, uhm, which
16 is why this judgment is accruing interest at \$11.00 a
17 day. Uhm, you know, the amount of the judgment was 55,
18 with interest the value of setoff is now 95. I will take
19 Mr. Kahn at his word that there's been 40,000 paid
20 reducing it, uhm, you know --

21 MR. KAHN: Just to be clear, it was 20 something
22 thousand. I can get the exact check, but and then I
23 don't mean to interrupt you at all, but the bank ought to
24 have some kind of records. I've got a copy of a check
25 for 20 something thousand dollars that was paid. It

1 wasn't 40 --

2 THE COURT: I mean, we're not gonna get a real --
3 I'm not looking to get down to the dollar. I'm kind of
4 looking for a general maybe within five or \$10,000.00,
5 you know, estimate. That's all.

6 MS. PALMER: And we're fine with 75,000 for the
7 bond.

8 THE COURT: Okay. All right. So, Justin, uhm, I
9 know there are lots of bonding companies that go through
10 these sort of civil type bonds and you just go through
11 the Clerk's Office and make sure that's squared away.
12 Could you do that within ten days from today?

13 MR. KAHN: Uhm, the answer is yes. What I'm picking
14 through candidly, there's two other lawyers more than six
15 feet away from me. I want to ask them. Conceptually
16 what I'm thinking through is if the Court has agreed that
17 the judgment has expired, I'm trying to figure out why my
18 client has to put up a bond. I'm not asking the Court
19 necessarily to address that. I'm trying to think through
20 do I have any arguments about that. I don't know them
21 off the top of my head, uh, but it seems to me that if
22 the Court has determined that judgment has expired --

23 THE COURT: Well, I think that's the purpose of the
24 bond. I mean, in other words, this issue, I don't know
25 if Ms. Palmer is going to -- But I guess we need to

1 address when would that bond expire. I mean, obviously
2 when the litigation is over or when this issue is finally
3 determined. I'm not sure if Ms. Palmer is gonna appeal
4 this. She very well may. I'm not sure what she's gonna
5 do, uhm, but I think for now I think it's appropriate. I
6 don't think it's an undue burden on your client.

7 Now, if it's, uhm --

8 MR. KAHN: I understand.

9 THE COURT: -- something that, you know, we need to
10 address again, we can. We can always revisit a bond
11 issue. That's not a, that's not a problem, but for now
12 I'm more comfortable giving, uhm, this stage in the case
13 setting, uhm, just a civil bond and have that, uhm, filed
14 with the Clerk's Office, and like I said, I think - I
15 think ten days will give you enough time to get that.
16 Uhm, if you need an extension for some reason, then
17 that's fine. Just let me know.

18 MR. KAHN: All right. Well, thank you.

19 THE COURT: I mean, we're in unusual sort of times I
20 know with the pandemic and everything so if you hit a
21 road bump because of that, just let us know. Kind of
22 keep us in the loop.

23 MR. KAHN: And I'll try to talk with Ms. Palmer to
24 see if given the Court's holding, and maybe she needs to
25 talk with her client, too, to see if they want to still

1 pursue this or how it's gonna be pursued. If it's not,
2 then maybe it becomes moot. I'm not trying to make her
3 commit to that right now at all. Maybe give us a chance
4 to talk about it with the idea that we've got at least a
5 ten day, uhm, deadline right now to inform the Court of
6 what's going on and...

7 THE COURT: Well, you know, that's really to inform
8 me what's going on. We're setting a ten day time period
9 to deposit a \$75,000.00 bond in this case. Uhm, you
10 know, obviously I'm here if you need me. Uhm, and I know
11 bond issues like as I stated earlier, bond issues can
12 always be revisited.

13 MR. KAHN: Thank you.

14 THE COURT: Okay. Well, thank you everybody. I'll
15 just issue, uhm, an order to this effect, uhm, within
16 probably by the end of the day. If you need anything
17 else, just don't hesitate to reach out.

18 MR. KAHN: Thank you so much.

19 MS. PALMER: One point just for clarification for
20 procedural purposes. Uhm, I'm just making sure that this
21 order will be denying - or granting his motion for
22 injunction, correct?

23 THE COURT: It is. This is only addressing this
24 injunction issue. I know he's got lots of claims and
25 then none of those are being addressed today so this is

1 all injunctive relief we're discussing today, okay?

2 MS. PALMER: Thank you, Your Honor.

3 THE COURT: All right. Thank you all. Take care.

4 MS. PALMER: Bye-bye.

5 THE COURT: Bye-bye.

6 WHEREUPON, THE HEARING WAS CONCLUDED.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

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5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 15th day of September, 2020.

11 I FURTHER CERTIFY that the forgoing 26 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 7th day of October, 2020.

17

18

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By:s/Steven E. LeBlanc

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Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

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