

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

ORIGINAL

\*\*\*\*\*

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Master in Equity

**RECEIVED**

FEB 24 2015

SC Court of Appeals

\*\*\*\*\*

Case No. 2007-CP-46-4305

\*\*\*\*\*

SunTrust Mortgage, Inc., ..... Respondent,

v.

Mark Ostendorff, ..... Appellant.

\*\*\*\*\*

**SUPPLEMENTAL RECORD ON APPEAL**

\*\*\*\*\*

Brian S. Tatum, Esquire  
PO Box 11250, Charlotte, NC 28220  
Phone: (704) 307-4197  
Attorney for Respondent

Mark Ostendorff  
135 Cedar Creek Circle, Central, SC 29630  
Phone: (864) 640-3340  
Appellant, Pro Se

**SUPPLEMENTAL RECORD ON APPEAL INDEX**

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STATE OF SOUTH CAROLINA  
COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

FILED-RECEIVED  
2009 NOV -4 AM 11:20

IN THE COURT OF COMMON PLEAS

CASE NO.: 07-CP-46-4305

DAVID HAMILTON  
C.C.P. & CS  
YORK COUNTY, SC

**PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT**

COMES NOW SunTrust Mortgage, Inc. ("SunTrust"), Plaintiff in the above-styled civil action, and moves this Court for Summary Judgment against Mark Ostendorff, Defendant in the above-styled civil action, on the grounds that there are no genuine issues of material fact and SunTrust is entitled to summary judgment as a matter of law. SunTrust respectfully refers the Court to its Brief in Support of Plaintiff's Motion for Summary Judgment, the Affidavit of Susan Walker, the Affidavit of Brian S. Tatum, and Plaintiff's Statement Of Material Facts Of Which There Exists No Genuine Issues To Be Tried filed herewith.

WHEREFORE, Plaintiff SunTrust respectfully requests that the Court grant its motion for summary judgment, dismiss the Counterclaim filed by the Defendant with prejudice, and grant Plaintiff SunTrust such other and further relief as it deems just and proper.

Respectfully submitted this 30th day of October, 2009.

TATUM LAW FIRM, PLLC

By: 

BRIAN S. TATUM  
South Carolina Bar No. 73975  
Attorney for Plaintiff

2101 Rexford Road, Suite 165W  
Charlotte, South Carolina 28211  
Phone: (704) 307-4350  
Efax: (704) 754-4140  
Email: BSTatum@tatumlegal.com  
0720934sc\A6023203

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** was served upon the following by mailing same by United States First Class Mail in a properly addressed envelope with adequate postage affixed thereon to insure delivery, addressed as follows:

Mark Ostendorff  
P.O. Box 772  
Fort Mill, SC 29716

Mark Ostendorff  
P.O. Box 14846  
Greenville, SC 29610

FILED - RECEIVED  
2009 NOV -4 AM 11:26  
DAVID HAMILTON  
C.C.P. & G.S.  
YORK COUNTY, SC

This 30th day of October, 2009:

  
\_\_\_\_\_  
BRIAN S. TATUM  
Attorney for Plaintiff

TATUM LAW FIRM, PLLC  
2101 Rexford Road, Suite 165W  
Charlotte, South Carolina 28211  
Phone: (704) 307-4350  
Efax: (704) 754-4140  
Email: BSTatum@tatumlegal.com

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

SunTrust Mortgage, Inc.,  
Plaintiff(s)  
vs.  
Mark Ostendorff  
Defendant(s).

IN THE COURT OF COMMON PLEAS  
CASE NO.: 07-CP-46-4305

AFFIDAVIT OF SUSAN WALKER

FILED-RECEIVED  
2009 NOV -4 AM 11:28  
DAVID HAMILTON  
C.C.P. & GS  
YORK COUNTY, SC

STATE OF Virginia  
CITY OF Richmond

Personally appeared before the undersigned duly authorized to administer oaths, Susan Walker, who, after being duly sworn, deposes and states on oath as follows:

1.

That I am a First Vice President at SunTrust Mortgage, Inc. ("SunTrust"), that I based this Affidavit on my own personal knowledge of the accounts of SunTrust, that I am competent to testify regarding those accounts about which I have personal knowledge, and that I am over 18 years of age.

2.

That I am the custodian of and familiar with the business records of SunTrust, which include the loan documents and account statements of Mark Ostendorff ("Defendant").

3.

That SunTrust maintained the Defendant's loan history records at the office of which I am employed.

4.

That the entries were made to the Defendant's loan history in the regular course of business at or near the time that the events occurred, and the entries were subsequently reviewed for accuracy.

5.

That it is the regular practice of SunTrust to make the business records of the Defendant's loan history and those records were made as part of and kept in the course of a regularly conducted business activity of SunTrust.

6.

That to secure the indebtedness evidenced by a Note in the original principal amount of \$400,000.00, on or about March 29, 2006, Defendant executed a Mortgage (the "Mortgage") in favor of SunTrust conveying a first priority security interest in certain real property commonly known as 1207 Cabin Creek Court, Fort Mill, South Carolina 29715, and more particularly described therein (the "Property").

7.

That the Mortgage was recorded in the Office of the Register of Deeds for York County, South Carolina, on or about April 28, 2006, at Book 07985, Page 00302.

8.

That a true and correct copy of the Mortgage is attached hereto as Exhibit "A" and incorporated herein by reference.

9.

That SunTrust is the owner and holder of the Note and the Mortgage and that the Note and Mortgage have not been securitized.

10.

That the Defendant failed to make scheduled payments under the Note and Mortgage as required by their terms; consequently, Defendant defaulted and remains in default on the payments due under and pursuant to the Note and the Mortgage.

11.

That as of October 14, 2007, the Defendant was due for the July 1, 2007 payment.

12.

That on October 14, 2007, the Defendant's arrearage on the Note was \$12,065.85.

13.

That in accordance with the terms of the Note and Mortgage, SunTrust accelerated maturity and declared the entire unpaid balance immediately due and payable.

14.

That the Defendant's payment history under the Note and the Mortgage from May 1, 2006 through September 1, 2007 is as follows:

<u>Date Due</u>	<u>Amt. Due</u>	<u>Date Pd.</u>	<u>Amt. Pd.</u>
05/01/06	\$ 2,000.48	05/02/06	\$ 2,000.48
06/01/06	1,879.24	06/16/06	1,879.24
07/01/06	1,875.57	07/21/06	1,875.57
08/01/06	1,959.50	08/25/06	1,959.50
09/01/06	1,993.90	09/29/06	2,018.36
10/01/06	2,012.79	10/30/06	2,006.08
11/01/06	2,079.89	11/30/06	2,079.89
12/01/06	2,069.75	12/18/06	2,069.75
01/01/07	2,201.20	01/30/07	2,201.20
02/01/07	2,228.95	03/15/07	4,242.18
03/01/07	2,013.23	06/28/07	2,241.50
04/01/07	2,241.50	07/30/07	2,180.58
05/01/07	2,180.58		<u>\$ 26,754.33</u>
06/01/07	2,253.26		
07/01/07	2,180.57		
08/01/07	2,253.27		
09/01/07	<u>2,253.26</u>		
	<u>\$ 35,676.94</u>		

15.

That true and correct copies of the Defendant's monthly statements from May 1, 2006 to September 1, 2007 are collectively attached hereto as Exhibit "B" and incorporated herein by reference.

16.

That the Note and the Mortgage are still in default for, among other possible events of default, failure to pay the sums due under the Note and the Mortgage.

17.

That on August 21, 2007, SunTrust advised the Defendant that the final construction draw could not be disbursed and the construction loan made permanent until Defendant's payments were current.

18.

That the Defendant did not bring the loan current; therefore, SunTrust did not disburse the final construction draw and began foreclosure proceedings.

19.

That as of September 2, 2009, Defendant is indebted to SunTrust for the total amount of \$455,115.83, consisting of principal in the amount of \$393,042.10 and interest in the amount of \$62,073.73.

20.

That interest continues to accrue on the Note at \$72.68 per day and other charges continue to accrue.

21.

That this Affidavit is made in support of Plaintiff SunTrust's Motion for Summary Judgment.

FURTHER AFFIANT SAITH NOT.

AFFIANT:

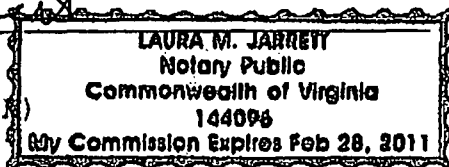
  
\_\_\_\_\_  
SUSAN WALKER

Sworn to and subscribed before me  
this 14<sup>th</sup> day of October, 2009.



NOTARY PUBLIC

(NOTARY SEAL)



My Commission Expires: \_\_\_\_\_  
0720934SC\A6023273

Return To:  
THE LAW OFFICES OF LISA F JARVIS  
7825 BALLANTYNE COMMONS PKWY  
CHARLOTTE, NC 28277

FILED FOR RECORD 04/28/2006  
AT 10:20:01AM BOOK 07985 PAGE 00302  
David Hamilton - Clerk of Court  
York County Courthouse  
Instrument Number: 000290143

Prepared By:  
JOSEPH BRIDGES  
SUNTRUST MORTGAGE, INC.  
770 Pelham Rd. Suite 101  
Greenville, SC 29615  
AP# OSTEN0036371904  
LN# 0036371904

[Space Above This Line For Recording Data]

14293

## MORTGAGE

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated **March 29, 2006** together with all Riders to this document.
- (B) "Borrower" is Mark Osterdorff, an Individual

Borrower is the mortgagor under this Security Instrument.  
(C) "Lender" is SUNTRUST MORTGAGE, INC.

Lender is a Virginia Corporation organized and existing under the laws of the State of Virginia

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3041 1/01

UNID -8(SC) (0409)

Page 1 of 15

MM 04/00.01

Initials: *MD*

VMP Mortgage Solutions, Inc. (800)521-7251



BK 0098 PG 0302

AP# OSTEN0036371904  
LN# 0036371904

Lender's address is 901 Semmes Avenue, Richmond, VA 23224

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated March 29, 2006  
The Note states that Borrower owes Lender Four Hundred Thousand and no/100

(U.S. \$ 400,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than April 1, 2036 Dollars

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input checked="" type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify]

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

AP# OSTEN0036371904  
LN# 0036371904

(F) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

**TRANSFER OF RIGHTS IN THE PROPERTY**

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, the following described property located in the

County of York :  
(Type of Recording Jurisdiction) (Name of Recording Jurisdiction)

Parcel ID Number: which currently has the address of  
1207 Cabin Creek Ct [Street]  
Ft Mill (City) , South Carolina 29715 [Zip Code]  
("Property Address"):

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

**THIS SECURITY INSTRUMENT** combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

**I. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this

initials: MD

Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts

due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions; and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstates as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

**23. Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**24. Homestead Waiver.** Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

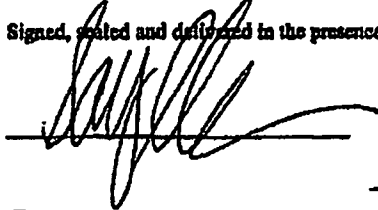
**25. Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory 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. **TO THE EXTENT PERMITTED BY LAW, 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.** This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

**26. Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

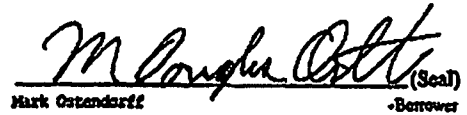
AP# OSTEN0036371904  
IN# 0036371904

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

  
\_\_\_\_\_

Tolbkw Simpson

 (Seal)  
Mark Ostendorf -Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
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-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

AP# OSTEN0036371904  
LN# 0036371904

STATE OF SOUTH CAROLINA,

Yock County ss:

1. Debbie Simpson  
Mark Ostendorf

do hereby certify that

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 29 day of March, 2006



Debbie Simpson  
Notary Public for South Carolina

My Commission Expires:



**LEGAL DESCRIPTION**

All that certain piece, parcel or lot of land, with the improvements thereon, if any, situate, lying and being in the County of York, State of South Carolina, being shown and delineated as Lot 86 on a plat of Oxford Subdivision, Phase V, drawn by Precision Surveying, Inc., dated April 23, 2001 and recorded in the Office of the R. M. C. for York County in Plat Book B-339, Page 6; reference being made to the same for a more complete and accurate description; all measurements being a little more or less. ✓

TMS #: 776-00-00-107

BEING the same property conveyed to Mark Douglas Ostendorff by Deed from Penton Group, Inc., dated September 27, 2001, recorded October 02, 2001, in Book 3890, Page 190, York County, South Carolina Records.

BK07985P0317

AP# OSTEN0036371904  
LN# 0036371904

## ADJUSTABLE RATE RIDER

THIS ADJUSTABLE RATE RIDER is made this 29th day of March, 2006 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to

SUNTRUST MORTGAGE, INC. ,

a Virginia Corporation

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

1207 Cabin Creek Ct , Ft Mill, SC 29715  
[Property Address]

**THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. INCREASES IN THE INTEREST RATE WILL RESULT IN HIGHER PAYMENTS. DECREASES IN THE INTEREST RATE WILL RESULT IN LOWER PAYMENTS.**

**ADDITIONAL COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for an Initial Interest rate of 6.7500 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Change Dates**

The interest rate I will pay may change on the 1st day of April, 2011 and on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

MULTISTATE ADJUSTABLE RATE RIDER - Single Family

888R (0402)

Page 1 of 5

Initials: *MD*

VMP Mortgage Solutions, Inc.

(800)521-7291



8K0798586031B

114

**(B) The Index**

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is:  
THE AVERAGE OF INTERBANK OFFERED RATES FOR ONE YEAR U. S. DOLLAR DENOMINATED DEPOSITS IN THE LONDON MARKET (LIBOR) AS PUBLISHED IN THE WALL STREET JOURNAL.

The most recent Index figure available as of the date:  45 days  \_\_\_\_\_ before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new Index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(C) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One / Quarter percentage points ( 2.2500 %) to the Current Index. The Note Holder will then round the result of this addition to the  Nearest  Next Highest  Next Lowest One/Eighth percentage point ( 0.125 %). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal I am expected to owe at the Change Date in full on the maturity date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

**Interest-Only Period**

The "Interest-only Period" is the period from the date of this Note through . For the interest-only period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to pay the interest which accrues on the unpaid principal of my loan. The result of this calculation will be the new amount of my monthly payment.

The "Amortization Period" is the period after the interest-only period. For the amortization period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

**(D) Limits on Interest Rate Changes**  
**(Please check appropriate boxes; if no box is checked, there will be no maximum limit on changes.)**

- (1) There will be no maximum limit on interest rate changes.
- (2) The interest rate I am required to pay at the first Change Date will not be greater than \_\_\_\_\_ % or less than \_\_\_\_\_ %.
- (3) My interest rate will never be increased or decreased on any single Change Date by more than \_\_\_\_\_ percentage points ( \_\_\_\_\_ %) from the rate of interest I have been paying for the preceding period.
- (4) My interest rate will never be greater than 12.7500 %, which is called the "Maximum Rate."
- (5) My interest rate will never be less than 2.2500 %, which is called the "Minimum Rate."
- (6) My interest rate will never be less than the initial interest rate.
- (7) The interest rate I am required to pay at the first Change Date will not be greater than 8.7500 % or less than 4.7500 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than Two percentage points ( 2.0000 %) from the rate of interest I have been paying for the preceding period.

**(E) Effective Date of Changes**

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

**(F) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**  
Uniform Covenant 18 of the Security Instrument is amended to read as follows:

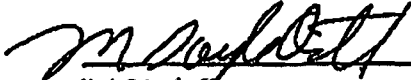
**Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if a Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

 \_\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
Mark Ostendorf -Borrower -Borrower

\_\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
-Borrower -Borrower

\_\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
-Borrower -Borrower

\_\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
-Borrower -Borrower

AP# CSTEN0036371904  
LN# 0036371904

## PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 29th day of March, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to SUNTRUST MORTGAGE, INC., a Virginia Corporation (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

1207 Cabin Creek Ct, Ft Mill, SC 29715  
(Property Address)

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

(the "Declaration"). The Property is a part of a planned unit development known as OXFORD PLACE

(Name of Planned Unit Development)

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

**PUD COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

MULTISTATE PUD RIDER - Single Family - FannieMae/FreddieMac UNIFORM INSTRUMENT Form 3150 1/01

7R (0411)

Page 1 of 3  
VMP Mortgage Solutions, Inc. (800)921-7291

Initials: MQ



**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

**F. Remedies.** If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.



SUNTRUST BANK  
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202  
RICHMOND, VA 23260-6202

6666

2332231313222333121323501321013

MARK OSTENDORFF  
1207 CABIN CREEK CT  
FORT HILL SC 29715-5812

1

04-14-2006 8002586 83-80500

80013 BT

0030671762 0610057405

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 03-29-2006 04-30-2006	327,800.00	6.75	2,000.48	INTEREST
36371904			2,000.48	TOTAL

MARK OSTENDORFF  
1207 CABIN CREEK CT  
FORT HILL SC 29715-5812

05-01-2006 8002586 83-80500

PRINCIPAL DUE	00
INTEREST DUE	200048
FEES DUE	00

TOTAL AMOUNT DUE 200048

TO AVOID ADDITIONAL CHARGES,  
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK  
COMMERCIAL CREDIT SERVICES  
PO BOX 26202  
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0610057405 00000000200048 3

SUNTRUST BANK  
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202  
RICHMOND, VA 23260-6202

6666

2332231313222333121323301321013

MARK OSTENDORFF  
1207 CABIN CREEK CT  
FORT HILL SC 29715-5812

1

05-17-2006 8002586 83-88500

80013 81

0030671762 0610074365

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 05-01-2006 05-31-2006	327,800.00	6.75	1,879.24	INTEREST
36371904			1,879.24	TOTAL

MARK OSTENDORFF  
1207 CABIN CREEK CT  
FORT HILL SC 29715-5812

06-01-2006 8002586 83-88500

PRINCIPAL DUE	00
INTEREST DUE	187924
FEES DUE	00

TOTAL AMOUNT DUE 187924

TO AVOID ADDITIONAL CHARGES,  
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK  
COMMERCIAL CREDIT SERVICES  
PO BOX 26202  
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0610074365 00000000187924 7





SUNTRUST BANK  
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202  
RICHMOND, VA 23260-6202

6666

2332231313222333121323301321013

MARK OSTENDORFF  
1207 CABIN CREEK CT  
FORT HILL SC 29715-5812

1

08-17-2006 8002586 83-80500

80013 81

0030671762 0610125137

THANK YOU FOR YOUR BUSINESS. FOR QUESTYDMS, PLEASE CALL 1-866-476-1460.

26 ADJUST			12.20 INTEREST
PAST DUE			1,959.50 INTEREST
08-01-2006 08-31-2006	347,800.00	6.75	1,993.90 INTEREST
36371904			3,965.60 TOTAL

MARK OSTENDORFF  
1207 CABIN CREEK CT  
FORT HILL SC 29715-5812

09-01-2006 8002586 83-80500

PRINCIPAL DUE	00
INTEREST DUE	396560
FEES DUE	00

TOTAL AMOUNT DUE 396560

TO AVOID ADDITIONAL CHARGES,  
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK  
COMMERCIAL CREDIT SERVICES  
PO BOX 26202  
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0610125137 00000000396560 8

SUNTRUST BANK  
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202  
RICHMOND, VA 23260-6202

6666

MARK OSTENDORFF  
P O BOX 772  
FORT HILL SC 29716

1

09-15-2006 8002586 83-80500

80013 81

0030671762 0610142120

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 ADJUST				9.55 INTEREST
PAST DUE				2,006.10 INTEREST
09-01-2006 09-30-2006	362,800.00	6.75		2,012.79 INTEREST
36371904				4,024.44 TOTAL

MARK OSTENDORFF  
P O BOX 772  
FORT HILL SC 29716

10-01-2006 8002586 83-80500  
PRINCIPAL DUE 00  
INTEREST DUE 402444  
FEES DUE 00

TOTAL AMOUNT DUE 402444

TO AVOID ADDITIONAL CHARGES,  
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK  
COMMERCIAL CREDIT SERVICES  
PO BOX 26202  
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0610142120 00000000402444 2









SUNTRUST BANK  
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202  
RICHMOND, VA 23260-6202

6666

MARK OSTENDORFF  
P O BOX 772  
FORT HILL SC 29716

1

02-14-2007 8002586 83-80500

80013 81

0030671762 0710024159

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 PAST DUE			2,228.95 INTEREST
02-01-2007 82-28-2007	388,800.00	6.75	2,013.23 INTEREST
36371904			4,242.18 TOTAL

MARK OSTENDORFF  
P O BOX 772  
FORT HILL SC 29716

03-01-2007 8002586 83-80500

PRINCIPAL DUE	00
INTEREST DUE	424218
FEES DUE	00

TOTAL AMOUNT DUE 424218

TO AVOID ADDITIONAL CHARGES,  
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK  
COMMERCIAL CREDIT SERVICES  
PO BOX 26202  
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0710024159 00000000424218 3



SUNTRUST BANK  
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202  
RICHMOND, VA 23260-6202

6666

MARK OSTENDORFF  
P O BOX 772  
FORT HILL SC 29716

1

04-16-2007 8002586 83-80500

80013 BI

0030671762 0710057754

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 PAST DUE			2,241.50 INTEREST
04-01-2007 04-30-2007	393,042.18	6.75	2,180.58 INTEREST
36371904			4,622.08 TOTAL

MARK OSTENDORFF  
P O BOX 772  
FORT HILL SC 29716

05-01-2007 8002586 83-80500

PRINCIPAL DUE	00
INTEREST DUE	442208
FEES DUE	00

TOTAL AMOUNT DUE 442208

TO AVOID ADDITIONAL CHARGES,  
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK  
COMMERCIAL CREDIT SERVICES  
PO BOX 26202  
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0710057754 00000000442208 0







SUNTRUST MORTGAGE  
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202  
RICHMOND, VA 23260-6202

6666

MARK OSTENDORFF  
P O BOX 772  
FORT WILL SC 29716

1

08-17-2007 0002609 68-80500

80013 81

0680085932 0710308707

THANK YOU FOR YOUR BUSINESS. ANY QUESTIONS PLEASE CALL 1-866-476-1460.

26 PAST DUE			393,042.10 PRIN
09-01-2007	393,042.10		.00 PRIN
PAST DUE			6,687.10 INTEREST
08-01-2007 08-31-2007	393,042.10 6.75		2,283.26 INTEREST
36371904			401,982.46 TOTAL

MARK OSTENDORFF  
P O BOX 772  
FORT WILL SC 29716

09-01-2007 0002609 68-80500

PRINCIPAL DUE	39304210
INTEREST DUE	894036
FEES DUE	00
LATE CHARGES DUE	00

TOTAL AMOUNT DUE 40198246

TO AVOID ADDITIONAL CHARGES,  
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST MORTGAGE  
COMMERCIAL CREDIT SERVICES  
PO BOX 26202  
RICHMOND, VA 23260-6202

13 68 4500 0680085932 00026 0710308707 00000040198246 7

LNAX REQ: 0104 MSG CURRENT OBLIGATION 10/09/09 PAGE 1 OF 0014  
BANK: 68 AP: 1 OBGOR: 0680085932 OBGAT: 0000000026 OSTENDORFF MARK  
DATE: CHG CODE: INVOICE/ITEM: PAGE:  
PROC TYPE: 5155 CURRENT BASIC OBLGN TAKEDOWN

----- BALANCE INFORMATION -----  
EFFECTIVE DT : 03-29-06 MATURITY DT : 07-01-07 EST MATUR DT:  
POSTED DT : 04-05-06 LAST ACT DT : 07-27-07 LAST CHG DT : 04-08-09  
ORIG BAL : 327,800.00 CURRENT AMT : 393,042.10  
GUAR AMOUNT : CHRG OFF AMT :  
COLLAT VALUE : PAID TO PRIN :  
USER BALANCE : BOOK VALUE : 393,042.10  
SCHED BAL : PART AMOUNT :  
PROCEEDS : NET BOOK VALUE: 393,042.10  
AVAILABILITY :

----- BALANCE ACTIVITY -----  
NET PRIN TDY : NET PARTS TDY :  
NET COLL ACTY:  
INTERNAL COMM: 0 NORMAL  
TKDWN OBGR : 0680085932 TKDWN OBLN : 0000000018

----- POOL INFORMATION -----  
POOL NUMBER : SEC STATUS :



CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing **AFFIDAVIT OF SUSAN WALKER** was served upon the following by mailing same by United States First Class Mail in a properly addressed envelope with adequate postage affixed thereon to insure delivery, addressed as follows:

Mark Ostendorff  
P.O. Box 772  
Fort Mill, SC 29716

Mark Ostendorff  
P.O. Box 14846  
Greenville, SC 29610

FILED - RECEIVED  
2009 NOV -4 AM 11:28  
DAVID HAMILTON  
C.C. C.P. & G.S.  
YORK COUNTY, SC

This 30th day of October, 2009.

TATUM LAW FIRM, PLLC

By: 

BRIAN S. TATUM  
South Carolina Bar No. 31974  
Attorney for Plaintiff

2101 Rexford Road, Suite 165W  
Charlotte, North Carolina 28211  
Phone: (704) 307-4350  
Efax: (704) 754-4140  
Email: BStatum@tatumlegal.com

STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 07-CP-46-4305

AFFIDAVIT OF BRIAN S. TATUM

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

FILED-RECEIVED  
2009 NOV -4 AM 11:30  
DAVID HAMILTON  
C.E.C.P. & GS  
YORK COUNTY, SC

Personally appeared before the undersigned officer, duly authorized to administer oaths, Brian S. Tatum, who after first being duly sworn, states under oath as follows:

1.

That I am counsel for SunTrust Mortgage, Inc. ("SunTrust"), Plaintiff in the above-styled civil action, that this Affidavit is based on my own knowledge, that I am competent to testify regarding those things about which I have knowledge, and that I am over 18 years of age.

2.

That I am "Of Counsel" with the law firm of Johnson & Freedman, LLC ("Johnson & Freedman") f/k/a Morris, Schneider & Prior, LLC ("MSP") and as such I am familiar with certain

business records of Johnson & Freedman, which include the records of the foreclosure proceedings instituted by Johnson & Freedman (the "Foreclosure Records") regarding Defendant Mark Ostendorff and the property commonly known as 1207 Cabin Creek Court, Fort Mill, South Carolina (the "Property").

1.

That it is the regular practice of Johnson & Freedman to make the Foreclosure Records regarding the Defendant and the Property and those records were made as part of and kept in the course of a regularly conducted business activity of Johnson & Freedman.

4.

That the Foreclosure Records reflect that on October 8, 2007, a letter (the "Acceleration Letter") was sent to the Defendant via certified mail, notifying him that he was in default and that without further demand, SunTrust was entitled to accelerate the debt and bring a lawsuit for foreclosure.

5.

That the Foreclosure Records reflect that the Complaint for Foreclosure was filed on November 30, 2007 (the "Foreclosure Complaint").

6.

That the Foreclosure Records reflect that the Defendant was personally served with the Foreclosure Complaint on December 4,

2007 and that the Affidavit of Service was filed on December 7, 2007.


7.

That this Affidavit is made in support of Plaintiff's Motion for Summary Judgment.

FURTHER AFFIANT SAITH NOT.

  
BRIAN S. TATUM

Sworn to and subscribed before me  
this 30<sup>th</sup> day of October, 2009.

  
NOTARY PUBLIC

(NOTARY SEAL)

My Commission Expires:

9/07/2014

0720934SCVA6023462

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing **AFFIDAVIT OF BRIAN S. TATUM** was served upon the following by mailing same by United States First Class Mail in a properly addressed envelope with adequate postage affixed thereon to insure delivery, addressed as follows:

Mark Ostendorff  
P.O. Box 772  
Fort Mill, SC 29716

Mark Ostendorff  
P.O. Box 14846  
Greenville, SC 29610

FILED - RECEIVED  
2009 NOV -4 AM 11:30  
DAVID HAMILTON  
C.C.P. & GS  
YORK COUNTY, SC

This 30th day of October, 2009.

TATUM LAW FIRM, PLLC

By: 

BRIAN S. TATUM  
South Carolina Bar No. 31974  
Attorney for Plaintiff

2101 Rexford Road, Suite 165W  
Charlotte, South Carolina 28211  
Phone: (704) 307-4350  
Efax: (704) 754-4140  
Email: BSTatum@tatumlegal.com

**THE STATE OF SOUTH CAROLINA**

**In The Court of Appeals**

---

**APPEAL FROM YORK COUNTY**

**Court of Common Pleas**

**S. Jackson Kimball, Special Circuit Judge**

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**Case No. 2007-CP-46-0430.5**

---

**SunTrust Mortgage' Inc,.....Respondent,**

**Mark Ostendorff,.....Appellant.**

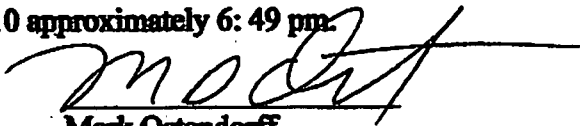
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**NOTICE OF IMMEDIATE APPEAL**

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**Mark Ostendorff appeals the Order of Summary Judgment of the Honorable S. Jackson Kimball dated December 18 , 2009.Appellant received written ( e-mail) notice of this Order of Summary Judgment on January 7, 2010 approximately 6: 49 pm.**

**January 7, 2010**



**Mark Ostendorff  
PO-Box 14846  
Greenville,SC 29610  
(864) 360-1834  
ProSe , Appellant**

**Other Counsel of Record:**

**Brian Steed Tatum  
Tatum Law Firm.  
2101 Rexford Road, Suite 16 W  
Charlotte,NC 28211  
(704) 307-4350**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

Case No.: 2007-CP- 46-0430 5

SunTrust Mortgage, Inc.,.....Respondent,

v.

Mark Ostendorff,.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on SunTrust Mortgage by depositing a copy of it in the United States Mail , postage prepaid, on January 11, 2010, addressed to his attorney of record, Brian Steed Tatum, Tatum Law Firm, 2101 Rexford Road, Suite 165W., Charlotte,NC,28211.

Certificate of Mailing using Common Pleas format was mailed on January 8,2010.

Fax notification was made on January 7, 2010.

January 11, 2010



Mark Ostendorff  
PO Box 14846  
Greenville,SC 29610  
(864) 360-1834  
Appellant, Pro Se  
markostendorff@yahoo.com

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

SunTrust Mortgage, Inc., Respondent,

v.

Mark Ostendorff, Appellant.

Appellate Case No. 2010-150386

---

Appeal From York County  
S. Jackson Kimball, Special Circuit Judge

---

Unpublished Opinion No. 2012-UP-608  
Heard October 30, 2012 – Filed November 14, 2012

---

**AFFIRMED**

---

Mark Ostendorff, Appellant pro se.

Brian Steed Tatum, of Tatum Law Firm, PLLC, of  
Charlotte, North Carolina, for Respondent SunTrust  
Mortgage Inc.

---

**PER CURIAM:** In this mortgage foreclosure case, Appellant Mark Ostendorff seeks review of the circuit court's order granting summary judgment to Respondent SunTrust Mortgage, Inc. on Ostendorff's counterclaim for breach of contract. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the circuit court's conclusion that SunTrust was entitled to suspend construction draws as a matter of law: Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003) ("The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous."); *Charles v. Canal Ins. Co.*, 238 S.C. 600, 608, 121 S.E.2d 200, 205 (1961) ("[T]he function of courts is to adjudge and enforce contracts as they are written and entered into by the parties.").
2. As to whether the issues of fact asserted by Ostendorff precluded summary judgment: Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); Rule 56(c), SCRCR (providing that summary judgment shall be granted 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" (emphasis added)); *In re Walter M.*, 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review.").
3. As to whether SunTrust's failure to provide Ostendorff with certain discovery responses precluded summary judgment: *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) ("[T]he nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence.").
4. As to Ostendorff's challenge to the jurisdiction of the special circuit judge: *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."); *State v. Colf*, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998), *aff'd as modified*, 337 S.C. 622, 525 S.E.2d 246 (2000) ("An issue is also deemed abandoned if the argument in the brief is merely conclusory.").

**AFFIRMED.**

**HUFF, THOMAS, and GEATHERS, JJ., concur.**

Tatum

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

Appellate Case No. 2010-150386

SunTrust Mortgage, Inc.,.....Respondent,

v.

Mark Ostendorff,.....Appellant.

PETITION FOR A WRIT OF CERTIORARI

Mark Ostendorff  
137 King Street  
Central, SC 29630  
(864) 640-3340  
Appellant, Pro Se

Brian S. Tatum  
Tatum Law Firm  
P.O. Box 11250  
Charlotte, NC 28220  
(704) 307-4350  
Attorney for Respondent

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**CERTIFICATE OF COUNSEL**

**Pro Se certifies that the Petition for Rehearing was made and finally ruled on by the Court  
of Appeals on December 18, 2012**

|

## QUESTIONS PRESENTED

1. Did the Court of Appeals err in not reversing the trial court's summary judgment as the due date issue was never in SunTrust's pleadings?
2. Did the Court of Appeals err in not reversing the trial court's summary judgment as Susan Walker's affidavit was not credible?
3. Did the Court of Appeals err in not reversing or remanding the case back to the trial court due to a lack of specific due date from either the court or contract documents?
4. Did the Court of Appeals err in not remanding the case back to the trial court to hear parole evidence ,as asserted by Ostendorff's affidavit?
5. Did the Court of Appeals err in not reversing the trial court's summary judgment as SunTrust never provided discovery as requested repeatedly by Ostendorff?
6. Did the Court of Appeals err in not reversing the trial court's summary judgment as there was not an absence of genuine issue of material fact?
7. Did the Court of Appeals err in not reversing the trial court's summary judgment as the contract was ambiguous and thus one of fact and not law?
8. Did the Court of Appeals err in not reversing the trial court's summary judgment as to the intent of both parties by reviewing the contract documents?
9. What was Ostendorff's due date according to the contract document?

## STATEMENT OF THE CASE

On November 30, 2007 SunTrust brought foreclosure action against Mark Ostendorff for failing to pay monthly interest payments. Ostendorff counterclaimed with a compulsory counterclaim. Ostendorff counterclaimed for damages because SunTrust stopped construction draws without explanation or warning and thus Ostendorff was not able to complete the rehab work on his house. Ostendorff paid the monthly interest payments for seven months after SunTrust stopped construction draws. Ostendorff had numerous offers for a cash-out refinancing but each offer required the house to be completed in order to refinance and receive cash of at least \$250,000 dollars at closing.

On December 18, 2009, a summary judgment was granted to SunTrust . The Court based its decision on that Ostendorff made his monthly interest payments after the due date( along with some imagined items). Nothing in the contract documents ever stated a specific due date. Ostendorff had an agreement with SunTrust that he would make the monthly interest payments by the end of each month to which he did. An affidavit by Susan Walker(SunTrust) never addressed why the construction draws stopped , only why the final draw and the conversion to a permanent loan was not made and that reason was because Ostendorff stopped making his monthly payments altogether, which was seven months after the last construction draw from SunTrust. . Susan Walker's affidavit never addressed any issue of interest payments paid by Ostendorff were past a due date. Nothing in the pleadings addressed any issue of the due date. The only time the due date was ever brought up was by SunTrust's attorney during the summary judgment hearing which was a " trial by ambush" .

## ARGUMENT

### 1 THE COURT OF APPEALS SHOULD HAVE REVERSED THE TRIAL COURT'S SUMMARY JUDGMENT AS THE DUE DATE ISSUE WAS NEVER IN SUNTRUST'S PLEADINGS.

The due date issue was never brought up in pleadings or any discussions with SunTrust's attorneys( R.P. pgs 7-12 and pgs 54-103). Nor was it brought up in Susan Walker's (SunTrust) affidavit. The only issue was that Ostendorff 's construction draws were stopped because Ostendorff quit paying his monthly payments. Ostendorff repeatedly explained to all of SunTrust's attorneys that Ostendorff had paid monthly payments seven months after the construction draws had stopped.

Rule 8 (a) SCRPC. This rule requires the litigant to plead the ultimate facts that will be proved at trial . " Ultimate facts" have been defined as " such facts as form the basis for the legal conclusions necessary for the pleader to prevail." (H.Lightsy,Jr.& J. Flannagan, South Carolina Civil Procedure 106( 2<sup>nd</sup> ed. 1985).

Had Ostendorff been afforded the opportunity to be prepared for this issue , then Ostendorff could have time to recollect more from the frequent discussions with Mike Watts (SunTrust) 3 ½ years before the hearing.

A trial court cannot grant judgment or relief on an issue not raised by the pleadings( Henry v. Chambroom, 304 S.C. 351, 404,S.E. 2d 518 (Ct. Appl. 1991)).

### 2 THE COURT OF APPEALS SHOULD HAVE REVERSED THE TRIAL COURT'S SUMMARY JUDGMENT AS SUSAN WALKER'S AFFIDAVIT IS NOT CREDIBLE.

Susan Walker's affidavit is evasive and does not address the issue of why SunTrust stopped Ostendorff's construction draws. It only states that " the final draw could not be disbursed..." , (R.P. pg 58, Items 17 and 18).

Susan Walker is not familiar with the issue of stopping of construction draws seven months before her statement of needing to be current.

Questions of credibility make summary judgment inappropriate(Hansen v. DHL Laboratories Inc. 316 S.C. 505 , 450 S.E. 2d 624 (Ct.App. 1994),cert. granted, decision aff'd, 319 S.C. 79, 459 S.E. 2d 850 (1995).

**3. THE COURT OF APPEALS SHOULD HAVE REVERSED OR REMANDED THE CAES BACK TO THE TRIAL COURT TO DETERMINE A DUE DATE THROUGH EXAMINATION OF CONTRACT DOCUMENTS.**

The trial court did not state what it found to be the due date for Ostendorff's interest payments ( R.P. pgs 4,5).

No where on the contract documents is a due date for interest payments.

West's Dictionary defines date as" the day when an event happened or will happen".

There is no defined date on either the trial court's order or contract documents.

**4. THE COURT OF APPEALS SHOULD HAVE REMANDED THE CASE BACK TO THE TRIAL COURT TO HEAR PAROLE EVIDENCE AS ASSERTED ON OSTENDORFF'S AFFIDAVIT .**

Ostendorff provided an affidavit (Appendix, attached to Motion for Rehearing) asserting that the due date was dicussed with SunTrust shortly after loan closing.

Motions to Reconsider are not permitted to the trial court on foreclosure hearings.

Parol evidence may be admitted to ascertain the true meaning of a contract and to show the intent of the parties (Lindsay v Lindsay, 328 S.C. 329 , 41 S.E. 2d 583 (ct. appl (1997))

Oral modifications -- a written contract may be modified by oral argument( King v. PYA/Monarch Inc., 317 S.C. , 385, 453 S.E. 2d 885 (1995))

Although the terms of a completely integrated agreement cannot be varied or contradicted by parol evidence of prior or contemporaneous agreements not included in the writing, this rule does not apply to subsequent modifications ( Adamson v., Marianne Fabrics, Inc., 301 S.C. 204, 391 S.E. 2d 249 (1990)

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**5. THE COURT OF APPEALS SHOULD HAVE REVERSED THE TRIAL COURT'S SUMMARY JUDGMENT BECAUSE SUNTRUST REFUSED TO PROVIDE DISCOVERY.**

SunTrust never provided addresses of Mike Watts (SunTrust) to whom Ostendorff made agreement with that the interest payments would be paid by the end of the month.

Mike Watts would have verified this agreement with Ostendorff as he conferred with SunTrust's Joseph Bridges, originator of the Mortgage document.

Ostendorff filed Motion to Compel to get addresses , among other discovery , (R.A. pg 156)

Summary Judgment must not be granted until the opposing party has had full and fair opportunity to complete discovery(Baird v. Charleston County,333 S.C. 519 511, s.e. 2d 69 (1999))

Granting Summary Judgment in favor of movant that has done nothing but "stonewall" on discovery is not a fair opportunity to complete discovery , especially in light of a filed Motion to Compel.

The trial court should have ordered a continuance to permit Ostendorff to submit affidavits under Rule 56 (f)SCRPC

**6. THE COURT OF APPEALS SHOULD HAVE REVERSED THE TRIAL COURT'S SUMMARY JUDGMENT BECAUSE SUNTRUST DID NOT SHOW AN ABSENSE OF GENUINE ISSUE OF MATERIAL FACT.**

Ostendorff opposed the SunTrust's Motion for Summary Judgment (R.A. pg 104)

The U.S. Supreme Court has stated a dispute is genuine "if the evidence is such that a reasonable Jury could return a verdict for the nonmoving party" ( Anderson v. Liberty Lobby, Inc., 477 U.S. 242 , 106 S. Ct. 2505 , 2511, 91 L. Ed. 2d. 202 –Supreme Court, (1986) The Court cautioned that Summary judgment not become a trial by affidavit and that " [c]redibility determinations, the weighing of evidence , and the drawing of legitimate inferences from facts are jury functions not those of a judge... The evidence of the non-movant is to be believed , and all justifiable inferences are to be drawn in his favor."

No reasonable jury would accept SunTrust's attorney's 3 ½ years later after-the-fact position of due dates.

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No reasonable jury would expect that any person of sound mind would agree to a contract where the other party could arbitrarily claim an after-the-fact due date, placing themselves in default and thus lose the fruits of their labor and incur other damages.

No reasonable jury would give Susan Walker's affidavit (R.A. pg 54) any credibility as she does not address the due date issue, nor why construction draws were stopped in December 2006, nor why SunTrust did not notify Ostendorff if they thought he was in default prior to September of 2007, when Ostendorff ceased payments. Paragraph 22 (R.A. pg 92) of contract states that SunTrust would notify Ostendorff within 30 days of any default. No notification of default was ever made by SunTrust while Ostendorff was making interest payments, only when Ostendorff stopped making payments did SunTrust notify Ostendorff of default. SunTrust's notification was seven months after SunTrust stopped construction draws.

Ostendorff demanded a jury trial, the summary judgment was heard by a lone judge and circumvented Ostendorff's jury trial.

All other issues to justify the order were fabrications of the court (Brief pgs 18 and 19)

**7. THE COURT OF APPEALS SHOULD HAVE REVERSED THE TRIAL COURT'S SUMMARY JUDGMENT AS THE CONTRACT WAS AMBIGUOUS AND THUS ONE OF FACT AND NOT LAW.**

The due date not being on the contract would make it ambiguous ( Brief pg 5)

A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear ( Lacke v. Lacke, 608 S.E. 2d 147, 362, S.C.)

West's South Carolina Digest 2d, Contracts-143(2). Existence of ambiguity.

D.S.C. 2002. Under South Carolina law, an "ambiguous contract" is one capable of being understood in more ways than one, or obscure in meaning through indefiniteness or expression. ( Richland—Lexington Airport Dist. V. American Airlines, Inc. 306 F. Supp.2d 548, affirmed 61 Fed. Appx. 67)

Where a contract is capable of more than one construction, the question of what the parties intended becomes one of fact to be submitted to the jury( Soil Remediation Co., v. NuWay Environmental, Inc., 325 S.C. 231, 482 S.E. 2d 554 (1997))

If the contract is unambiguous, then the court is not add a due date and thus rewrite the contract. The courts are not to supply omitted terms to an agreement ( Cash v. Maddox, 265 S.C. 480, 220 S.E. 2d 121 (1975))

**8. THE COURT OF APPEALS SHOULD HAVE REVERSED THE TRIAL COURT'S SUMMARY JUDGMENT AS TO THE INTENT OF BOTH PARTIES BY REVIEWING THE DOCUMENTS.**

Para 22 of the contract document( R.A. pg 92) states that SunTrust would notify Ostendorff within 30 days of any breach. SunTrust never notified Ostendorff of any breach because he paid his interest payments past a due date. SunTrust notified Ostendorff of default when Ostendorff stopped payments altogether, which was seven months after SunTrust stopped Ostendorff's construction draws. SunTrust never claimed stopping construction draws was because payments were past a due date.

Intent (Brief pg 6)- SunTrust would have notified Ostendorff within 30 days if he was in breach for paying interest payments after a due date.

The interpretation of a contract is governed by the objective manifestation of the parties at the time the contract was made ; it does depend on a subjective , after-the- fact meaning one party assigns to it ( Brannon v. Knauss, 282 S.C. 589 , 320 S.E. 2d 470 (Ct. Appl 1984)).

Where a contract is capable of more than one construction , the question of what the parties intended becomes one of fact to be submitted to the jury ( Soil Remediation Co. v. NuWay Environmental, Inc., 325 S.C. 231 , 482 S.E. 2d 554 (1997))

8

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

---

Appellate Case No. 2010-150386

---

SunTrust Mortgage.....Respondent,  
v.  
Mark Ostendorff.....Appellant.

---

CERTIFICATE OF SERVICE

---

I, Mark Ostendorff, certify that I placed in the United Postal Service with proper postage, a copy of Petition for a Writ of Certiorari, addressed to the Respondent's attorney at :

Brian S. Tatum  
Tatum Law Firm  
POBox 11250  
Charlotte, NC 28220  
(704) 307-4350

January 17, 2013

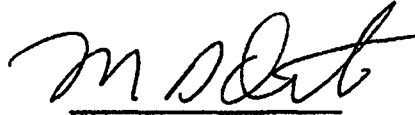


Mark Ostendorff  
137 King St  
Central, SC 29630  
(864) 640-3340  
Appellant, Pro Se

**CONCLUSION**

**For the reasons stated, petitioner asks the Court to the petition for a writ of certiorari.**

**Respectfully submitted,**

A handwritten signature in black ink, appearing to read 'M Ostendorff', written over a horizontal line.

**January 16, 2013**

**Mark Ostendorff  
123 King Street  
Central, SC 29630  
(864) 640-3340  
Pro Se**

**UNITED STATES BANKRUPTCY COURT**  
District of South Carolina

**Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines**

A chapter 7 bankruptcy case concerning the debtor listed below was filed on 11/1/13.

You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the Bankruptcy Clerk's Office at the address listed below.  
**NOTE:** The staff of the Bankruptcy Clerk's Office cannot give legal advice.

**Creditors – Do not file this notice in connection with any proof of claim you submit to the court.  
See Reverse Side For Important Explanations.**

**Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):**

Mark D Ostendorff  
135 Cedar Creek court  
Central, SC 29630

**Case Number:**  
13-06566-hb

**Social Security / Individual Taxpayer ID / Employer Tax ID / Other Nos:**  
250-02-3962

**Attorney for Debtor(s) (name and address):**

Mark D Ostendorff  
135 Cedar Creek court  
Central, SC 29630  
Telephone Number: 864-640-3340

**Bankruptcy Trustee (name and address):**

Robert F. Anderson  
P.O. Box 76  
Columbia, SC 29202-0076  
Telephone Number: (803) 252-8600

**Meeting of Creditors:**

**Date:** November 27, 2013

**Time:** 01:30 PM

**Location:**

U.S. Trustee's Office, Room 557, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201

**Presumption of Abuse under 11 U.S.C. § 707(b)**

*See "Presumption of Abuse" on reverse side.*

Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.

**Deadlines:**

Papers must be *received* by the Bankruptcy Clerk's Office by the following deadlines:

**Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts:**  
1/27/14

**Deadline to Object to Exemptions:**  
Thirty (30) days after the *conclusion* of the meeting of creditors.

**Creditors May Not Take Certain Actions**

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the Court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

**Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.**

**Creditor with a Foreign Address:**

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

**Mailing Address of the Bankruptcy Clerk's Office:**  
United States Bankruptcy Court  
J. Bratton Davis United States Bankruptcy Courthouse  
1100 Laurel Street  
Columbia, SC 29201-2423  
Telephone Number: 1-803-765-5436  
www.scb.uscourts.gov

FILED BY THE COURT ON:

**11/04/13**  
Laura A. Austin, Clerk  
U.S. Bankruptcy Court

**Public Business Hours:** 9:00 AM – 5:00 PM

**Date:** 11/4/13

## EXPLANATIONS

FORM B9A (12/12)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this Court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the Bankruptcy Clerk's Office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the Court to extend or impose a stay.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time.</i> If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the Court to extend this deadline. <i>Do not include this notice with any filing you make with the court.</i>
Discharge of Debts:	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may be prohibited from collecting the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) or that a debt owed to you is not dischargeable under Bankruptcy Code § 523, you must commence an adversary proceeding against the debtor — or file a motion if you assert the discharge should be denied under § 727(a)(8) or (a)(9) — by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side of this notice. The Bankruptcy Clerk's Office must receive the complaint and any required filing fee by that deadline.
Exempt Property:	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the Bankruptcy Clerk's Office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The Bankruptcy Clerk's Office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any pleading or document that you file in this bankruptcy case should be filed at the Bankruptcy Clerk's Office at the address listed on the front side. Certain parties are required to electronically file documents pursuant to the orders of this Court. You may view the public record of this case, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the Bankruptcy Clerk's Office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
<b>-- Refer to Other Side for Important Deadlines and Notices --</b>	
Dismissal Notice	This case may be dismissed without further notice or hearing should the debtor fail to comply with SC LBR 1017-2 (providing for dismissal for a failure to: pay the applicable filing fee, file or provide documents, or attend the meeting of creditors).
Miscellaneous Notice	The Voice Case Information System (VCIS) will give status information on cases filed or converted after 11/30/88. Call 1-866-222-8029. Please refer to the Court's web site at <a href="http://www.scb.uscourts.gov">www.scb.uscourts.gov</a> for further information. Chapter 7 cases: Property of the estate may be abandoned by the trustee at the meeting of creditors unless creditors or parties in interest object to SC LBR 6007-1.

NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimbal, Special Circuit Court Judge

Case No. 2007-CP- 4604305

SunTrust Mortgage, Inc.,..... Respondent,

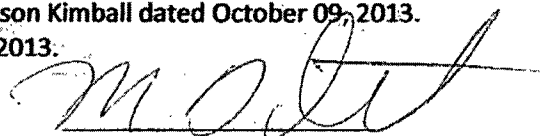
v.

Mark Ostendorff,.....Appellant.

NOTICE OF APPEAL

Mark Ostendorff appeals the judgment of the Honorable S. Jackson Kimbal dated October 09, 2013.  
Appellant received notice of entry of this judgment on October 29, 2013.

November 1, 2013



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135 Cedar Creek Circle  
Central, SC 29630  
(864) 540-3340  
Appellant, Pro Se

Other Counsel of Record:  
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(704) 307- 4350

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball , Special Circuit Court Judge

Case No. 2007- CP- 4604305

SunTrust Mortgage, Inc., ..... Respondent,

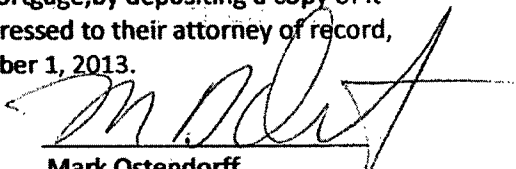
v.

Mark Ostendorff, ..... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on SunTrust Mortgage, by depositing a copy of it  
in the United States Mail, postage prepaid, on November 1, 2013, addressed to their attorney of record,  
Brian S. Tatum, Post Office Box 11250, Charlotte NC 28220 on November 1, 2013.

November 1, 2013



Mark Ostendorff  
135 Cedar Creek Circle  
Central, SC 29630  
(864) 640-3340  
Appellant, Pro Se

# The Supreme Court of South Carolina

Sun Trust Mortgage, Inc., Respondent,

v.

Mark Ostendorff, Petitioner.

Appellate Case No. 2013-000144

Lower Case No. 2007-CP-46-04305

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## ORDER

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Petitioner seeks a writ of certiorari to review the Court of Appeals' decision in *Sun Trust Mortgage, Inc. v. Ostendorff*, Op. No. 2012-UP-608 (S.C. Ct. App. filed Nov. 14, 2012). The petition is denied.

  
C.J.  
FOR THE COURT

Columbia, South Carolina

August 21, 2014

cc:

The Honorable Jenny Abbott Kitchings

The Honorable David Hamilton

Brian Steed Tatum, Esquire

Mark Ostendorff