

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Markley Dennis, Jr.

Appellate Case No. 2016-001496

RECEIVED

DEC 28 2016

SC Court of Appeals

David B. Powell and Carol Ann Powell Respondents,

v.

SunTrust Bank, Midland Funding LLC,
and Pavilion Place Property Owners' Association, Inc. Defendants,

Of whom SunTrust Bank is the.....Appellant.

RECORD ON APPEAL

Sean M. Foerster (SC Bar # 77466)
ROGERS TOWNSEND & THOMAS, PC
1221 Main Street, 14th Floor (29201)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803) 771-7900
sean.foerster@rtt-law.com

Attorneys for the Appellant SunTrust Bank

John P. Seibels, Jr. (SC Bar # 66506)
SEIBELS LAW FIRM, P.A.
38 Broad Street, Suite 200
Charleston, South Carolina 29401
(843) 722-6777
jseibels@seibelsfirm.com

Attorneys for the Respondent David B. Powell

**RECORD ON APPEAL
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

David B. Powell and Carol Ann Powell,
Plaintiffs,

v.

SunTrust Bank a/k/a SunTrust Mortgage, Inc.,
Defendant.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2012-CP-10-7842

BY _____
1
CONSENT ORDER

JULIE J. ARMSTRONG
CLERK OF COURT

2014 JAN 21 AM 9:01

FILED

(19610.12 SMF)

WHEREAS, Defendant SunTrust Bank a/k/a SunTrust Mortgage, Inc. ("SunTrust"), filed a motion on September 12, 2013, to amend its Answer to 1) add a defense of equitable set-off, 2) add a counterclaim against the Plaintiffs David B. Powell and Carol Ann Powell ("Plaintiffs") for foreclosure of the additional mortgage at issue in Plaintiffs' Complaint, 3) add Midland Funding LLC and Pavilion Place Property Owners' Association Inc. as defendants to this action pursuant to Rules 19 and 20(a), SCRPC, and 4) add a cross-claim for foreclosure against the new parties to adjudicate the interest of these entities in the subject property;

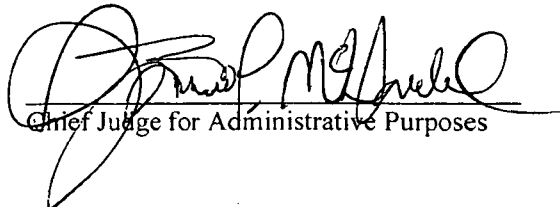
WHEREAS, Plaintiffs do not oppose the motion to amend;

NOW THEREFORE, by consent of the parties and in accordance with their agreement,

IT IS THEREFORE ORDERED THAT:

1. SunTrust's "Motion to Amend Answer to Add Defense, Counterclaim, Cross-Claim, and Additional Parties as Defendants" filed on September 12, 2013, is granted;
2. SunTrust shall file and serve the Amended Answer, Counterclaim, and Cross-Claim that was included as an exhibit to its motion to amend; and
3. Pursuant to Rule 40(b), SCRPC, the Clerk of Court is hereby notified that this case may not be called for trial until 180 days after service of SunTrust's Amended Answer, Counterclaim, and Cross-Claim, unless all parties consent in writing.

AND IT IS SO ORDERED.

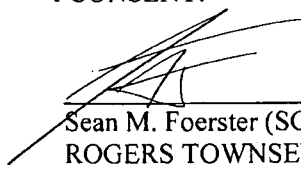

Chief Judge for Administrative Purposes

January 13, 2014

[consent signatures on the following page]

Consent Order
C/A # 2012-CP-10-7842

I CONSENT:


Sean M. Foerster (SC Bar # 77466)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
P.O. Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
sean.foerster@rtt-law.com

Attorneys for Defendant SunTrust Bank a/k/a
SunTrust Mortgage, Inc.
*Rogers Townsend & Thomas, PC and its staff are debt
collectors.*

I CONSENT:

David A. Collins by Sean Foerster with permission
David A. Collins
P.O. Box 40578
Charleston, South Carolina 29423
(843) 760-0220
davidacollins2@aol.com

Attorney for Plaintiffs David B. Powell and Carol
Ann Powell

Sean Foerster

From: davidacollins2@aol.com
Sent: Friday, January 03, 2014 9:43 AM
To: Sean Foerster
Subject: Re: Powell v. SunTrust - 2012-CP-10-7842

Sean, here is the executed consent order. You have my permission to sign the original on my behalf.

-----Original Message-----

From: Sean Foerster <Sean.Foerster@rtt-law.com>
To: davidacollins2 <davidacollins2@aol.com>
Cc: Tabitha Scott <Tabitha.Scott@rtt-law.com>
Sent: Thu, Jan 2, 2014 12:14 pm
Subject: Powell v. SunTrust - 2012-CP-10-7842

David –

Thank you for speaking with me this morning about the issues in this case. As we discussed, I've drafted and attached a proposed Consent Order granting SunTrust's motion to amend.

If you will sign it and email me a signed copy within the next day, my office will handle contacting the clerk of court to cancel the January 7 hearing on this motion. If you will mail the original consent order to me, I will have it filed. Thereafter, I will serve you with the amended pleading.

In drafting this consent order, I was reminded that Rule 40(b) will postpone trial for 180 days due to the addition of new parties. Therefore, I don't think we'll need scheduling order after all as this consent order should remove the case from the trial roster. Please let me know if you disagree. Thanks.

Sean Foerster	Direct
Associate	803.744.1855
	Fax 803.343.7017
Rogers Townsend	Main 803.771.7900
& Thomas, PC	Visit rtt-law.com
220 Executive	
Center Dr.	
Columbia, SC	
29210	

NOTICES

PRIVILEGED AND CONFIDENTIAL: This electronic message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is attorney-client privileged, may be confidential work product, or may be exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is wrongful, is strictly prohibited, and may subject you to civil liability. If you have received this communication in error, please immediately notify us by telephone at 803-771-7900 (Columbia office) or 704-442-9500 (Charlotte office) or by return e-mail, and destroy any copies (electronic, paper, or otherwise) that you may have of this communication.

Consent Order
C/A # 2012-CP-10-7842

I CONSENT:

Sean M. Foerster (SC Bar # 77466)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
P.O. Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
sean.foerster@rtt-law.com

Attorneys for Defendant SunTrust Bank a/k/a
SunTrust Mortgage, Inc.
*Rogers Townsend & Thomas, PC and its staff are debt
collectors.*

I CONSENT:



David A. Collins
P.O. Box 40578
Charleston, South Carolina
(843) 760-0220
davidacollins2@aol.com

Attorney for Plaintiffs David B. Powell and Carol
Ann Powell

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

David B. Powell and Carol Ann Powell,
Plaintiffs,

v.

SunTrust Bank a/k/a SunTrust Mortgage, Inc.;
Midland Funding LLC; and Pavilion Place Property
Owners' Association Inc.;
Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2012-CP-10-7842

CONSENT ORDER RESOLVING VARIOUS
MOTIONS

FILED
2015 JUN 23 AM 10:03
JULIE J. APHISBRONG
CLERK OF COURT

WHEREAS, Defendant SunTrust Bank a/k/a SunTrust Mortgage, Inc. ("SunTrust") filed a Motion to Compel on September 22, 2014, for an order compelling Plaintiffs David B. Powell and Carol Ann Powell ("Plaintiffs") to respond to SunTrust's Interrogatories and Requests for Production, which were served on them on December 20, 2013;

WHEREAS, SunTrust filed a Motion to Amend Caption on February 9, 2015, for an order amending the caption to designate this defendant as merely "SunTrust Bank" and striking "a/k/a SunTrust Mortgage Inc.";

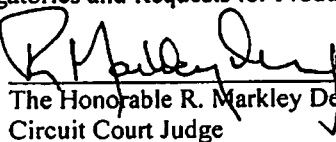
WHEREAS, Plaintiffs do not oppose these motions and have reached an agreement with SunTrust for their resolution;

NOW THEREFORE, by consent of the parties and in accordance with their agreement,

IT IS THEREFORE ORDERED THAT:

1. The caption is hereby amended to designate the defendant in this action as merely "SunTrust Bank", and "a/k/a SunTrust Mortgage Inc." shall be stricken from the name of the defendant in the caption;
2. The Clerk of Court is hereby instructed to update its records with this amendment to the caption and the name of the defendant; and
3. Plaintiffs shall have 20 days from written notice of the entry of this order to serve responses to SunTrust's Interrogatories and Requests for Production.

AND IT IS SO ORDERED.


The Honorable R. Markley Dennis, Jr.
Circuit Court Judge

June 18, 2015

[consent signatures on the following page]

Consent Order
C/A # 2012-CP-10-7842

I CONSENT:


Sean M. Foerster (SC Bar # 77466)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
P.O. Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
sean.foerster@rtt-law.com

Attorneys for Defendant SunTrust Bank a/k/a
SunTrust Mortgage, Inc.
*Rogers Townsend & Thomas, PC and its staff are debt
collectors.*

I CONSENT:


David A. Collins
P.O. Box 40578
Charleston, South Carolina 29423
(843) 760-0220
davidacollins2@aol.com

Attorney for Plaintiffs David B. Powell and Carol
Ann Powell

EMD/2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-7842

David B. Powell and Carol Ann Powell,)
)
Plaintiffs,)

v.)

SunTrust Bank a/k/a/ SunTrust Mortgage,)
Inc., Midland Funding LLC, and Pavilion)
Place Property Owners' Association, Inc.,)
)
Defendants.)

ORDER

FILED
2016 MAY -3 AM 9:59
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came on for hearing on the cross-motions of the parties for summary judgment. Present at the hearing were David Athell Collins, for Plaintiffs, and Sean Foerster, for Defendant SunTrust Bank. For the reasons that follow, the Plaintiffs' motion for summary judgment is GRANTED, and the Defendant's motion is DENIED.

The parties are in substantial agreement as to the facts underlying the action. Consequently, the Court finds those facts to be demonstrated.

On March 15, 2006, Plaintiff David Powell borrowed the principal sum of \$720,000 from SunTrust, and executed a Promissory Note for the full amount. The funds were used for the purchase of a parcel of real property, referred to as the Longmarsh property. In order to fully secure the loan, Plaintiffs gave Defendant a second mortgage on an additional property located on the Isle of Palms, which is referred to as the Beach property. The mortgage on the Beach property contained a provision that "[i]n the event the loan for [the Longmarsh property] actually closes, upon the principal thereon having been paid down by \$144,000.00 . . . Lender will satisfy of record the said second mortgage on [the Beach property]."

Handwritten signature/initials

On November 1, 2008, Plaintiffs defaulted on the Promissory Note, and SunTrust filed a foreclosure, on the Longmarsh property only, on August 11, 2009. Although it later indicated that it had not waived its right to pursue foreclosure of the Beach property as well, SunTrust did waive any personal or deficiency judgment against Plaintiffs. SunTrust took title to the Longmarsh property, and eventually sold it for \$260,000, leaving it with net proceeds of \$246,223.54. SunTrust indicated that it intended to proceed against the Beach property in order to recover the remainder of its loan balance; Plaintiffs filed this action seeking to have the second mortgage against that property satisfied.

In seeking to foreclose on the Beach property, Defendant relies on S.C. Code § 29-3-310, which provides that a mortgage holder is required to enter a satisfaction of mortgage, within three months of demand, once it has received "full payment or satisfaction or to whom a legal tender has been made of his debt..." It argues that as it has not received "full payment" of the obligation, it is entitled to pursue the second mortgage. SunTrust also relies upon *Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 647 S.E.2d 214 (2007) for the proposition that until it has received such satisfaction, the waiver of deficiency does not prohibit it from continuing to proceed, in a separate action, against any collateral it holds.

The Court finds *Lever* inapplicable to this case. In *Lever*, the mortgage holder had initially filed suit only upon the promissory note; it had not sought relief pursuant to the mortgage. It had not asked for foreclosure of its property interest, but simply obtained a judgment that it was owed the outstanding balance of its note. As Plaintiffs point out in their cross-motion, attempting to collect twice, in separate actions, for the same cause of action, for the same obligation, against the same parties, is impermissible under the Rules of Civil

RWD/2

Procedure. The initial foreclosure action brought by SunTrust operates as *res judicata* as to any further attempts to collect under its mortgage.

The Rules of Civil Procedure require that all actions against the same parties and arising from the same transaction be brought at one time. S.C.R.C.P. 13. "*Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between these parties. . *Res judicata* prevents a litigant 'from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Nelson v. QHG of S.C., Inc.*, 354 S.C. 290, 304, 580 S.E.2d 171, 178 (2003)(citations omitted). Unlike the bank in *Lever*, SunTrust both sought collection on its Note and the foreclosure of its security, and it waived any deficiency judgment; it is barred from continuing to seek the same relief in a second action.

Furthermore, as Plaintiffs note in their memorandum in support of their cross motion for summary judgment, allowing SunTrust to pursue the second property, despite having waived its right to a deficiency judgment, would be inequitable. Had SunTrust sought a deficiency judgment, Plaintiffs would have been entitled to have the property already sold appraised prior to the sale, and they would have been protected to the full extent of the appraised value of this tract, rather than merely the sales price. It is, at this late date, impossible to determine what the value of that land would have been at the time of the foreclosure.¹

Plaintiffs executed a Promissory Note, secured by not one but two separate and distinct parcels of property. SunTrust brought an action to collect on the Note and foreclose the property, waiving any deficiency judgment and thereby avoiding the statutory safeguards regarding the appraisal of the collateral. It received everything it requested in its complaint, and

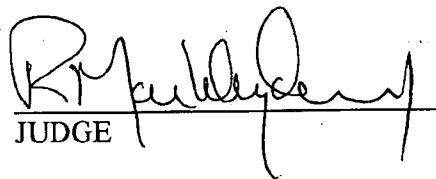
¹ The Court notes that the sales price after the foreclosure was approximately one-third of the value at the time Plaintiffs purchased the property, a period of only four years. Although this time period spans the recession and consequent depreciation in property values generally, it is difficult to imagine a reduction this great.

RNOA/3

received a judgment in its favor on the Note, and the foreclosure of the property. Now, despite having fully obtained everything to which it could have been entitled in its suit, it essentially seeks to reopen a portion of that action in order to foreclosure on the remainder of the collateral. This is an identical action to the first, involving the same parties, and arising out of the same transaction; foreclosure of the second parcel is simply an additional remedy it both failed to pursue and at least to some degree waived during the original proceeding. Defendant's motion for summary judgment is, consequently, DENIED, and Plaintiffs' cross-motion for summary judgment is GRANTED.

In addition to summary judgment, Plaintiffs argued during the course of the hearing that they were entitled to their fees and costs, and an award of damages of Twenty-Five Thousand (\$25,000) Dollars, pursuant to S.C. Code § 29-3-320, for SunTrust's failure to enter a satisfaction of the mortgage on the second property. The Court finds that under the circumstances of this action such an award would be inappropriate, and Plaintiffs' motion for fees and damages is therefore DENIED.

IT IS SO ORDERED!


JUDGE

April 27, 2016
Charleston, SC

RM08/4

IN THE COURT OF COMMON PLEAS
Case No. 2012-CP-10-7842

Plaintiffs,

Defendants.

ORDER

FILED
2016 JUN 15 AM 10:47
JULIE A. ARISTARONG
CLERK OF COURT

AND IT IS SO ORDERED!

R. MARKLEY DENNIS, JR.
Presiding Judge

June 14, 2016

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

David B. Powell and Carol Ann Powell

Plaintiffs,

Vs.

SunTrust Bank, a/k/a SunTrust Mortgage, Inc.

Defendant,

(006201)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2012-CP-10-_____

SUMMONS

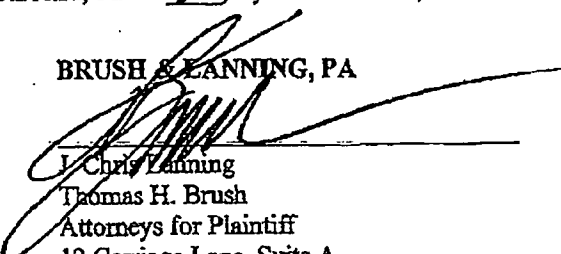
FILED
2012 NOV 30 PM 4:31
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff or its attorneys, J. Chris Lanning and Thomas H. Brush at their office, Brush & Lanning, PA, 12 Carriage Lane, Suite A, Charleston, South Carolina, 29407, within thirty (30) days after the service hereof, exclusive of the day of such service; and, if you fail to answer, we will apply to the Court for Default Judgment to be awarded against you for the amount alleged in the suit plus all fees and costs which have been incurred.

Dated at Charleston, South Carolina, on the 30 day of November, 2012.

BRUSH & LANNING, PA


J. Chris Lanning
Thomas H. Brush
Attorneys for Plaintiff
12 Carriage Lane, Suite A
Charleston, SC 29407

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

David B. Powell and Carol Ann Powell

Plaintiff(s)

vs.

SunTrust Bank

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP-10-

7842

(Please Print)

Submitted By: Thomas H. Brush

Address: 12 A Carriage Lane

Charleston, South Carolina 29407

SC Bar #: 974

Telephone #: (843) 766-5576

Fax #: (843) 766-9152

Other:

E-mail: tbrush@brush-lanning.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

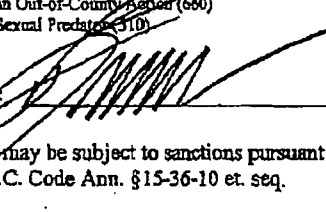
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20__-CP-__ | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
| Special/Complex/Other | ☐ Pharmaceuticals (630) | | ☐ Public Service Commission (990) |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) | | ☐ Employment Security Comm (991) |
| ☐ Automobile Arb. (610) | ☐ Out-of State Depositions (650) | | ☐ Other (999) |
| ☐ Medical (620) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | |
| ☐ Other (699) | ☐ Sexual Predators (610) | | |

Submitting Party Signature: 

Date: 11/14/2012

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

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

David B. Powell and Carol Ann Powell

Plaintiffs,

Vs.

SunTrust Bank a/k/a SunTrust Mortgage,
Inc.

Defendant,

IN THE COURT OF COMMON PLEAS

CASE # 2012-CP-10-_____

COMPLAINT
Jury Trial Demanded

FILED
2012 NOV 30 PM 4:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

(006201)

The Plaintiffs complaining of the Defendant hereby allege as follows:

1. That the Plaintiffs are residents of Charleston County, South Carolina.
2. That the Defendant is doing business in the State of South Carolina, County of Charleston.
3. That on or about March 15, 2006 the Plaintiffs gave a promissory note to the Defendant in the amount of \$720,000.00 secured by two separate parcels of property located in Charleston County, South Carolina.
4. That the note was secured by a mortgage dated March 15, 2006 and recorded in Book U 576, Page 557, and by another Mortgage recorded in Book U576, Page 574 that is the subject of this action.
5. That on or about October 6, 2009 the Defendant commenced a foreclosure action on the note referred to above against the property described in Book U 576, Page 557 as shown in the Clerk of Court's Office for Charleston County 2009CP10-04990.
6. That said action was completed and the property was sold by the Master in Equity for Charleston County.

7. During the above mentioned foreclosure sale the Defendant waived any and all rights to a deficiency judgment on the promissory note.
8. That the Plaintiffs informed and believe the Defendants records show that the above note has a zero balance.
9. That despite numerous calls and emails beginning in June of 2012 the Defendant refuses to satisfy the remaining mortgage in Book U 576, Page 557 and is unwillingly to provide a payoff or explanation for its failure to satisfy.
10. That on July 18, 2012 the Plaintiff's attorney was directed by the Defendants employees that all request had to be faxed to the Defendant. A copy of said request and proof of delivery is attached hereto.
11. That the Defendants' attorney called the Plaintiffs on or about August 14, 2012 and directed that he no longer contact the Defendant. A copy of said letter confirming the conversation is attached hereto.
12. That the Plaintiff also mailed the request to the Defendant by certified mail that was received by the Defendant on October 22, 2012.
13. That the Plaintiffs are informed and believe that they have fully complied with South Carolina Code Section 29-3-310.
14. That the Plaintiff's believes that damages be assessed against the Defendant pursuant to South Carolina Code Section 29-3-320.

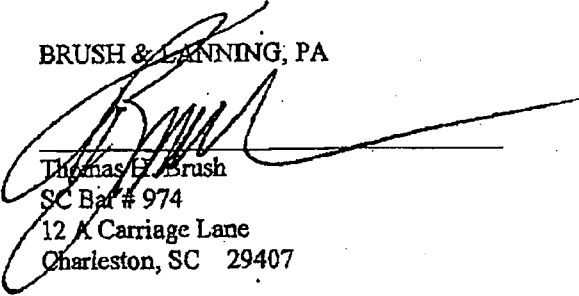
Wherefore, the Plaintiffs pray before this Honorable Court for its Order as follows:

- a. Directing that the aforementioned Mortgage be satisfied by the RMC Office for Charleston County.

- b. Damages pursuant to South Carolina Code Section 29-3-320.
- c. Taxing all attorney fees and cost to the Defendant.

November 30, 2012

BRUSH & LANNING, PA



Thomas H. Brush

SC Bar # 974

12 A Carriage Lane

Charleston, SC 29407



Brush & Lanning

Attorneys at Law

12 A Carriage Lane
Charleston, SC 29407

843-766-5576 • 843-766-9152 Fax

October 18, 2012

SunTrust Mortgage Corporation
901 Semmes Avenue
Richmond, Virginia 23224

Re: David Powell
Loan Number: 0034948570

Dear Sir:

On July 18, 2012 this office forwarded to you the attached request for a satisfaction as directed by your agents.

Since, we have not received a response litigation is being prepared. Before filing the Complaint we wanted to reach out one more time and attempt to amicably resolve this issue.

If we do not receive a response within 15 days we will move forward with the action.

With kind regards, I remain

Yours truly,

BRUSH & LANNING, PA

Thomas H. Brush

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

SunTrust Mortgage Corp. 901 Semmes Avenue Richmond VA 23224

www.brush-lanning.com

J. Christopher Lanning
clanning@brush-lanning.com



Brush & Lanning

Attorneys at Law

12 A Carriage Lane
Charleston, SC 29407
843-766-5576 • 843-766-9152 Fax

July 18, 2012

SunTrust Mortgage Corporation
901 Semmes Avenue
Richmond, Virginia 23224

Re: David Powell
Loan Number: 0034948570

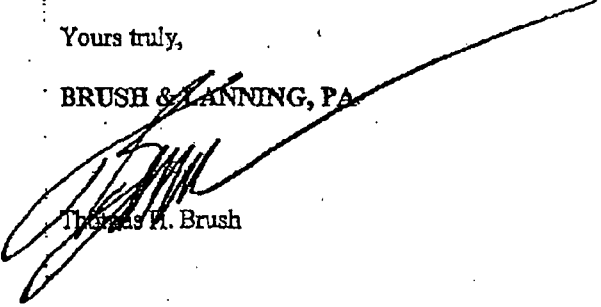
Dear Sir:

This office has been obtained by the above mortgagor to obtain a release of property in reference to the above account. In 2010 SunTrust Mortgage foreclosed on the primary property and chose not to proceed against the property described on the attached mortgage. During the foreclosure process a deficiency judgment was waived thereby eliminating your rights to proceed against this property.

If we do not obtain a release within the time frame as specified in the South Carolina Code, he has authorized this office to take the appropriate action. You may return the release to this office and we will have it recorded.

Yours truly,

BRUSH & LANNING, PA.


Thomas H. Brush

THB/tt

Thomas H. Brush
tbrush@brushlawfirm.com

www.brushlawfirm.com

J. Christopher Lanning
clanning@brushlawfirm.com

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Santucci Mortgage Corp.
901 Semmes Avenue
Richmond VA
23224

2. Article Number
(Transfer from service label)

7010 1870 0000 0921 0954

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

James S. Sells

☐ Agent

☐ Addressee

B. Received by (Printed Name)

James S. Sells

C. Date of Delivery

10/22/12

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes

☐ No

OCT 22 2012

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

PS Form 3811, February 2004

Domestic Return Receipt

100296-02-14-1640



Brush & Lanning

Attorneys at Law

12 A Carriage Lane
Charleston, SC 29407

843-766-5576 • 843-766-9152 Fax

July 18, 2012

SunTrust Mortgage Corporation
901 Semmes Avenue
Richmond, Virginia 23224

Re: David Powell
Loan Number: 0034948570

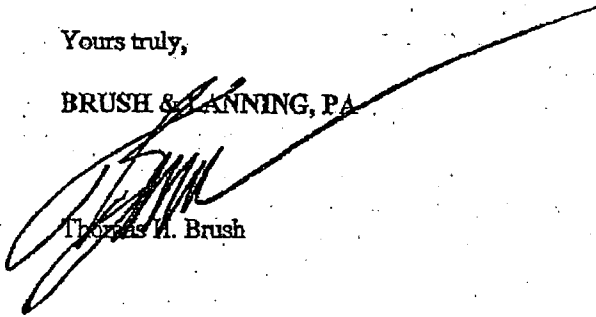
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Yours truly,

BRUSH & LANNING, P.A.


Thomas H. Brush

THB/tt

Thomas H. Brush
tbrush@brushlawfirm.com

www.brushlawfirm.com

J. Christopher Lanning
clanning@brushlawfirm.com

FAX HEADER: BRUSH LAW FIRM

TRANSMITTED/STORED : JUL. 18. 2012 9:26AM
FILE MODE OPTION

ADDRESS

RESULT

PAGE

370 MEMORY TX

18042910724

OK

6/6

REASON FOR ERROR OR LINE FAIL
E-1) HANG UP OR NO ANSWER

E-2) BUSY
E-3) NO FACSIMILE CONNECTION



Brush & Lanning

Attorneys at Law

12 A Carriage Lane
Charleston, SC 29407
843-766-5576 • 843-766-9152 Fax

July 18, 2012

SunTrust Mortgage Corporation
901 Semmes Avenue
Richmond, Virginia 23224

Re: David Powell
Loan Number: 0034948570

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Yours truly,

BRUSH & LANNING, PA

Thomas H. Brush

THB/tt

Thomas H. Brush
tbrush@brushlawfirm.com

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J. Christopher Lanning
clanning@brushlawfirm.com



Brush & Lanning

Attorneys at Law

12 A Carriage Lane.

Charleston, SC 29407.

843-766-5576 • 843-766-9152 Fax

August 14, 2012

Michael Graham, Esquire
Rogers, Townsend & Thomas
Post Office Box 100200
Columbia, SC 29202

Re: David Powell vs. SunTrust Mortgage

Dear Mr. Graham;

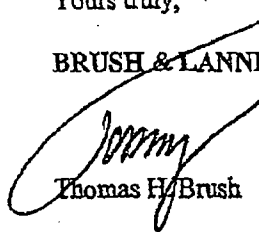
If I have sent this letter to you in error please forgive my short memory. I believe we spoke briefly concerning the above matter. David Powell has formally retained this office to represent him in the suit that your firm will file on behalf of SunTrust or the lawsuit that we will be filing. If SunTrust decides that it is going to foreclose, please forward the Summons and Complaint to this office and we will accept service.

We requested the release on July 18, 2012 and once the statutory time has elapsed we will be filing suit if we have not received the release.

Thanking you in advance, I remain

Yours truly,

BRUSH & LANNING, PA



Thomas H. Brush

TJB/tt

cc: client

Thomas H. Brush
tbrush@brushlawfirm.com

www.brushlawfirm.com

J. Christopher Lanning
clanning@brushlawfirm.com

Return To:
Dodd & Penney
973 Houston Northcutt Blvd.
Mt Pleasant, SC 29464

POWELL RE 12622

Prepared By:
Janice Green
SunTrust Mortgage Inc.
145 King Street
Charleston, SC 29401

OK U576PG574

MORTGAGE

AP# POWEL0034948570
LN# 0034948570

THIS MORTGAGE is made this 15th day of March 2006, between the Mortgagor,
DAVID B POWELL AND CAROL ANN POWELL

(herein "Borrower"), and the Mortgagee,

SunTrust Mortgage, Inc., a Virginia Corporation
existing under the laws of the State of Virginia
901 Semmes Avenue, Richmond, VA 23224

, a corporation organized and
existing under the laws of the State of Virginia,
whose address is

(herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 144,000.00, which
indebtedness is evidenced by Borrower's note dated March 15, 2006, and extensions and renewals
thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not
sooner paid, due and payable on April 1, 2009;

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all
other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the
performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey
to Lender and Lender's successors and assigns the following described property located in the County of
CHARLESTON, State of South Carolina

See Exhibit "A" attached hereto and made a part hereof

which has the address of 1001 OCEAN BOULEVARD
ISLE OF PALMS
(herein "Property Address");

(City), South Carolina 29451 (Street,
Zip Code)

TO HAVE AND TO HOLD unto Lender and Lender's successors and assigns, forever, together with all the improvements
now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be
and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the
leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

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

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

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness
evidenced by the Note and late charges as provided in the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or a written waiver by Lender, Borrower shall pay to
Lender on the day-monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum
(herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit
development assessments, if any) which may attain priority over this Mortgage and ground rents on the Property, if any, plus
one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage
insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and
reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that
Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender.

SOUTH CAROLINA - SECOND MORTGAGE - 1/80 - FNMA/FHLMF UNIFORM INSTRUMENT

7805C1 0405

Page 1 of 4
VSP Mortgage Solutions, Inc. 8001271-7291



If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, and then to the principal of the Note.

4. Prior Mortgages and Deeds of Trust; Charges; Liens. Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

5. Hazard 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 such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

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.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

6. Preservation and Maintenance of Property; Leasehold; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and a statement documents.

7. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, dispute such suits, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree in other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

10. 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 Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

12. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. Governing Law; Severability. The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

15. Rehabilitation Loan Agreement. Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

16. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Mortgage.

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 delivered or mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

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

17. Acceleration; Remedies. Except as provided in paragraph 16 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 20 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, 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 nonexistence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees, and costs of documentary evidence, abstracts and title reports, all of which shall be additional sums secured by this Mortgage.

18. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Mortgage due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

19. Assignment of Rents; Appointment of Receiver. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

20. Release. Upon payment of all sums secured by this Mortgage, this Mortgage shall become null and void, and Lender shall release this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

AP# POWEL0034948570

LN# 0034948570

21. Waiver of Homestead. Borrower hereby waives all rights of homestead exemption in the Property.

EX U576P6577

REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

Signed, sealed and delivered in the presence of:

Witness

DAVID B. POWELL

(Seal)

-Borrower

Witness

CAROL ANN POWELL

(Seal)

-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

STATE OF SOUTH CAROLINA, CHARLESTON
I, William J. Remessy, Jr.

County ss:
do hereby certify that

David B. Powell and Carol Ann Powell

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

Witness my hand and official seal this 15th day of March, 2006

Notary Public for South Carolina

My Commission Expires: 11/7/15

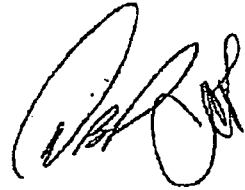
EXHIBIT "A"

EX 0576PG578

All that certain piece, parcel or lot of land, situate, lying and being in the City of Isle of Palms, Charleston County, South Carolina and shown and designated as Lot 05N, 6602 SQFT, in a subdivision to be known as Pavilion Place, on a plat entitled, "CONDITIONAL PLAT PROPERTY LINE ADJUSTMENT @ LOTS 02, 03, 04, 05, 06, 07 & OLD ROAD R/W BLOCK 30 CONTAINING 0.771 ACRES LOCATED @ FRONT BEACH CITY OF ISLE OF PALMS CHARLESTON COUNTY SOUTH CAROLINA," by John E. Wade Jr., R.L.S., dated December 9, 2004 and recorded in Plat Book DR at Page 386 in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

Being the same property conveyed to David B. Powell and Carol Ann Powell by deed of John E. Littlefield dated January 12, 2005 and recorded in Book NS22 at Page 324 in the RMC Office for Charleston County.

TMS # 568-11-00-149

A handwritten signature in dark ink, appearing to be 'David B. Powell', is located in the lower right quadrant of the page.

U576PG579
RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



SPT
Filed By:

Dodds & Hennessy, L.L.P.

Attorneys at Law

P.O. Box 298

Charleston

SC 29402

FILED

March 20, 2006

1:17:34 PM

U576PG574

Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION	AMOUNT
	\$ 11.00
Postage	
TOTAL	\$ 11.00
DRAWER:	
	A - bmm

DO NOT STAMP BELOW THIS LINE

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION# 2012-CP-10-7848

David B. Powell and Carol Ann Powell,
Plaintiffs,

v.

SunTrust Bank a/k/a SunTrust Mortgage, Inc.,
Defendant.

ANSWER

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 FEB 14 PM 2:08

FILED

(19610.12 SMF)

Defendant SunTrust Bank a/k/a SunTrust Mortgage, Inc. ("SunTrust"), by way of an Answer to the Complaint herein, would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE
(Responses to Specific Allegations)

1. That each and every allegation contained in the Complaint, which is not specifically admitted or otherwise qualified, is denied.
2. Paragraph 1 is admitted on information and belief.
3. Paragraph 2 is admitted.
4. Paragraph 3 is admitted.
5. SunTrust admits so much of the factual allegations contained in Paragraph 4 as may be found in the public records of Charleston County.
6. Paragraph 5 is denied; the relevant foreclosure action commenced on August 11, 2009.
7. SunTrust admits so much of the factual allegations contained in Paragraph 6 as may be found in the public records of Charleston County.
8. SunTrust admits so much of the factual allegations contained in Paragraph 7 as may be found in the public records of Charleston County.
9. Paragraph 8 is denied.
10. SunTrust is without information sufficient to form a belief as to the truth of the allegations in Paragraph 9 concerning alleged calls and emails beginning in June 2012. SunTrust denies the remainder of Paragraph 9 because the mortgage recorded in Book U576 at Page 557 was satisfied by Satisfaction of Mortgage by Foreclosure entered on March 25, 2010, and recorded on March 31, 2010, in the Office of the Register Mesne Conveyance for Charleston County in Book 114 at Page 830.

11. SunTrust is without information sufficient to form a belief as to the truth of the allegations in Paragraph 10 concerning the directions allegedly received by Plaintiffs. The copies of the request and proof of delivery attached to the Complaint speak for themselves.

12. SunTrust is without information sufficient to form a belief as to the truth of the allegations in Paragraph 11. The copy of the letter attached to the Complaint speaks for itself.

13. Paragraph 12 is admitted on information.

14. Paragraph 13 is denied.

15. Paragraph 14 is denied.

16. The subsequent allegations and/or the prayers for relief as set forth in the Amended Complaint following the "WHEREFORE" provision are denied.

17. SunTrust denies that Plaintiffs are entitled to a jury trial in this case.

FOR A SECOND DEFENSE
(Failure to State a Claim)

18. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action upon which the Court can grant relief. Therefore, the claims against SunTrust must be dismissed with prejudice.

FOR A THIRD DEFENSE
(Claims Barred by Statutes of Limitation)

19. Plaintiffs' claims are barred by the applicable statutes of limitation.

FOR A FOURTH DEFENSE
(Laches)

20. Plaintiffs waited an unreasonable length of time before asserting these claims against SunTrust. SunTrust has been prejudiced and disadvantaged by this unreasonable delay, and any relief otherwise available to Plaintiffs is therefore barred by the doctrine of laches.

FOR A FIFTH DEFENSE
(Waiver)

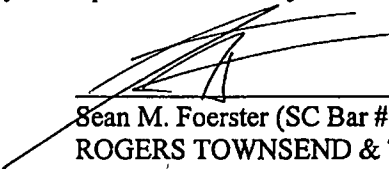
21. By failing to assert this claim and raise these issues in the foreclosure action against them, Plaintiffs voluntarily and intentionally relinquished their right to assert these claims. Plaintiffs' causes of action against SunTrust have been waived.

FOR A SIXTH DEFENSE
(Failure to Satisfy Condition Precedent)

22. Plaintiffs failed to satisfy the conditions set forth in Additional Collateral Agreement between Plaintiffs and SunTrust dated March 15, 2006, and therefore SunTrust has no obligation to satisfy the Mortgage recorded in Book U576 at Page 574.

FOR A SIXTEENTH DEFENSE
(Non-waiver and Reservation)

23. SunTrust reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.



Sean M. Foerster (SC Bar # 77466)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
sean.foerster@rtt-law.com

Attorneys for Defendant SunTrust Bank a/k/a SunTrust
Mortgage, Inc.

Rogers Townsend & Thomas, PC and its staff are debt collectors.

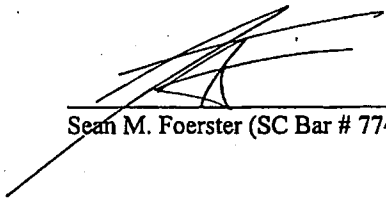
February 12, 2013

CERTIFICATE OF SERVICE BY MAIL
Case # 2012-CP-10-7842

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on February 12, 2013, at the following addresses:

Document Served: Answer of SunTrust Bank a/k/a SunTrust Mortgage, Inc.

Counsel Served:
Thomas H. Brush, Esquire
Brush & Lanning, P.A.
12 A Carriage Lane
Charleston, South Carolina 29407



Sean M. Foerster (SC Bar # 77466)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

David B. Powell and Carol Ann Powell,
Plaintiffs,

v.

SunTrust Bank a/k/a SunTrust Mortgage, Inc.;
Midland Funding LLC; and Pavilion Place Property
Owners' Association Inc.;
Defendants.

(19610.12 SMF)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION# 2012-CP-10-7842

AMENDED ANSWER, COUNTERCLAIM, AND
CROSS-CLAIM
(Foreclosure of Real Estate Mortgage)

FILED
2014 JAN 27 PM 4:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant SunTrust Bank a/k/a SunTrust Mortgage, Inc. ("SunTrust"), by way of an Amended Answer to the Complaint, Counterclaim against Plaintiffs David B. Powell and Carol Ann Powell ("Powells"), and Cross-claim against Defendants Midland Funding LLC and Pavilion Place Property Owners' Association Inc., would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE
(Responses to Specific Allegations)

1. That each and every allegation contained in the Complaint, which is not specifically admitted or otherwise qualified, is denied.
2. Paragraph 1 is admitted on information and belief.
3. Paragraph 2 is admitted.
4. Paragraph 3 is admitted.
5. SunTrust admits so much of the factual allegations contained in Paragraph 4 as may be found in the public records of Charleston County.
6. Paragraph 5 is denied; the relevant foreclosure action commenced on August 11, 2009.
7. SunTrust admits so much of the factual allegations contained in Paragraph 6 as may be found in the public records of Charleston County.
8. SunTrust admits so much of the factual allegations contained in Paragraph 7 as may be found in the public records of Charleston County.
9. Paragraph 8 is denied.
10. SunTrust is without information sufficient to form a belief as to the truth of the allegations in Paragraph 9 concerning alleged calls and emails beginning in June 2012. SunTrust denies the remainder of Paragraph 9 because the mortgage recorded in Book U576 at Page 557 was satisfied by

Satisfaction of Mortgage by Foreclosure entered on March 25, 2010, and recorded on March 31, 2010, in the Office of the Register Mesne Conveyance for Charleston County in Book 114 at Page 830.

11. SunTrust is without information sufficient to form a belief as to the truth of the allegations in Paragraph 10 concerning the directions allegedly received by the Powells. The copies of the request and proof of delivery attached to the Complaint speak for themselves.

12. SunTrust is without information sufficient to form a belief as to the truth of the allegations in Paragraph 11. The copy of the letter attached to the Complaint speaks for itself.

13. Paragraph 12 is admitted on information.

14. Paragraph 13 is denied.

15. Paragraph 14 is denied.

16. The subsequent allegations and/or the prayers for relief as set forth in the Amended Complaint following the "WHEREFORE" provision are denied.

17. SunTrust denies that the Powells are entitled to a jury trial in this case.

FOR A SECOND DEFENSE
(Failure to State a Claim)

18. The Powells' Complaint fails to state facts sufficient to constitute a cause of action upon which the Court can grant relief. Therefore, the claims against SunTrust must be dismissed with prejudice.

FOR A THIRD DEFENSE
(Claims Barred by Statutes of Limitation)

19. The Powells' claims are barred by the applicable statutes of limitation.

FOR A FOURTH DEFENSE
(Laches)

20. The Powells waited an unreasonable length of time before asserting these claims against SunTrust. SunTrust has been prejudiced and disadvantaged by this unreasonable delay, and any relief otherwise available to the Powells is therefore barred by the doctrine of laches.

FOR A FIFTH DEFENSE
(Waiver)

21. By failing to assert this claim and raise these issues in the foreclosure action against them, the Powells voluntarily and intentionally relinquished their right to assert these claims. The Powells' causes of action against SunTrust have been waived.

FOR A SIXTH DEFENSE
(Failure to Satisfy Condition Precedent)

22. The Powells failed to satisfy the conditions set forth in Additional Collateral Agreement between the Powells and SunTrust dated March 15, 2006, and therefore SunTrust has no obligation to satisfy the Mortgage recorded in Book U576 at Page 574.

FOR A SEVENTH DEFENSE
(Equitable Set-Off)

23. If SunTrust is found liable to the Powells, which liability SunTrust expressly denies, equity demands that any damages awarded to the Powells should be set off against the portion of the mortgage debt that still remains unsatisfied.

FOR AN EIGHTH DEFENSE
(Non-waiver and Reservation)

24. SunTrust reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

FOR A NINTH DEFENSE AND
BY WAY OF COUNTERCLAIM AGAINST PLAINTIFFS DAVID B. POWELL AND CAROL
ANN POWELL AND CROSS-CLAIM AGAINST DEFENDANTS MIDLAND FUNDING LLC
AND PAVILION PLACE PROPERTY OWNERS' ASSOCIATION INC.
(Foreclosure of Additional Real Estate Mortgage)

25. This is a claim for the foreclosure of a mortgage upon certain real estate in Charleston County, South Carolina.

26. Pursuant to S.C. Code Ann. § 33-15-101, SunTrust is a corporation or other legal entity doing business in the State of South Carolina.

27. The terms of the Home Affordable Modification Program ("HAMP") and the South Carolina Supreme Court Administrative Order 2009-05-22-01 are inapplicable in this matter because the mortgage loan at issue is not owned, securitized, or guaranteed by Fannie Mae or Freddie Mac, and SunTrust is not currently participating in the HAMP.

28. On or about March 15, 2006, Plaintiff David B. Powell made, executed, and delivered a certain Fixed Rate Note ("Note") to SunTrust in the principal sum of \$720,000.00, payable in monthly installments.

29. In order to partially secure the payment of the Note according to the terms and conditions thereof, David B. Powell and Carol Ann Powell made, executed, and delivered unto SunTrust a certain real estate mortgage (the "Primary Mortgage") covering their real property at 25 Longmarsh Road, Mt. Pleasant, SC 29466, TMS# 632-00-00-063. The Primary Mortgage was signed, witnessed, and probated on March 15, 2006, and recorded in the Office of the RMC/ROD for Charleston County on March 20, 2006, in Mortgage Book U576 at Page 557. The Primary Mortgage constituted a purchase money first lien on the real property at 25 Longmarsh Road.

30. In lieu of having to make a down payment for this loan and in order to further secure the payment of the Note, David B. Powell executed and delivered an Additional Collateral Agreement to SunTrust dated March 15, 2006, whereby he agreed to give SunTrust an additional, second mortgage on the Powells' real estate at 1001 Ocean Boulevard, Isle of Palms, South Carolina 29541 (hereinafter the "subject property"). The Additional Collateral Agreement provided that:

In the event the loan for real property in the amount of \$720,000.00 located at 25 Longmarsh Road, Mount Pleasant, SC 29466 actually closes, upon the principal balance thereon having been paid down by \$144,000.00 (that is to \$576,000.00) Lender will satisfy of record the said second mortgage on 1001 Ocean Boulevard, Isle of Palms, SC 29541.

31. David B. Powell and Carol Ann Powell then made, executed, and delivered unto SunTrust a certain real estate mortgage (the "Additional Mortgage") in the amount of \$144,000.00 covering the subject property:

All that certain piece, parcel or lot of land, situate, lying and being in the City of Isle of Palms, Charleston County, South Carolina and shown and designated as Lot 05N, 6602 SQFT, in a subdivision to be known as Pavilion Place, on a plat entitled, "CONDITIONAL PLAT PROPERTY LINE ADJUSTMENT@LOTS 02, 03, 04, 05, 06, 07 & OLD ROAD R/W BLOCK 30 CONTAINING 0.771 ACRES LOCATED @ FRONT BEACH CITY OF ISLE OF PALMS CHARLESTON COUNTY SOUTH CAROLINA," by John E. Wade Jr., R.L.S., dated December 9, 2004 and recorded in Plat Book DE at Page 386 in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

Being the same property conveyed to David B. Powell and Carol Ann Powell by deed of John E. Littlefield dated January 12, 2005, and recorded in Book N522 at Page 324 in the RMC Office for Charleston County.

Property Address: 1001 Ocean Boulevard
Isle of Palms, South Carolina 29541

TMS # 568-11-00-149

32. The Additional Mortgage was signed, witnessed, and probated on March 15, 2006, and recorded in the Office of the Register Mesne Conveyance for Charleston County on March 20, 2006, in Mortgage Book U576 at Page 574.

33. The Additional Mortgage constitutes a second lien on the real property at 1001 Ocean Boulevard, junior only to a first lien real estate mortgage given to Southcoast Community Bank by the Powells on March 14, 2006, and recorded in the Office of the Register Mesne Conveyance for Charleston County on March 16, 2006, in Mortgage Book L576 at Page 315. On information and belief, the loan secured by this first lien mortgage is now owned by Deutsche Bank. SunTrust does not dispute the

priority of this first mortgage lien and acknowledges that this foreclosure of the Additional Mortgage is subject to the first mortgage.

34. Both the Primary Mortgage and Additional Mortgage evidenced and secured the repayment of money advanced by SunTrust to, or on behalf of, David Powell.

35. David B. Powell defaulted on the repayment of the Note, thereby breaching the terms of the Note, the Primary Mortgage, and the Additional Mortgage. After all mortgage loan payments received by SunTrust were credited to the subject loan, the loan was in default and due for November 1, 2008. SunTrust elected to and declared the entire balance of the indebtedness due and payable.

36. On August 11, 2009, SunTrust filed civil action # 2009-CP-10-4990 against the Powells for foreclosure of the Primary Mortgage on 25 Longmarsh Road only (the "Foreclosure Action").

37. At the time of the filing of the Foreclosure Action, there was due on the Note and Mortgage as of November 1, 2008, the principal sum of \$720,000.00, with interest from October 1, 2008, advances, late charges, and also for the costs and disbursements of the first foreclosure action, including attorney's fees.

38. Prior to defaulting, Plaintiff Defendant David B. Powell failed to pay down the principal balance of the loan by \$144,000.00 as required by the Additional Collateral Agreement. In fact, he failed to pay down any of the principal of the loan.

39. In the Foreclosure Action, SunTrust waived its right to a personal or deficiency judgment against the Powells, but did not waive its right to later pursue the foreclosure of any additional collateral it had for the loan in the event that the foreclosure of 25 Longmarsh Road failed to satisfy the entire debt.

40. In the Foreclosure Action, the Powells filed an Answer through counsel in which they admitted every allegation in the foreclosure complaint and raised no affirmative defenses.

41. On December 10, 2009, the Master in Equity for Charleston County entered a Judgment of Foreclosure and Sale against the Powells in the Foreclosure Action in the amount of \$796,110.74 and ordered that 25 Longmarsh Road be sold at a foreclosure sale. SunTrust was the owner and holder of the Note prior to the judgment.

42. SunTrust was the successful bidder at the foreclosure sale of 25 Longmarsh Road on March 16, 2010. SunTrust paid only \$3,495.24 in connection with the foreclosure sale and took a Master's Deed to 25 Longmarsh Road dated March 25, 2010, and recorded in the Office of the Register Mesne Conveyance for Charleston County on March 31, 2010, in Mortgage Book O114 at Page 828.

43. On March 25, 2010, the Master in Equity entered a Satisfaction of the Primary Mortgage on 25 Longmarsh Road, which was recorded in the Office of the Register Mesne Conveyance for Charleston County on March 31, 2010, in Mortgage Book O114 at Page 830.

44. On January 27, 2011, SunTrust sold the real property at 25 Longmarsh Road on the open market to a third party for the purchase price of \$260,000.00. After its transaction costs were subtracted, SunTrust received only \$246,223.54 in proceeds from the sale of 25 Longmarsh Road.

45. After crediting the loan account with the \$246,223.54 in proceeds from the sale of 25 Longmarsh Road, but after adding interest accrued since the date of judgment and other post-judgment amounts permitted to be recovered pursuant to the Judgment of Foreclosure and Sale against the Powells in the Foreclosure Action, the judgment debt still remains in an approximate amount of \$748,636.73 (which estimate is good through August 15, 2013; thereafter, more interest will accrue).

46. Having been unable to satisfy the Powells' debt through the foreclosure of 25 Longmarsh Road, SunTrust now elects to foreclose on the subject property pursuant to the Additional Mortgage.

47. SunTrust is entitled to foreclose on the subject property to recover up to the \$144,000.00 secured by the Additional Mortgage, plus any further fees and costs permitted to be recovered by the terms of the Additional Mortgage. SunTrust is not seeking a personal or deficiency judgment against the Powells in this matter, and acknowledges that it previously waived this right in the Foreclosure Action. SunTrust is simply pursuing the additional collateral through this claim.

48. Any notice required by the terms of the Additional Mortgage or by state or federal law has been given to the Powells prior to the commencement of this action.

49. Pursuant to the terms of the Additional Mortgage, SunTrust has employed counsel to prosecute this action and a reasonable value of services of counsel in this action in a sum as the Court may find appropriate.

50. Pursuant to the terms of the Additional Mortgage and applicable state law, SunTrust requests that the Additional Mortgage be foreclosed and that the subject property be sold at public auction in accordance with law, subject to any senior liens, liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

51. The following defendants may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of the Additional Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the Register Mesne Conveyance or Clerk of Court for Charleston County and are described as follows:

- a. Midland Funding LLC by virtue of an Order for Judgment by Default against Plaintiff David Powell in the amount of \$8,495.16 in civil action # 2010-CP-10-7875 in the Court of Common Pleas for Charleston County.

- b. Pavilion Place Property Owners' Association Inc. by virtue of any lien it may have for assessments claimed as provided for in the Declaration of Covenants, Conditions, Restrictions and Easements for Pavilion Place Subdivision.

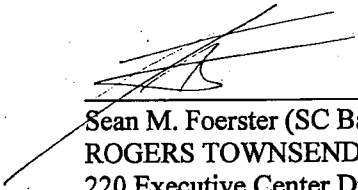
52. The Defendants herein described as judgment creditors have, by filing said judgments, designated their attorney entering the judgment as their agent for service of process pursuant to S.C. Code Ann. § 15-35-840.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and:

- (1) Dismiss the Complaint of Plaintiffs David B. Powell and Carol Ann Powell ("Powells");
- (2) Grant judgment in favor of SunTrust on its counterclaim for foreclosure against Plaintiffs David B. Powell and Carol Ann Powell and cross-claim against Defendants Midland Funding LLC and Pavilion Place Property Owners' Association Inc.;
- (3) Under the direction of this Court, ascertain and determine the amount due upon the Additional Mortgage held by SunTrust together with attorney's fees and costs of this action.
- (4) Declare the Additional Mortgage a valid second lien on the subject property and render judgment of foreclosure for the amount so found to be permitted by the Additional Mortgage, together with reasonable attorney's fees and for the costs of this action.
- (5) Under the direction of this Court, sell the subject property, bar any equity of redemption, and apply the proceeds of sale as follows:
 - First, to the costs and expenses of the within action and sale;
 - Second, to the payment and discharge of the amount due and secured by SunTrust's Additional Mortgage, together with attorney's fees as aforesaid; and
 - Third, to the distribution of any surplus pursuant to Rule 71, SCRCP;
- (6) Issue an order directing the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary; and
- (7) Order such other and further relief as may be just and proper.

[signature on the following page]

*Amended Answer, Counterclaim, and
Cross-Claim of SunTrust Bank a/k/a
SunTrust Mortgage, Inc.
Case # 2012-CP-10-7842*



Sean M. Foerster (SC Bar # 77466)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
sean.foerster@rtt-law.com

Attorneys for Defendant SunTrust Bank a/k/a SunTrust
Mortgage, Inc.
Rogers Townsend & Thomas, PC and its staff are debt collectors.

January 23, 2014

CERTIFICATE OF SERVICE BY MAIL
Case # 2012-CP-10-7842

I, Bonnie Kyzer, an employee for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on January 23, 2014, at the following addresses:

Document Served:

Lis Pendens

Summons to Counterclaim and Cross-Claim

Amended Answer, Counterclaim, and Cross-Claim of SunTrust Bank a/k/a SunTrust Mortgage, Inc.

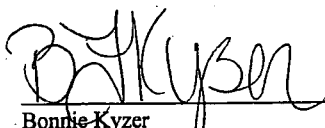
Notice of Foreclosure Intervention

Counsel Served:

David A. Collins, Esquire

P.O. Box 40578

Charleston, SC 29423



Bonnie Kyzer

Legal Assistant to Sean M. Foerster, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-7842

David B. Powell and Carol Ann Powell)

Plaintiffs,)

vs.)

SunTrust Bank a/k/a/ Suntrust)
Mortgage, Inc Midland Funding LLC;)
and Pavilion Place Property Owner's)
Association Inc.)

Defendants)

REPLY TO AMENDED COUNTERCLAIM

FILED
2014 APR 23 AM 11:46
JULIE J ARMSTRONG
CLERK OF COURT

The Plaintiffs, in reply to the Counterclaim of the Defendant Suntrust Bank a/k/a Suntrust Mortgage, Inc., by their undersigned attorney, hereby respond to the Counterclaim (the Counterclaim) of Defendant, and alleges as follows:

1. That any and all allegations contained in the Counterclaim not specifically admitted or denied, are hereby denied and strict proof is demanded thereof.
2. That the Plaintiff admits the allegations contained in Paragraphs Twenty-Five and Twenty-Six of the Counterclaim.
3. That the Plaintiff does not have sufficient information with which to either admit or deny the allegations contained in Paragraph Twenty-Seven of the Counterclaim and demands strict proof thereof.
4. That the Plaintiffs admit the allegations contained in Paragraphs Twenty-Eight and Twenty-Nine of the Counterclaim.
5. That the Plaintiffs admit so much of the allegations contained in Paragraphs Thirty and Thirty-One of the Counterclaim which state that the Plaintiffs executed an Additional

Collateral Agreement and an Additional Mortgage but would aver to those documents as being the best evidence of the terms thereof.

6. That the Plaintiffs admit the allegations contained in Paragraph Thirty-Two of the Counterclaim.

7. That the Plaintiffs deny the allegations contained in Paragraph Thirty-Three and Thirty-Four of the Counterclaim and demand strict proof thereof.

8. That the Plaintiffs admit so much of the allegations contained in Paragraph Thirty-Five of the Counterclaim which state that they defaulted on the Note but would deny the remaining allegations contained in said Paragraph and would demand strict proof thereof.

9. That the Plaintiffs admit the allegations contained in Paragraph Thirty-Six, Thirty-Seven and Thirty-Eight of the Counterclaim.

10. That the Plaintiffs admit so much of the allegations contained in Paragraph Thirty-Nine of the Counterclaim which state that the Defendant waived its right to a personal or deficiency judgment in the foreclosure action but would deny the remaining allegations contained in said Paragraph and would demand strict proof thereof.

11. That the Plaintiffs admit the allegations contained in Paragraphs Forty and Forty-One of the Counterclaim.

12. That the Plaintiffs admit so much of the allegations contained in Paragraph Forty-Two of the Counterclaim which state that the Defendant was the successful bidder at the foreclosure sale but would deny that the Defendant paid only \$3495.24 and would affirmatively state that the Defendant actually paid the sum of \$250,000.

13. That the Plaintiffs admit the allegations contained in Paragraph Forty-Three of the Complaint.

14. That the Plaintiffs deny the allegations contained in Paragraphs Forty-Four and Forty-Five of the Counterclaim and demand strict proof thereof.

15. That the Plaintiffs deny the allegations contained in Paragraphs Forty-Six, Forty-Seven, Forty-Eight, Forty-Nine, Fifty- Fifty-One and Fifty-Two of the Counterclaim and demand strict proof thereof.

**FURTHER ANSWERING THE COMPLAINT
AND AS A FIRST AFFIRMATIVE DEFENSE
(Reservation of Additional Defenses)**

16. That the Plaintiffs reallege and reaver the allegations of the preceding paragraphs as though fully restated herein.

17. That the Plaintiffs hereby give notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend their Reply to assert any such defense.

**FURTHER ANSWERING THE COMPLAINT
AND AS A SECOND AFFIRMATIVE DEFENSE
(Estoppel by Conduct)**

18. That the Plaintiffs reallege and reaver the allegations of the preceding Paragraphs as though fully restated herein.

19. That the Defendant by its actions has breached certain duties owed the Plaintiff and, therefore, the Defendant should be estopped from bringing the claims made in its Counterclaim due to its own conduct, and such constitutes a complete defense to the claims of the Defendant.

**FURTHER ANSWERING THE COMPLAINT
AND AS A THIRD AFFIRMATIVE DEFENSE
(Rule 12(b)(6) Failure to State Facts Sufficient to State a Claim)**

20. That the Plaintiffs reallege and reaver the allegations of the preceding paragraphs as though fully restated herein.

21. That the Plaintiffs allege that this action should be dismissed against them pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure, for failure to state facts sufficient to constitute a cause of action.

**FURTHER ANSWERING THE COMPLAINT
AND AS A FOURTH AFFIRMATIVE DEFENSE
(Lack of Standing)**

22. That the Plaintiffs reallege and reaver the allegations of the preceding paragraphs as though fully restated herein.

23. That the Plaintiffs allege that this action should be dismissed against them because the Defendant lacks standing to pursue this action. Specifically, the Plaintiffs are informed and believes that the Defendant has waived any right to collect this debt by virtue of its deficiency waiver in the initial foreclosure.

**FURTHER ANSWERING THE COMPLAINT
AND BY AS A FIFTH AFFIRMATIVE DEFENSE
(Collateral Estoppel)**

24. That the Plaintiffs reallege and reaver the allegations of the preceding paragraphs as though fully restated herein.

25. That the Defendant initiated an action styled Suntrust Bank v. David B. Powell, case number 09-CP-10-4990, in which this Defendant sought to foreclose a mortgage predicated

upon the same debt herein involved. The defendant waived any deficiency that would result from the sale of that property.

26. That the Court granted the Defendants prayer to foreclose its mortgage.

27. That the issues regarding any debt owed to the Defendant herein have been adjudicated and the Defendant herein should be collaterally estopped from asserting any rights to foreclosure against this Plaintiff.

**FURTHER ANSWERING THE COMPLAINT
AND BY WAY OF FIRST COUNTERCLAIM
(Frivolous Action)**

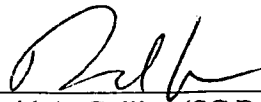
28. That the Plaintiffs reallege and reaver the allegations of the preceding paragraphs as though fully restated herein.

29. That the Defendant has knowledge, pursuant to Suntrust v. Powell, *inter alia*, that the mortgage herein involved is not enforceable against this Plaintiff.

30. That the Defendant, nonetheless, has brought this counterclaim against these Plaintiffs for a purpose other than that of securing proper discovery, joinder of parties or adjudication of the claim upon which the pleadings are based and in violation of the South Carolina Frivolous Proceedings Act, Code section 15-36-10 et.al. That upon information and belief the Defendant is entitled to attorney's fees and costs associated with this suit pursuant to South Carolina Code of Laws 15-36-10.

WHEREFORE, having fully answered the Counterclaim of the Defendant, the Plaintiffs pray that this Court inquire into the matters set forth herein, dismiss the Counterclaim of the Defendant with prejudice, grant them judgment on their Complaint and grant such other relief as the Court may deem just and proper.

LAW OFFICE OF DAVID A. COLLINS, LLC



David A. Collins (SC Bar 10294)

P. O. Box 40578

Charleston, SC 29423

(843)760-0220

Davidacollins2@aol.com

Attorney for the Plaintiffs

April 22, 2014

North Charleston, South Carolina

1 STATE OF SOUTH CAROLINA)
) Court of Common Pleas
 2 COUNTY OF CHARLESTON) Case No. 2012-CP-10-07842
)
 3)
 4 DAVID B. POWELL and)
 CAROL ANN POWELL,)
)
 5 Plaintiff,)
)
 6 vs.) Transcript of Record
)
 7 SUNTRUST BANK, MIDLAND)
 FUNDING, LLC, and)
 8 PAVILION PLACE PROPERTY)
 OWNERS' ASSOCIATION, INC.)
 9)
 Defendant.) DATE: October 16, 2015
 10)
 11)

12 B E F O R E:

13 THE HONORABLE R. MARKLEY DENNIS, JR.

14 A P P E A R A N C E:

15 DAVID A. COLLINS
 16 Attorney for the Plaintiff

17 SEAN M. FOERSTER
 18 Attorney for the Defendant

19
 20 Karen V. Andersen, RMR, CRR
 21 Circuit Court Reporter
 22
 23
 24
 25

1 THE COURT: This is a cross motion for summary
2 judgment.

3 And I say this for the record, because I had this --
4 you learn by your mistakes. It wasn't that big of a mistake,
5 but in 1997, when I was in Beaufort, I was having a hearing.
6 And, in fact, we did it in chambers because most of the
7 things that we hear is based -- in summary judgment certainly
8 is one -- based on a record. So really doesn't have to be on
9 the record, so to speak, unless you are arguing something
10 that's not ready.

11 So I asked them, I said: Do you all agree then it's
12 cross motions and this is a matter of law that needs to be
13 called and there's no issue of fact? And both of them said
14 absolutely. Well, I ruled. And lo and behold, when they
15 appealed, they said, no, there was a general issue of fact.
16 And the court reversed me, said, okay, there wasn't one.

17 Looking at this one, there doesn't appear to me to
18 be any dispute as to what the facts are.

19 MR. COLLINS: Judge, I think that's absolutely
20 correct.

21 THE COURT: The one question that -- I think I
22 understand this. There is one note that was on the first
23 mortgage that was executed. Then the second mortgage
24 referenced that note.

25 MR. FOERSTER: Yes, Your Honor.

1 THE COURT: Okay. I just want to be clear on that.
2 Okay. All right. Let me also incorporate your memorandums
3 that you submitted. And I will be happy to hear from you.

4 I've read the case. I've read the statute that you
5 are arguing. And I think it's a call that I have to make,
6 but I will be happy to hear from you.

7 MR. COLLINS: You want to go first since you filed
8 the motion first?

9 MR. FOERSTER: That's fine.

10 MR. COLLINS: Whichever makes you more comfortable.

11 MR. FOERSTER: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. FOERSTER: My name is Sean Foerster. I'm here
14 on behalf of the defendant, SunTrust Bank.

15 And, again, SunTrust is seeking summary judgment on
16 the Powells, plaintiffs in this action, which is pursuant to
17 the mortgage satisfaction statute.

18 There's no dispute that they never paid down the
19 debt. There's no dispute that the mortgage wasn't actually
20 satisfied. The issue is a matter of law. It's whether
21 SunTrust's waiver of its right to a personal judgment against
22 Mr. Powell on the promissory note that took place in a
23 foreclosure action concerning a different piece of loan
24 collateral, whether that deficiency waiver somehow operated
25 as a matter of law to extinguish the underlying debt.

1 That's what they are arguing. That's why they are
2 arguing this additional mortgage should satisfied the debt.

3 THE COURT: Let me ask you a question. Because the
4 case that you are relying on is the *Lever* case?

5 MR. FOERSTER: Yes, Your Honor.

6 THE COURT: And the *Lever* case talks about --
7 doesn't call it a note, per se, but says agreement. And I'm
8 assuming it's a note, but there were two notes in that case.
9 There was a note that was first part of the foreclosure
10 action, and the judgment obtained because in the *Lever* case,
11 they waited. Second mortgage just remained open, second
12 mortgage, and there was a note for that.

13 And 10 years passed, therefore, the judgment was no
14 longer valid. And then they proceeded to try to foreclose
15 the second one, correct?

16 MR. FOERSTER: Yes, Your Honor.

17 THE COURT: And there was a note that secured and
18 was part of that particular mortgage. It was separate and
19 apart from the first one. There was a second negotiated
20 note; same terms, same amount. I think -- I don't recall the
21 first one had any reference to attorney's fees, but the
22 second one did.

23 And the court, I think, was correct. I don't have
24 any problem with what they did as it pertained to that
25 particular case. But that case is distinguished -- it is

1 distinguishable to me in the sense that you don't have a note
2 on the second mortgage. And what you did, I have no problem
3 with your foreclosure. And I agree with the Court.

4 I, unfortunately, learned that from personal
5 experience outside of my practice of law. I went into a
6 business arrangement with several of my friends. And we had
7 property. And we -- I thought the property would adequately
8 secure the mortgage. It was valuable property, we all you
9 thought; still do. But I don't have any interest in it
10 anymore. Thank God.

11 But then we guaranteed the note, all the
12 individuals. And the business venture went the wrong way.
13 It went south. And I will never forget, because it was right
14 before Christmas. And my wife spoke to me a little later,
15 but she spoke to me in harsh term. She said, don't you ever
16 ask me to participate in any -- I told you not to get in that
17 business deal.

18 And I said, well, they haven't foreclosed the
19 mortgage. They said, we don't have to. We want the debt
20 paid.

21 And that is precisely what they did in that -- in
22 the *Lever* case. They said, we want the debt paid, the debt
23 being the ability to pay it. And they proceeded to
24 foreclose. Debt was never fully satisfied. Property in that
25 case apparently was worth -- I haven't heard what happened in

1 the first. Was there money obtained in the sale of the
2 property?

3 MR. FOERSTER: Yes, Your Honor.

4 THE COURT: I thought there was.

5 MR. FOERSTER: But it wasn't enough to satisfy the
6 debt.

7 THE COURT: I understand that, my friend. But there
8 was something obtained in the sale of the first foreclosure?

9 MR. FOERSTER: SunTrust credit.

10 THE COURT: Sure. That's fine. Hey, I understand
11 that too. And I bet the bank did in the *Lever* case too.
12 It's not recited what actually was done, but I bet the
13 property went to them. But they had a second agreement,
14 which allowed them to go forward and foreclose that second
15 mortgage.

16 This agreement's resolved. It's gone. It's over.
17 That debt no longer exists. You elected -- the bank made an
18 election. You could have had judgment, but you said, we
19 waive that. And because you did, you basically have said --
20 insofar as that note is concerned -- we will take the
21 property. And that's it. And that's what happens when
22 deficiency is due. Lots of banks do that. I don't know why
23 you would have done that here, but you did.

24 All of that to say, I really respect your position
25 and I respect your argument. And it's one of the things

1 that -- why we like to be lawyers, I guess. It isn't all
2 black and white. It's a lot of gray. And because of that,
3 my ruling on this gray is going to be, we will give you a
4 chance to pay -- maybe there will be another case by SunTrust
5 that will -- it will either distinguish *Lever* or it will be
6 reserved and say, *Lever*, you were right, *Lever* does control.

7 I don't have any problem with you not satisfying the
8 judgments, per se, on your own, which the statute basically
9 says that. But I think that the order needs to be that the
10 judgment is satisfied, because it's done.

11 Well, the judgment stands. It is -- well, there is
12 no judgment.

13 MR. COLLINS: No, sir.

14 THE COURT: Because the judgment was, we waive the
15 deficiency. The note no longer existed. That gets the --
16 that's what the problem is. That note, while I -- you could
17 have not foreclosed your mortgage and just asked to pay that.
18 You could have done a lot of things. But you made an
19 election how to collect it.

20 So that's going to be my position. I appreciate it.
21 But anything else you want to add that was not reached in
22 your memo?

23 MR. FOERSTER: Yes, Your Honor. If I might bring
24 another case to the Court's attention --

25 THE COURT: Sure.

1 MR. FOERSTER: -- and just brief you on it. May I
2 bring up a copy?

3 THE COURT: You surely may.. Absolutely.

4 MR. FOERSTER: Your Honor, this case is called *Jones*
5 *vs. Equicredit Corporation*. It's not exactly on point, but I
6 think it's helpful. It deals with this issue of whether a
7 mortgage lender can pursue additional loan collateral after a
8 foreclosure judgment, after the lender waived its right to a
9 personal deficiency judgment in that foreclosure action,
10 but -- and the foreclosure sale, but doesn't satisfy the debt
11 through the foreclosure sale.

12 And I will back up and just give the Court the facts
13 of that case real quick, again.

14 THE COURT: You really don't need to. I
15 appreciate -- I mean, the case speaks for itself. Give me a
16 second. I will look at it.

17 I appreciate your position. This case is really who
18 had an insurable interest. And I don't think it expands or
19 changes my decision. So you are entitled to allow the case.

20 MR. FOERSTER: I understand your ruling, Your Honor.
21 And I understand your ruling that the deficiency waiver would
22 have extinguished the underlying debt.

23 There's also the side issue of, he sued us for
24 violating the mortgage satisfaction statute. We didn't
25 satisfy within three months and he wants damages for that.

1 THE COURT: I'm not going to do that.

2 MR. COLLINS: Well, Judge, I can address that for
3 you, if you want to.

4 We have asked for damages, the statutory damages,
5 \$25,000, plus attorney's fees.

6 Quite frankly, if I go back to my client and I say,
7 Judge Dennis ruled that the mortgage be satisfied, my advice
8 to him would be, go and send no more and let's shut this
9 thing down.

10 THE COURT: I'll put it this way. I think there's a
11 legitimate legal issue here why they didn't violate that. I
12 mean, I just -- now, I haven't heard any testimony about
13 anything.

14 I'm going to deny that. I'm going to deny that.
15 And then y'all can decide whether you both want to go up on
16 appeals.

17 MR. COLLINS: Well, I can tell you this, Your Honor.
18 And, of course, I've got to run this by my client, but if I
19 get an order from you saying, just satisfy the mortgage,
20 that's all I really want.

21 THE COURT: I'm going to order -- the order has been
22 set. I ask you prepare that. And I believe that that
23 extinguishes the debt. And I'm going to ask that the
24 mortgage be satisfied.

25 MR. COLLINS: Yes, sir.

1 MR. FOERSTER: Thank you, Your Honor.

2 THE COURT: Okay. Thank you very much.

3 MR. FOERSTER: And this case was up for trial next
4 week, but I assume that's not necessary.

5 THE COURT: It will be done. I appreciate it.

6 Do a Form 4 that says the plaintiff's motion for
7 summary judgment is partially granted and formal order to
8 follow.

9 Defendant's motion for summary judgment is denied.
10 Okay?

11 Thank you so much. And I appreciate you, gentlemen.

12 (Whereupon, proceedings are adjourned.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 27th day of July, 2016, at Charleston, Charleston
County, South Carolina.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2012-CP-10-7842

David B. Powell and Carol Ann Powell,
Plaintiffs,

v.

SunTrust Bank a/k/a SunTrust Mortgage, Inc.;
Midland Funding LLC; and Pavilion Place Property
Owners' Association Inc.
Defendants.

MOTION FOR SUMMARY JUDGMENT

FILED
2013 FEB 10 PM 3:52
JULIE J. ARMSTRONG
CLERK OF COURT

(19610.12 SMF)

TO: DAVID A. COLLINS, ESQUIRE, ATTORNEY FOR PLAINTIFFS DAVID B. POWELL AND CAROL ANN POWELL:

Defendant SunTrust Bank¹ ("SunTrust"), by and through counsel, hereby moves pursuant to Rule 56, SCRPC, for an Order granting summary judgment in its favor on the Complaint of Plaintiffs David B. Powell and Carol Ann Powell ("Powells") on the following grounds:

Undisputed Facts

On March 15, 2006, David B. Powell ("David Powell") borrowed \$720,000 from SunTrust to purchase property located at 25 Longmarsh Road, Mt. Pleasant, SC 29466 ("Longmarsh property"). (See Affidavit of Diana L. King ¶ 2 attached hereto as Def.'s Exhibit 1.) David Powell gave SunTrust a promissory Note for the full loan amount. *Id.* To secure the debt, the Powells gave SunTrust a mortgage covering the Longmarsh property ("Primary Mortgage"). (King Aff. ¶ 2(a).)

In order to obtain a 100% financing loan, and to avoid having to make a 20% down payment on the purchase, the Powells gave SunTrust another mortgage for \$144,000 ("Additional Mortgage") against another property they owned at 1001 Ocean Boulevard, Isle of Palms, SC 29451 ("subject property"). (See Requests for Admissions attached hereto as Def.'s Exhibit 2; *see also* King Aff. ¶ 2(b).) The Additional Mortgage was given pursuant to the terms of an Additional Collateral Agreement. (See Exhibit C to Requests for Admissions.) The Additional Collateral Agreement provided:

"In the event the loan for real property in the amount of \$720,000.00 located at 25 Longmarsh Road, Mount Pleasant, SC 29466 actually closes, upon the principal balance thereon having been paid down by \$144,000.00 (that is to \$576,000.00) Lender will

¹ SunTrust Bank is erroneously referred to in the caption as "SunTrust Bank a/k/a SunTrust Mortgage, Inc." SunTrust Bank is not "a/k/a" SunTrust Mortgage, Inc., and has therefore moved to correct this error in the caption.

satisfy of record the said second mortgage on 1001 Ocean Boulevard, Isle of Palms, SC 29541.”

On November 1, 2008, David Powell defaulted on the promissory note. (*See* Judgment of Foreclosure and Sale attached as Exhibit C to King Aff.) Prior to defaulting, David Powell failed to pay down the principal balance of the loan by \$144,000.00 as required by the Additional Collateral Agreement. (*See* Requests for Admissions ¶ 13.) In fact, he failed to pay down any of the principal of the loan.

On August 11, 2009, SunTrust filed civil action # 2009-CP-10-4990 against the Powells for foreclosure of only the Primary Mortgage on the Longmarsh property (the “Foreclosure Action”). (*See* Judgment of Foreclosure and Sale attached Exhibit C to King Aff.) In the Foreclosure Action, SunTrust waived its right to a personal or deficiency judgment against David Powell, but did not waive its right to later pursue the foreclosure of any additional collateral it had for the loan in the event that the foreclosure of the Longmarsh property failed to satisfy the entire debt. *Id.*

On December 10, 2009, the Master in Equity for Charleston County entered a Judgment of Foreclosure and Sale against the Powells in the Foreclosure Action and ordered that the Longmarsh property be sold at a foreclosure sale. *Id.* SunTrust was the successful bidder at the foreclosure sale of the Longmarsh property on March 16, 2010. SunTrust paid only \$3,495.24 in connection with the foreclosure sale (*see* Master’s Order of Sale and Disbursement attached hereto as Def.’s Exhibit 3) and took a Master’s Deed to the Longmarsh property dated March 25, 2010, and recorded in the Office of the Register Mesne Conveyance for Charleston County on March 31, 2010, in Mortgage Book O114 at Page 828.

On January 27, 2011, SunTrust sold the Longmarsh property on the open market to a third party for the purchase price of \$260,000.00. (King Aff. ¶ 5.) After its transaction costs were subtracted, SunTrust received only \$246,223.54 in proceeds from the sale of the Longmarsh property. *Id.*

After crediting the loan account with the \$246,223.54 in proceeds from the sale of the Longmarsh property, the judgment debt still remains in an amount of \$549,887.20 (which estimate is good through January 20, 2015). (King Aff. ¶ 7.)

The Powells now allege that SunTrust was required by S.C. Code Ann. § 29-3-310 to satisfy the Additional Mortgage on the grounds that either 1) the debt owed to SunTrust was satisfied in full through the foreclosure of the Primary Mortgage, and/or 2) that SunTrust’s waiver of its right to personal judgment against David Powell for any deficiency somehow equated to a voluntary satisfaction of the underlying debt. (Compl. ¶¶ 6-8.)

By failing to respond to SunTrust’s Requests for Admissions served on them on January 2, 2014, the Powells have admitted that:

- David Powell did not pay down the principal balance due under Note by \$144,000.00 (down to \$576,000.00) and did not satisfy his obligations under the Additional Collateral Agreement;
- David Powell never tendered full payment or satisfaction of the debt to SunTrust;
- The Powells were never told by SunTrust, or anyone on its behalf, that the debt had been satisfied; and
- The Powells were never told by SunTrust, or anyone on its behalf, that SunTrust would satisfy the Additional Mortgage.

(See Requests for Admissions ¶¶ 13, 15-17.)

Standard

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. “[A]n adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Rule 56(e), SCRPC. “If he does not so respond, summary judgment, if appropriate, shall be entered against him.” *Id.*

Argument

SunTrust is entitled to judgment as a matter of law on the Powells’ Complaint because the loan secured by the Additional Mortgage remains unsatisfied and SunTrust never waived its right to enforce the Additional Mortgage.

The Powells are suing SunTrust under South Carolina’s mortgage satisfaction statute, which states in full:

Any holder of record of a mortgage who has received full payment or satisfaction or to whom a legal tender has been made of his debts, damages, costs, and charges secured by mortgage of real estate shall, at the request by certified mail or other form of delivery with a proof of delivery of the mortgagor or of his legal representative or any other person being a creditor of the debtor or a purchaser under him or having an interest in any estate bound by the mortgage and on tender of the fees of office for entering satisfaction, within three months after the certified mail, or other form of delivery, with a proof of delivery, request is made, enter satisfaction in the proper office on the mortgage which shall forever thereafter discharge and satisfy the mortgage.

S.C. Code Ann. § 29-3-310 (emphasis added). The statute imposes liability only on mortgage holders that have “received such payment, satisfaction, or tender.” S.C. Code Ann. § 29-3-320.

Based on the supporting affidavit of SunTrust and on the Powells’ admissions, there is no genuine dispute of the following material facts:

- SunTrust has never received full payment of the debt secured by the Additional Mortgage;
- The foreclosure of the Primary Mortgage did not satisfy the debt;
- David Powell never tendered payment of the debt, damages, costs, and charges secured by the Additional Mortgage; and
- David Powell never satisfied the condition precedent set forth in the Additional Collateral Agreement for satisfaction of the Additional Mortgage.

Based on these undisputed facts, the Court must find as a matter of law that the Powells were not entitled to a satisfaction of the Additional Mortgage pursuant to S.C. Code Ann. § 29-3-310.

SunTrust's obtaining of a foreclosure judgment concerning the Primary Mortgage had no effect on the Additional Mortgage because it did not satisfy the underlying debt. "A creditor shall not have two satisfactions for the same debt, but there is no inconsistency in his pursuing two remedies." *Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 35-36, 647 S.E.2d 214, 217-18 (2007). Only if "one produces satisfaction, [does it become] a bar to the other." *Id.* Although the Foreclosure Action extinguished the Primary Mortgage, it did not "satisfy any unpaid portion of the debt secured by the mortgage." S.C. Code Ann. § 29-3-780. "[U]ntil the mortgage debt is actually satisfied, the recovery of a judgment on the obligation secured by a mortgage, without the foreclosure of the mortgage, although merging the debt in the judgment, has no effect upon the mortgage or its lien, does not merge it, and does not preclude its foreclosure in a subsequent suit ..." *Lever*, 374 S.C. at 33, 647 S.E.2d at 216 (quoting 55 Am. Jur. 2d *Mortgages* § 524). "A mortgage being given as a security for a debt, the general rule is that no mere change in the mode or time of payment, nothing short of an actual payment of the debt or an express release, will operate as a discharge of the mortgage." *Lever*, 374 S.C. at 35, 647 S.E.2d at 217 (quoting *Nichols v. Briggs*, 18 S.C. 473 (1883)). "The lien lasts as long as the debt." *Id.* Because the foreclosure of the Primary Mortgage did not satisfy the underlying debt, the Additional Mortgage remained intact.

SunTrust's waiver of its right to a deficiency judgment against David Powell during the Foreclosure Action did not equate to a satisfaction of the underlying debt. "In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage..." S.C. Code Ann. § 29-3-660 (emphasis added). By its very terms, the deficiency judgment statute concerns only the right of the lender to a personal judgment against the borrower. Therefore, SunTrust's waiver of its rights under this statute concerned only its right to a personal judgment against David Powell, and nothing more. SunTrust never waived its right to pursue satisfaction of the debt from sources other than David Powell personally, such

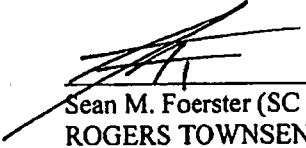
as through the foreclosure of additional loan collateral. Thus, SunTrust's waiver of its statutory deficiency judgment rights had no effect on the Additional Mortgage.

Conclusion

There is no genuine issue of material fact that the loan secured by the Additional Mortgage remains unsatisfied and that SunTrust never waived its right to enforce the Additional Mortgage. Based on these undisputable material facts, SunTrust has not violated S.C. Code Ann. § 29-3-310, and it is entitled to judgment as a matter of law in its favor on the Powells' Complaint.

This motion is based on the pleadings, the affidavit and exhibits attached hereto, the unanswered Requests for Admissions attached hereto, the case law, the South Carolina Rules of Civil Procedure, and the statutes of South Carolina.

Respectfully submitted,



Sean M. Foerster (SC Bar # 77466)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
sean.foerster@rtt-law.com

Attorneys for Defendant SunTrust Bank
Rogers Townsend & Thomas, PC and its staff are debt collectors.

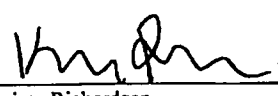
February 4, 2015

CERTIFICATE OF SERVICE BY MAIL
Case # 2012-CP-10-7842

I, the undersigned, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on February 4, 2015, at the following addresses:

Document Served: Motion for Summary Judgment

Counsel Served:
David A. Collins, Esquire
P.O. Box 40578
Charleston, SC 29423



Karissa Richardson
Litigation Assistant to Sean M. Foerster



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION# 2012-CP-10-7842

David B. Powell and Carol Ann Powell,
Plaintiffs,

v.

AFFIDAVIT

SunTrust Bank a/k/a SunTrust Mortgage, Inc.;
Midland Funding LLC; and Pavilion Place Property
Owners' Association Inc.;

Defendants.

(19610.12 SMF)

PERSONALLY APPEARED before me, the undersigned, who, being duly sworn, deposes and says:

1. My name is Diana L. King and I am authorized to execute this affidavit on behalf of Defendant SunTrust Bank ("SunTrust").

2. SunTrust is the owner of a mortgage loan (the "Loan") evidenced by a promissory note given by Plaintiff David B. Powell to SunTrust on March 15, 2006, in the principal sum of \$720,000.00, and secured by the following mortgages:

- a. Mortgage covering the real property at 25 Longmarsh Road, Mt. Pleasant, SC 29466, TMS # 632-00-00-063, dated March 15, 2006, and recorded in the Office of the RMC/ROD for Charleston County on March 20, 2006, in Mortgage Book U576 at Page 557 (the "Primary Mortgage") (See copy attached as Exhibit A);
- b. Mortgage covering the real property at 1001 Ocean Boulevard, Isle of Palms, South Carolina 29541, TMS # 568-11-00-149, dated March 15, 2006, and recorded in the Office of the Register Mesne Conveyance for Charleston County on March 20, 2006, in Mortgage Book U576 at Page 574 (the "Additional Mortgage") (See copy attached as Exhibit B);

3. SunTrust maintains records for the Loan in the ordinary course of its business. As part of my job responsibilities for SunTrust, I have personal knowledge of SunTrust's procedures for creating and maintaining these records. My knowledge of the facts set forth in this affidavit is based on my review of the records maintained by my company in connection with this Loan.

4. According to SunTrust's records for the Loan, SunTrust was owed \$796,110.74 at the time of the entry of the Judgment of Foreclosure and Sale on December 10, 2009, in the foreclosure action concerning the Primary Mortgage. (See copy of Judgment of Foreclosure and Sale attached as Exhibit C.)

5. After the completion of the foreclosure of the Primary Mortgage, SunTrust sold the real property located at 25 Longmarsh Road on January 27, 2011, to a third party for the purchase price of

\$260,000.00. After its transaction costs were subtracted, SunTrust received only \$246,223.54 in proceeds from the sale of 25 Longmarsh Road. (See copy of Settlement Statement attached as Exhibit D.)

6. Although SunTrust "charged-off" the loan, this simply meant that SunTrust believed the remainder of the debt was unlikely to be collected. A charge-off is not a satisfaction of the debt by SunTrust or a waiver by SunTrust of its right to collect the debt. Typically, charged-off loans are transferred to a different department of SunTrust to attempt recovery.

7. After crediting the Loan with the \$246,223.54 in proceeds from the sale of 25 Longmarsh Road, the amount of the remaining debt under the Loan is \$549,887.20.

8. The debt due under the Loan remains unsatisfied as of the date of this affidavit.

FURTHER AFFIANT SAYETH NOT.

Diana L King
Name

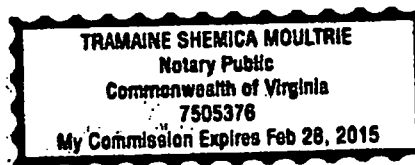
Vice President
Title

1/20/15
Date

Diana L. King
Vice President

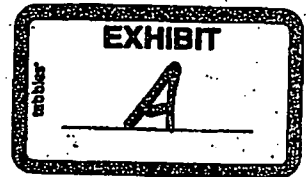
Sworn to before me this 20 day of
January, 2015

Debra Shemica Moultrie
Notary Public for Virginia
My commission expires: Feb. 28, 2015



Return To:
Dodds & Hennessey
973 Houston Northcutt Blvd.
Mt Pleasant, SC 29464

POWELL RE



OK U576PG557

Prepared By:
Janice Green
SunTrust Mortgage Inc.
145 King Street
Charleston, SC 29401

AP# [REDACTED]
LN# [REDACTED]

[Space Above This Line For Recording Data]

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 together with all Riders to this document.

March 15, 2006

(B) "Borrower" is DAVID B POWELL AND CAROL ANN POWELL

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

VMP -6(SC) (0409)

Page 1 of 15

MW 04/09/01

Initials: [Signature]

VMP Mortgage Solutions, Inc. (800) 921-7291



AP# [REDACTED]
LN# [REDACTED]

BK U576P6558

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 15, 2006
The Note states that Borrower owes Lender Seven Hundred Twenty Thousand and no/100

Dollars

(U.S. \$720,000.00) 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, 2009

(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]:

- | | | |
|--|---|---|
| ☐ Adjustable Rate Rider | ☐ Condominium Rider | ☐ Second Home Rider |
| ☐ Balloon Rider | ☐ Planned Unit Development Rider | ☐ 1-4 Family Rider |
| ☐ VA Rider | ☐ Biweekly Payment Rider | ☐ 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# [REDACTED]
LN# [REDACTED]

U576PG559

(P) "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 Charleston
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

See Exhibit "A" attached hereto and made a part hereof

Parcel ID Number: 632-00-00-063
25 LONGMARSH ROAD
MOUNT PLEASANT
("Property Address"):

which currently has the address of
[Street]
[City], South Carolina 29466 [Zip Code]

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 seised 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:

1. 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

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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

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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

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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

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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

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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.

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(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, reinstate 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.

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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.

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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

AP# [REDACTED]
LN# [REDACTED]

U576PG568

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.

AP# [REDACTED]
LN# [REDACTED]

U576PG569

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.

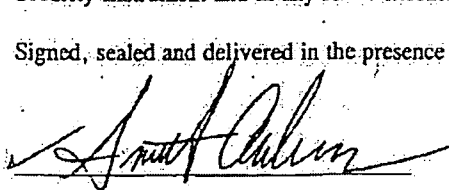
26. **Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

LN# [REDACTED]

OK U576PG570

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.

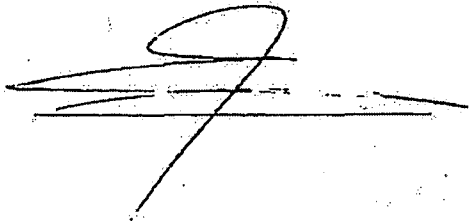
Signed, sealed and delivered in the presence of:

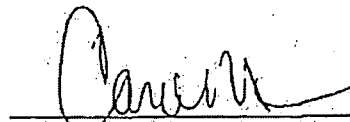




DAVID B POWELL

(Seal)
-Borrower





CAROL ANN POWELL

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

AP# [REDACTED]
LN# [REDACTED]

EX U576PG571

STATE OF SOUTH CAROLINA, CHARLESTON

County ss:

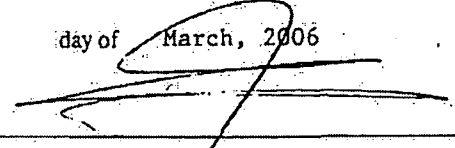
I, William J. Hennessy, Jr.

do hereby certify that

David B. Powell and Carol Ann Powell

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

Witness my hand and official seal this 15th day of March, 2006



Notary Public for South Carolina

My Commission Expires: 11/7/15

EXHIBIT "A"

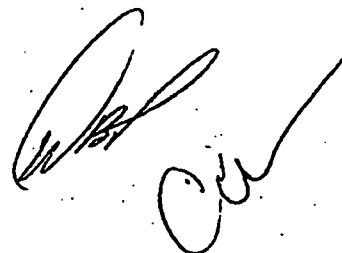
U576PG572

All that piece, parcel or lot of land, situate, lying and being in Christ Church Parish, Charleston County, State of South Carolina, being shown and designated as Lot No. 25 on that certain plat entitled "FINAL PLAT SEWEE PRESERVE CHRIST CHURCH PARISH CHARLESTON COUNTY, SC" by Absolute Surveying, Inc. dated January 30, 2002 and last revised June 10, 2002 and recorded in Plat Book EG, at pages 40-43, Charleston County RMC Office, reference to which is craved for a more complete description. Said lot includes marsh as may be contained within the boundary lines of said lot as shown on said plat.

Together with a non-exclusive easement for access, ingress and egress to and from said Lot 25 over and across the roads in Sewee Preserve to U.S. Highway 17 as shown on that certain plat entitled "FINAL PLAT SEWEE PRESERVE CHRIST CHURCH PARISH CHARLESTON COUNTY, SC" by Absolute Surveying, Inc. dated January 30, 2002 and last revised June 10, 2002 and recorded in Plat Book EG, at pages 40-43, Charleston County RMC Office.

Being the same property conveyed to the mortgagor herein by deed of E. Burrow Hill, III and Helen T. Hill of even date and to be recorded simultaneously herewith in the RMC Office for Charleston County.

TMS #632-00-00-063

A handwritten signature in black ink, appearing to be 'C. Hill' or similar, located in the lower right quadrant of the page.

EX U576PG573

RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



Filed By:

Dodds & Hennessy, L.L.P.

Attorneys at Law

P.O. Box 298

Charleston

SC 29402

FILED

March 20, 2006

1:16:34 PM

EX U576PG557

Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION	AMOUNT
	\$ 22.00
Postage	
TOTAL	\$ 22.00

DRAWER:

A - bmm

DO NOT STAMP BELOW THIS LINE

Return To:
Dodds & Hennessey
973 Houston Northcutt Blvd.
Mt Pleasant, SC 29464

POWELL RE ~~123456~~



Prepared By:
Janice Green
SunTrust Mortgage Inc.
145 King Street
Charleston, SC 29401

EX U576PG574

MORTGAGE

AP# ~~123456~~
LN# ~~123456~~

THIS MORTGAGE is made this 15th day of March 2006, between the Mortgagor,
DAVID B POWELL AND CAROL ANN POWELL

(herein "Borrower"), and the Mortgagee,

SunTrust Mortgage, Inc., a Virginia Corporation
existing under the laws of the State of Virginia
901 Semmes Avenue, Richmond, VA 23224

, a corporation organized and
whose address is

(herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 144,000.00, which indebtedness is evidenced by Borrower's note dated March 15, 2006 and extensions and renewals thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not sooner paid, due and payable on April 1, 2009;

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the County of CHARLESTON, State of South Carolina:

See Exhibit "A" attached hereto and made a part hereof

which has the address of 1001 OCEAN BOULEVARD
ISLE OF PALMS
(herein "Property Address");

(City), South Carolina 29451

(Street),
(Zip Code)

TO HAVE AND TO HOLD unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

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

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

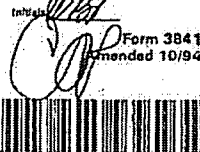
1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Mortgage and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender.

SOUTH CAROLINA - SECOND MORTGAGE - 1/80 - FNMA/FHLMC UNIFORM INSTRUMENT

VMP-75(SC) 104091

Page 1 of 4
VMP Mortgage Solutions, Inc. (800)521-7231



If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, and then to the principal of the Note.

4. Prior Mortgages and Deeds of Trust; Charges; Liens. Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

5. Hazard 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 such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

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.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

6. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

7. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

10. 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 Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender, under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

12. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. Governing Law; Severability. The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. Borrower's Copy. Borrower shall be furnished a conforming copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

15. Rehabilitation Loan Agreement. Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

16. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Mortgage.

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 delivered or mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

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

17. Acceleration; Remedies. Except as provided in paragraph 16 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 20 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, 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 nonexistence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees, and costs of documentary evidence, abstracts and title reports, all of which shall be additional sums secured by this Mortgage.

18. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Mortgage due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

19. Assignment of Rents; Appointment of Receiver. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

20. Release. Upon payment of all sums secured by this Mortgage, this Mortgage shall become null and void, and Lender shall release this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

AP# [REDACTED]

LN# [REDACTED]

21. Waiver of Homestead. Borrower hereby waives all rights of homestead exemption in the Property.

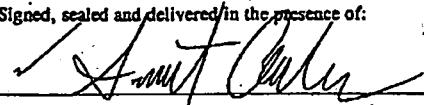
EX U576PG577

**REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST**

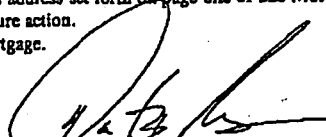
Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

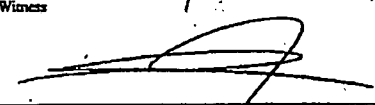
Signed, sealed and delivered in the presence of:



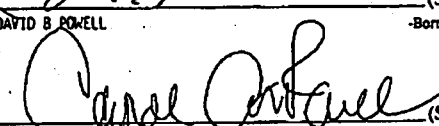
Witness



DAVID B. POWELL (Seal)
-Borrower



Witness



CAROL ANN POWELL (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

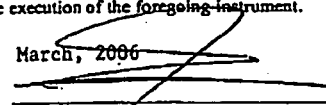
STATE OF SOUTH CAROLINA, CHARLESTON
I, William J. Hennessy, Jr.

County ss:
do hereby certify that

David B. Powell and Carol Ann Powell

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

Witness my hand and official seal this 15th day of March, 2006



Notary Public for South Carolina

My Commission Expires: 11/7/15

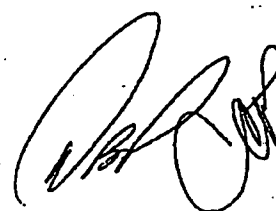
EXHIBIT "A"

U576PG578

All that certain piece, parcel or lot of land, situate, lying and being in the City of Isle of Palms, Charleston County, South Carolina and shown and designated as Lot 05N, 6602 SQFT, in a subdivision to be known as Pavilion Place, on a plat entitled, "CONDITIONAL PLAT PROPERTY LINE ADJUSTMENT @ LOTS 02,03,04,05,06,07 & OLD ROAD R/W BLOCK 30 CONTAINING 0.771 ACRES LOCATED @ FRONT BEACH CITY OF ISLE OF PALMS CHARLESTON COUNTY SOUTH CAROLINA," by John E. Wade Jr., R.L.S., dated December 9, 2004 and recorded in Plat Book DE at Page 386 in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

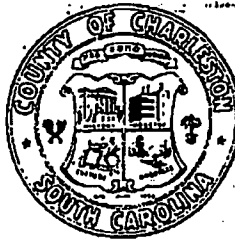
Being the same property conveyed to David B. Powell and Carol Ann Powell by deed of John E. Littlefield dated January 12, 2005 and recorded in Book N522 at Page 324 in the RMC Office for Charleston County.

TMS # 568-11-00-149

A handwritten signature in black ink, appearing to be 'D. B. Powell', located in the bottom right corner of the page.

BK U576PG579
RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



FILED

March 20, 2006

1:17:34 PM

BK U576PG574

Charlie Lybrand, Register
Charleston County, SC

SAT
info
Filed By:

Dodds & Hennessy, L.L.P.

Attorneys at Law

P.O. Box 298

Charleston

SC 29402

DESCRIPTION

AMOUNT

	\$ 11.00
Postage	

TOTAL

\$ 11.00

DRAWER:

A - bmm

DO NOT STAMP BELOW THIS LINE



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

SunTrust Bank,

Plaintiff,

v.

David B. Powell; Carol Ann Powell; The South
Carolina Department of Revenue; Sewee Preserve
Property Owners' Association;

Defendant(s).

(003231-01057)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 09-CP-10-4990

JUDGMENT OF FORECLOSURE AND SALE
Deficiency Judgment Waived

FILED
2009 DEC 10 AM 10:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Samuel C. Waters, Esquire
Attorney for the Plaintiff

John J. Dodds, III
Attorney for David B. Powell

John J. Dodds, III
Attorney for Carol Ann Powell

Ronald W. Urban, Esq.
Attorney for The South Carolina Department of Revenue

Derek F. Dean
Attorney for Sewee Preserve Property Owners' Association

A hearing was held December 3, 2009 at 02:00 PM. The testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on August 11, 2009.
2. The Summons and Complaint were filed on August 11, 2009.
3. Service was made upon the Defendant(s) named in this report as shown by the proof(s) of service filed herein.
4. No Defendant raised any issues related to Plaintiff's standing to prosecute this

action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

5. Pursuant to an Order of the South Carolina Supreme Court Administrative Order dated May 22, 2009, the Plaintiff has set forth its belief in its Complaint or by Affidavit, which is already of record in this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HMP), and therefore Plaintiff has fully complied with said Order. Also called attention that pursuant to Order of the South Carolina Supreme Court Administrative Order dated May 22, 2009, Plaintiff's attorney has not received a counter affidavit from the Defendant(s).

6. David B. Powell filed an answer through their attorney/guardian, John J. Dodds, III. Carol Ann Powell filed an answer through their attorney/guardian, John J. Dodds, III. The South Carolina Department of Revenue filed an answer through their attorney/guardian, Ronald W. Urban, Esq. Sewee Preserve Property Owners' Association filed an answer through their attorney/guardian, Derek F. Dean.

7. The Defendant(s) and/or all attorneys of record were notified of the time, date, and place of the hearing in this matter.

8. According to the affidavit filed herein, the Defendant(s) David B. Powell and Carol Ann Powell are not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. Seq.

9. For value received, David B. Powell made, executed and delivered a(n) Fixed Rate Note dated March 15, 2006 promising thereby to pay the sum of \$720,000.00 with interest at 7.125% per annum. Other terms and conditions are stated in the Fixed Rate Note, which is of record herein.

10. To better secure the payment of the Fixed Rate Note described above David B. Powell and Carol Ann Powell made, executed, and delivered to SunTrust Mortgage, Inc. a certain real estate Purchase money first Mortgage in writing, dated March 15, 2006 covering real property in Charleston County, which is the same as that described in the Complaint. The Purchase money first Mortgage was filed on March 20, 2006, and is of record in the Office of RMC/ROD in Book U576 at Page 557. This Mortgage was assigned to the Plaintiff herein by assignment dated August 13, 2009 and recorded on September 2, 2009 in Book 78 at Page 833.

11. This Purchase money first Mortgage constitutes a Purchase money first mortgage lien on the subject property, subject only to ad valorem or other liens/taxes given priority by statute.

12. The Plaintiff in this action is the owner and holder or nominee for the owner and holder of the Fixed Rate Note and Purchase money first Mortgage it is seeking to foreclose.

13. Any notice required by the terms of the Purchase money first mortgage or by state or federal statutes has been given to the applicable defendant(s) prior to the commencement of this action.

14. Payment due on the Fixed Rate Note has not been made as provided for therein, and the Plaintiff, as the holder or nominee for the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Fixed Rate Note and Purchase money first Mortgage in the hands of the attorney herein for collection by foreclosure.

15. The sum of \$5,500 is a reasonable fee to allow as attorney fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Fixed Rate Note and Purchase money first Mortgage. These sums are likewise reasonable based on the time necessarily devoted to representation of the Plaintiff during the several month course of these proceedings. The services of counsel performed for the Plaintiff, including the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the amount awarded. The fees are also reasonable given the professional standing of the Plaintiff's counsel and their experience in handling foreclosure matters. The fees awarded herein are also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time. The Plaintiff has advanced \$810.00 to its counsel and this amount appears in Plaintiff's advances.

16. According to the Plaintiff's accounting, after all payments received by the Plaintiff have been credited to the subject loan, the amount due and owing on the Fixed Rate Note, with interest at the rate provided in the Fixed Rate Note, and other costs and expenses of the within action, including an attorney's fee, secured by the Fixed Rate Note and Purchase money first Mortgage, is as follows:

(a)	Principal due November 1, 2008.....	\$720,000.00
(b)	Interest from October 1, 2008 through December 3, 2009 at 7.125% per annum	\$60,131.10
(c)	Advances (Escrow advances, corporate charges and other charges)	\$10,220.89
(d)	Late Charges.....	\$1,068.75
(e)	Attorney's fee.....	\$4,690.00

TOTAL debt secured by Fixed Rate Note and Purchase money first Mortgage,
including interest to date shown \$796,110.74

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 7.125% per annum (pursuant to the terms of the Fixed Rate Note and Purchase money first Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Purchase money first Mortgage through the date to which such interest is computed.

17. Plaintiff is seeking the usual foreclosure of the Purchase money first mortgage and has in the Complaint (or subsequently thereto in writing) expressly waived the right to a personal or deficiency judgment.

18. The Defendant(s) claim(s) or may claim a lien upon or legal interest in the subject property and in the event there is a surplus from the sale of the subject property, such Defendant(s) may present any such lien or legal interest at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such liens or legal interests are as follows:

a. The South Carolina Department of Revenue by virtue of a Tax Lien against David B. Powell and Carol A. Powell; Tax Lien No.: 3-51023099-4; Dated: April 6, 2009; Recorded: April 13, 2009; in the amount of \$5,136.26; in Judgment Roll No. 2009-07985.

b. Sewee Preserve Property Owners' Association by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions and any amendments thereto.

IT IS THEREFORE ORDERED:

19. Pursuant to Order of the South Carolina Supreme Court Administrative Order dated May 22, 2009, Plaintiff has fully complied with said Order, and the foreclosure action may proceed.

20. There is due on the Fixed Rate Note and Purchase money first Mortgage set forth in the Complaint the sum of \$796,110.74, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

21. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due the Plaintiff.

22. The amount of the judgment shall be subject to increase to permit the Plaintiff

to recover additional costs, commissions and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

23. The Defendant(s) liable for the aforesaid judgment debt of the Fixed Rate Note and Purchase money first Mortgage including interest at the rate of 7.125% per annum shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

24. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity at public auction, at the Charleston County Courthouse, in the City of Charleston, County and State aforesaid on the next available sales date, at 11:00 AM, or some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the next business day succeeding such holiday), on the following terms, that is to say:

a. For cash: The Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to either make the required deposit at time of bid or comply with the other terms of the bid within 30 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, but at the risk of the defaulting bidder(s).

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

c. Purchaser to pay for any statutory commission on sale from the proceeds of the final bid amount.

d. Purchaser to pay for deed preparation, costs of recording the deed and satisfaction of mortgage, and transfer taxes on the deed.

e. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Court.

25. A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

26. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure, prior to sale.

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

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

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

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

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

NEXT: Any surplus should be held pending further Order of this court.

30. In the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of Charleston County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

31. In the event the successful bidder is other than the Defendants in possession herein and the occupants have voluntarily vacated the premises or have been ejected from the premises leaving furnishings, fixtures and items not subject to the Plaintiff's Mortgage in said premises, the Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of the Plaintiff's Mortgage, which personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

32. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in

the said mortgaged premises so sold, or any part thereof.

33. In accordance with Rule 77(d), SCRPC, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear herein.

34. The deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee; and the Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

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

36. The following is a description of the premises herein ordered to be sold:

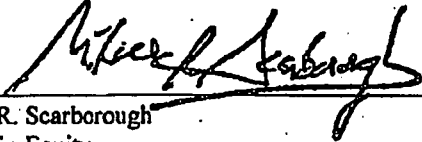
All that piece, parcel or lot of land, situate, lying and being in Christ Church Parish, Charleston County, State of South Carolina, being shown and designated as Lot No. 25 on that certain plat entitled "Final Plat Sewee Preserve Christ Church Parish Charleston County, SC" by Absolute Surveying, Inc. dated January 30, 2002 and last revised June 10, 2002 and recorded in Plat Book EG at Pages 40 through 43, Charleston County RMC Office, reference to which is craved for a more complete description. Said lot includes marsh as may be contained within the boundary lines of said lot as shown on said plat.

Together with a non-exclusive easement for access, ingress and egress to and from said Lot 25 over and across the roads in Sewee Preserve to US Highway 17 as shown on that certain plat entitled "Final Plat Sewee Preserve Christ Church Parish Charleston County, SC" by Absolute Surveying, Inc. dated January 30, 2002 and last revised June 10, 2002 and recorded in Plat Book EG at Pages 40 through 43, Charleston County RMC Office.

This being the same property conveyed to David B. Powell and Carol Ann Powell, as joint tenants with rights of survivorship, by deed of E. Burrow Hill, III and Helen T. Hill, dated March 15, 2006 and recorded March 20, 2006 in Book S576 at Page 606 in the Office of the Register of Deeds for Charleston County.

Property Address: 25 Londmarsh Road
Mt Pleasant, SC 29466

TMS# 632-00-00-063


Mikell R. Scarborough
Master in Equity

12/9, 2009
Charleston, South Carolina



CMB Approval No. 2502-0265



A. Settlement Statement (HUD-1)

B. Type of Loan:		6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:
1. ☐ FHA	2. ☐ RHS	3. ☐ Conv. Unins.	11010009	
4. ☐ VA	5. ☐ Conv. Ins.			
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.				
D. Name and Address of Buyer:		E. Name and Address of Seller:		F. Name and Address of Lender:
Edward G. Boblin and Ellie P. Boblin 7300 Chameleon Way Sarasota, FL 34241		Suntrust Bank, a Georgia Banking Corporation 303 Peachtree Street, N.E., 36th Floor Atlanta, GA 30303		
G. Property Location:		H. Settlement Agent:		I. Settlement Date:
25 Longmarsh Road Mount Pleasant, SC 29468 Charleston County, South Carolina		58-2377920 Brownard Law Firm 1017 Chuck Dawley Blvd., Suite 200 Mt. Pleasant, SC 29464 Place of Settlement: 1017 Chuck Dawley Blvd., Suite 200 Mt. Pleasant, SC 29464		January 27, 2011
TMS No. 632-00-00-063				
J. Summary of Buyer's transaction			K. Summary of Seller's transaction	
100. Gross Amount Due from Buyer:			400. Gross Amount Due to Seller:	
101. Contract sales price 260,000.00			401. Contract sales price 260,000.00	
102. Personal property			402. Personal property	
103. Settlement Charges to Buyer (Line 1400) 3,515.88			403.	
104.			404.	
105.			405.	
Adjustments for items paid by Seller in advance			Adjustments for items paid by Seller in advance	
106. City/Town Taxes to			406. City/Town Taxes to	
107. County Taxes to			407. County Taxes to	
108. Assessments to			408. Assessments to	
109.			409.	
110.			410.	
111.			411.	
112.			412.	
120. Gross Amount Due from Buyer 263,515.88			420. Gross Amount Due to Seller 260,000.00	
200. Amounts Paid by or in Behalf of Buyer			500. Reductions in Amount Due Seller:	
201. Deposit or earnest money 26,000.00			501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)			502. Settlement charges to Seller (Line 1400) 13,247.14	
203. Existing loan(s) taken subject to			503. Existing loan(s) taken subject to	
204.			504. Payoff First Mortgage	
205.			505. Payoff Second Mortgage	
206.			506.	
207.			507. (Deposit disb. as proceeds)	
208.			508.	
209.			509.	
Adjustments for items unpaid by Seller			Adjustments for items unpaid by Seller	
210. City/Town Taxes to			510. City/Town Taxes to	
211. County Taxes 01/01/11 to 01/28/11 529.32			511. County Taxes 01/01/11 to 01/28/11 529.32	
212. Assessments to			512. Assessments to	
213.			513.	
214.			514.	
215.			515.	
216.			516.	
217.			517.	
218.			518.	
219.			519.	
220. Total Paid by/for Buyer 26,529.32			620. Total Reduction Amount Due Seller 13,776.46	
300. Cash at Settlement from/to Buyer			600. Cash at settlement to/from Seller	
301. Gross amount due from Buyer (line 120) 263,515.88			601. Gross amount due to Seller (line 420) 260,000.00	
302. Less amount paid by/for Buyer (line 220) (26,529.32)			602. Less reductions due Seller (line 520) (13,776.46)	
303. Cash ☒ From ☐ To Buyer. 236,986.54			603. Cash ☒ To ☐ From Seller 246,223.54	

The undersigned hereby acknowledge receipt of a completed copy of this statement & any attachments referred to herein

Buyer
Edward G. Boblin
Ellie P. BoblinSeller Suntrust Bank, a Georgia Banking Corporation
BY: President
ATTEST:
Secretary/Treasurer

The Public Reporting Burden for this collection of information is estimated at 33 minutes per response for gathering, reviewing, and entering the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assumed; free disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

Page: 1 of 3

HUD-1
(BOBLIN11010009.PFD/11010009/8)



OMB Approved No. 2502-0245

A. Settlement Statement (HUD-1)

B. Type of Loan

1. ☐ FHA	2. ☐ R/S	3. ☐ Conv. Unins.	4. ☐ VA	5. ☐ Conv. Ins.	6. File Number: 11010009	7. Loan Number:	8. Mortgage Insurance Case Number:
---------------------------------	---------------------------------	--	--------------------------------	--	-----------------------------	-----------------	------------------------------------

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "p.p.c." were paid outside the closing, they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Buyer: Edward G. Boblin and Ellie P. Boblin 7300 Chameleon Way Sarasota, FL 34241	E. Name and Address of Seller: SunTrust Bank, a Georgia Banking Corporation 303 Peachtree Street, N.E., 30th Floor Atlanta, GA 30303	F. Name and Address of Lender:
G. Property Location: 25 Longmarsh Road Mount Pleasant, SC 29465 Charleston County, South Carolina TMS No. 632-00-00-053	H. Settlement Agent: Brownfield Law Firm 1017 Chuck Dawley Blvd., Suite 200 Mt. Pleasant, SC 29464 Place of Settlement: 1017 Chuck Dawley Blvd., Suite 200 Mt. Pleasant, SC 29464	I. Settlement Date: January 27, 2011

J. Summary of Buyer's transaction		K. Summary of Seller's transaction	
100. Gross Amount Due from Buyer:		400. Gross Amount Due to Seller:	
101. Contract sales price	250,000.00	401. Contract sales price	250,000.00
102. Personal property		402. Personal property	
103. Settlement Charges to Buyer (Line 1400)	3,515.88	403.	
104.		404.	
105.		405.	
Adjustments for items paid by Seller in advance		Adjustments for items paid by Seller in advance	
106. City/Town Taxes to		406. City/Town Taxes to	
107. County Taxes to		407. County Taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due from Buyer	253,515.88	420. Gross Amount Due to Seller	250,000.00
200. Amounts Paid by or in Behalf of Buyer		500. Reductions to Amount Due Seller:	
201. Deposit or earnest money	26,000.00	501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to Seller (Line 1400)	13,147.14
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff First Mortgage	
205.		505. Payoff Second Mortgage	
206.		506.	
207.		507. (Deposit disb. as proceeds)	
208.		508.	
209.		509.	
Adjustments for items unpaid by Seller		Adjustments for items unpaid by Seller	
210. City/Town Taxes to		610. City/Town Taxes to	
211. County Taxes 01/01/11 to 01/28/11	529.32	611. County Taxes 01/01/11 to 01/28/11	529.32
212. Assessments to		612. Assessments to	
213.		613.	
214.		614.	
215.		615.	
216.		616.	
217.		617.	
218.		618.	
219.		619.	
220. Total Paid by Buyer	28,529.32	620. Total Reduction Amount Due Seller	13,776.46
300. Cash at Settlement from the Buyer		800. Cash at Settlement to the Seller	
301. Gross amount due from Buyer (line 120)	253,515.88	801. Gross amount due to Seller (line 420)	250,000.00
302. Less amount paid by Buyer (line 220)	(28,529.32)	802. Less reductions due Seller (line 620)	(13,776.46)
303. Cash ☒ From ☐ To Buyer	234,986.56	803. Cash ☒ To ☐ From Seller	243,223.54

The undersigned hereby acknowledge receipt of a completed copy of this statement & any attachments referred to herein

Buyer
Edward G. Boblin
Ellie P. Boblin

Seller
SunTrust Bank, a Georgia Banking Corporation
By:
ATTEST:
Secretary/Treasurer

1-26-11

This Public Reporting Document for this settlement of information is submitted to HUD pursuant to regulation, including, and according to the 4th. This agency hereby not subject this information, and you are not required to complete this form, unless otherwise a currently valid HUD contract number. Its submission is voluntary. This is designed to provide the parties to a HUD-1 a convenient transaction with information during the settlement process.

L. Settlement Charges				Paid From Buyer's Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Real Estate Broker Fees			\$ 11,700.00		
Division of commission (line 700) as follows:					
701. \$ 3,900.00	to	Beach & River Properties			
702. \$ 7,800.00	to	Charleston Area Appraisals			
703. Commission paid at settlement					11,700.00
704.					
705.					
800. Items Payable In Connection with Loan					
801. Our origination charge	\$	(from GFE #1)			
802. Your credit or charge (points) for the specific interest rate chosen	\$	(from GFE #2)			
803. Your adjusted origination charges		(from GFE #A)			
804. Appraisal fee	to	(from GFE #3)			
805. Credit Report	to	(from GFE #3)			
806. Tax service	to	(from GFE #3)			
807. Flood certification	to	(from GFE #3)			
808.		(from GFE #3)			
809.		(from GFE #3)			
810.		(from GFE #3)			
811.		(from GFE #3)			
900. Items Required by Lender to Be Paid In Advance					
901. Daily interest charges from	to	@ \$/day (from GFE #10)			
902. MIP Tot Ins. for Life of Loan	months to	(from GFE #3)			
903. Homeowner's Insurance for	years to	(from GFE #11)			
904. Flood Insurance	1.0 years to	(from GFE #11)			
905.		(from GFE #11)			
1000. Reserves Deposited with Lender					
1001. Initial deposit for your escrow account		(from GFE #9)			
1002. Homeowner's insurance	months @ \$	per month \$			
1003. Mortgage insurance	months @ \$	per month \$			
1004. Property taxes		\$			
County Taxes	months @ \$	per month			
1005.		\$			
1006.	months @ \$	per month \$			
1007. Flood Insurance	months @ \$	per month \$			
1008.		\$			
1009. Aggregate Adjustment		\$			
1100. Title Charges					
1101. Title services and lender's title insurance		(from GFE #4)		675.00	
1102. Settlement or closing fee	to	Brownyard Law Firm	\$		415.00
1103. Owner's title insurance to Chicago Title Insurance Company - SC4544		(from GFE #5)		666.00	
1104. Lender's title insurance to Chicago Title Insurance Company - SC4544		\$			
1105. Lender's title policy limit	\$				
1106. Owner's title policy limit	\$	260,000.00			
1107. Agent's portion of the total title insurance premium	to	Cypross Title, Inc.	\$	399.60	
1108. Underwriter's portion of the total title insurance premium	to	Chicago Title Insurance Company - SC41	\$	266.40	
1109.					
1110.					
1111.					
1112.					
1113.					
1200. Government Recording and Transfer Charges					
1201. Government recording charges	to	Charleston County RMC	(from GFE #7)	10.00	
1202. Deed \$ 10.00	Mortgage \$	Release \$	Other \$		
1203. Transfer taxes			(from GFE #8)		
1204. City/County tax/stamps	Deed \$	Mortgage \$			
1205. State tax/stamps	Deed \$	Mortgage \$			962.00
1206.					
1207.					
1300. Additional Settlement Charges					
1301. Required services that you can shop for		(from GFE #6)			
1302.					
1303. 2011 HOA DUES	to	SEWEE		2,129.86	170.14
1304. HOA Assessment Fee	to	Odessa		35.00	
1305.					
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)				3,515.86	13,247.14

By signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 & 3 of this three page statement.

Brownyard Law Firm, Settlement Agent

Certified to be a true copy.

HUD-1 Attachment

Buyer(s): Edward G. Bobilin and Ellie P. Bobilin

Seller(s): Suntrust Bank, a Georgia Banking

7300 Chameleon Way
Sarasota, FL 34241

Corporation
303 Peachtree Street, N.E., 36th Floor
Atlanta, GA 30303

Settlement Agent: Brownyard Law Firm
(843)884-1658

Place of Settlement: 1017 Chuck Dawley Blvd., Suite 200
Mt. Pleasant, SC 29464

Settlement Date: January 27, 2011

Property Location: 25 Longmarsh Road
Mount Pleasant, SC 29466
Charleston County, South Carolina
TMS No. 632-00-00-063

Title Services and Lender's Title Insurance Details	BORROWER	SELLER
Attorney Fee	335.00	
to Brownyard Law Firm		
Title Insurance Binder	100.00	
to Cypress Title, Inc.		
Messenger Fee	25.00	
to Brownyard Law Firm		
Wire Fee	40.00	
to Brownyard Law Firm		
Title Search	175.00	
to Peggy Carr		
Total	\$ 675.00	\$ 0.00

Settlement or Closing Fee Details	BORROWER	SELLER
Documentation Prep		350.00
to Brownyard Law Firm		
Wire Fee		40.00
to Brownyard Law Firm		
Messenger Fee		25.00
to Brownyard Law Firm		
Total	\$ 0.00	\$ 415.00

Owner's Title Insurance	BORROWER	SELLER
Owner's Policy Premium	666.00	
to Chicago Title Insurance Company - SC4544		
Total	\$ 666.00	\$ 0.00

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

(BOBILIN11010009.PFD/11010009/8)

ROGERS TOWNSEND & THOMAS, PC
POST OFFICE BOX 100200 (29202)
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SOUTH CAROLINA 29210
P 803.771.7500 F 803.343.7017
W RTT-LAW.COM

Sean M. Foerster
Sean.Foerster@RTT-LAW.COM
P 803.744-1855



January 2, 2014

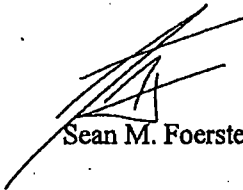
David A. Collins, Esquire
P.O. Box 40578
Charleston, SC 29423

RE: *David B. Powell and Carol Ann Powell vs. SunTrust Bank a/k/a SunTrust Mortgage, Inc.*
Civil Action# 2012-CP-10-7842
Our File# 19610.12

Dear Mr. Collins:

Enclosed are the Defendant's First Set of Requests for Admissions to Plaintiffs David B. Powell and Carol Ann Powell, which I serve upon you.

Very truly yours,



Sean M. Foerster

/tds
Enclosure

This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only an enforcement of the lien against the property.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

David B. Powell and Carol Ann Powell,

Plaintiffs,

v.

SunTrust Bank a/k/a SunTrust Mortgage, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2012-CP-10-7842

DEFENDANT'S FIRST SET OF REQUESTS
FOR ADMISSIONS TO PLAINTIFFS DAVID B.
POWELL AND CAROL ANN POWELL

(19610.12 SMF)

TO: DAVID A. COLLINS, ESQUIRE, ATTORNEY FOR PLAINTIFFS

Pursuant to Rule 36, SCRCP, Defendant SunTrust Bank a/k/a SunTrust Mortgage, Inc. ("SunTrust") hereby serves you with this written request for the admissions of fact and genuineness of documents for the purpose of the pending action only.

INSTRUCTIONS AND DEFINITIONS

A. These requests for admissions, pursuant to the Rule, shall be deemed admitted unless within thirty (30) days from the date hereof you serve a written answer or objection on the undersigned at the address set forth below. If objection is made, the reasons therefore shall be stated.

B. The answer to each request shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. Any such denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify an answer or deny only part of the matter which is requested to be admitted, you shall specify so much of the request as being true and qualify or deny the remainder.

C. You may not give lack of information or knowledge as a reason for failure to admit or deny unless you state that you have made a reasonable inquiry into the information known or readily obtainable by you and it is insufficient to enable you to admit or deny.

D. You will hereby take notice that if you fail to admit these Requests for Admission or any part thereof, and if the undersigned thereafter proves the truth of the matter, the undersigned will apply to the Court for an order requiring the party to pay the reasonable expenses incurred in making such proof, which shall include reasonable attorney's fees.

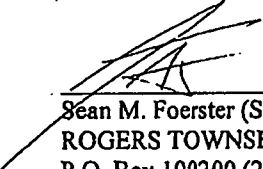
E. Definitions of terms used in these requests:

- a. The "Loan" refers to loan #0034948570 in the amount of \$720,000.00 given by SunTrust Mortgage, Inc. to David B. Powell on March 15, 2006, and which loan is the subject of this action.
- b. The "Note" refers to the fixed rate promissory note given by David B. Powell to SunTrust on March 15, 2006, in the principal sum of \$720,000.00.
- c. The "Primary Mortgage" refers to the mortgage given by David B. Powell and Carol Ann Powell to SunTrust covering the real property at 25 Longmarsh Road, Mt. Pleasant, SC 29466, TMS# 632-00-00-063, on March 15, 2006, and recorded in the Office of the RMC/ROD for Charleston County on March 20, 2006, in Mortgage Book U576 at Page 557.
- d. The "Additional Mortgage" refers to the mortgage given by David B. Powell and Carol Ann Powell to SunTrust covering the real property at 1001 Ocean Boulevard, Isle of Palms, South Carolina 29541, on March 15, 2006, and recorded in the Office of the Register Mesne Conveyance for Charleston County on March 20, 2006, in Mortgage Book U576 at Page 574.
- e. The "Additional Collateral Agreement" refers to the agreement signed by David B. Powell on March 15, 2006, whereby he agreed to give SunTrust an additional, second mortgage on the Powells' real estate at 1001 Ocean Boulevard, Isle of Palms, South Carolina 29541.

REQUESTS FOR ADMISSIONS

1. Admit that David Powell signed the Note.
2. Admit that Exhibit A attached hereto is a true and accurate copy of the original Note that David Powell signed.
3. Admit that David Powell signed the Additional Mortgage.
4. Admit that Carol Ann Powell signed the Additional Mortgage.
5. Admit that Exhibit B attached hereto is a true and accurate copy of the original Additional Mortgage that David Powell and Carol Ann Powell signed.
6. Admit that David Powell signed the Additional Collateral Agreement.
7. Admit that Exhibit C attached hereto is a true and accurate copy of the original Additional Collateral Agreement that David Powell signed.
8. Admit that David Powell signed a "Cross Collateralization" Agreement on February 28, 2006.
9. Admit that Exhibit D attached hereto is a true and accurate copy of the original "Cross Collateralization" Agreement that David Powell signed.

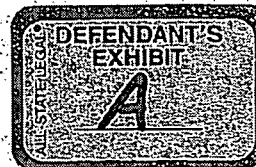
10. Admit that David Powell stopped making his regular monthly payments due under the Note.
11. Admit that David Powell made no down payment in connection with the financing of the purchase of the property at 25 Longmarsh Drive.
12. Admit that David Powell did not purchase mortgage insurance in connection with the financing of the purchase of the property at 25 Longmarsh Drive.
13. Admit that David Powell did not pay down the principal balance due under Note by \$144,000.00 (down to \$576,000.00).
14. Admit that David Powell did not satisfy his obligations under the Additional Collateral Agreement.
15. Admit that David Powell never tendered full payment or satisfaction of the Loan to SunTrust.
16. Admit that Plaintiffs were never told by SunTrust, or anyone on its behalf, that the Loan had been satisfied.
17. Admit that Plaintiffs were never told by SunTrust, or anyone on its behalf, that SunTrust would satisfy the Additional Mortgage.
18. Admit that Plaintiffs never tendered to SunTrust the fee required by the Office of the Register Mesne Conveyance for Charleston County to record a mortgage satisfaction.


Sean M. Foerster (S.C. Bar # 77466)
ROGERS TOWNSEND & THOMAS, PC
P.O. Box 100200 (29211)
220 Executive Center Drive
Columbia, South Carolina 29210
(803) 771-7900
sean.foerster@rtt-law.com

Attorneys for Plaintiff SunTrust Bank a/k/a SunTrust
Mortgage, Inc.
Rogers Townsend & Thomas, PC and its staff are debt collectors

January 2, 2014

AP# [REDACTED]
LN# [REDACTED]



BALLOON NOTE
(Fixed Rate)

THIS LOAN IS PAYABLE IN FULL AT MATURITY. YOU MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE. THE LENDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. IF THE LENDER DOES NOT REFINANCE THE LOAN, YOU WILL BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT YOU OWN, OR YOU WILL HAVE TO FIND ANOTHER LENDER WILLING TO REFINANCE THE LOAN. IF YOU REFINANCE THIS LOAN AT MATURITY, YOU MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF YOU OBTAIN REFINANCING FROM THE SAME LENDER.

March 15, 2006 Charleston SC
[Date] [City] [State]

25 LONGHARSH ROAD MOUNT PLEASANT, SC 29466
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 720,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is SunTrust Mortgage Inc.
I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.1250%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay Principal and interest by making a payment of interest only every month and a balloon payment of Principal as described below.

I will make my monthly payment on the first day of each month beginning on May 1, 2006. I will make these payments every month. Each monthly payment will be applied as of its scheduled due date and will be applied to interest only, unless additional separate amounts are designated as a Prepayment under Section 5 below. On April 1, 2009, I will pay in full on that date, which is called the "Maturity Date," all amounts still owing under this Note, including unpaid Principal, unpaid interest, and any other charges described below.

I will make my monthly payments at SunTrust Mortgage, Inc., P. O. Box 79041
Baltimore, MD 21270-0041 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment of interest only will be in the amount of U.S. \$ 4,275.00.

AP# [REDACTED]
LN# [REDACTED]

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before the Maturity Date. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the required monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payment or the Maturity Date unless the Note Holder agrees in writing to those changes. The Note Holder, however, will recalculate my required monthly interest payment on the basis of the reduced Principal.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this 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 limits; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of any payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

(F) Returned Check Fee

Unless prohibited by applicable law, I agree to pay a fee of U.S. \$ N/A if a payment is made on this Note with a check and the check is dishonored for any reason after the second presentment.

AP# [REDACTED]
LN# [REDACTED]

7. GIVING OF NOTICE

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Borrower Address below or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

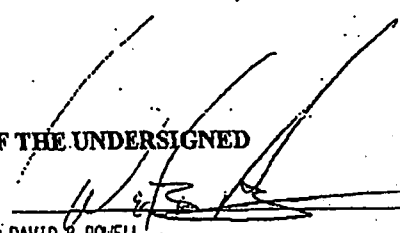
This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

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.

AP# [REDACTED]
LN# [REDACTED]

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED



DAVID B. POWELL (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

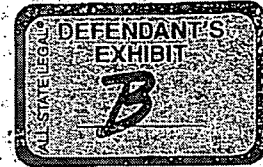
[Sign Original Only]

Borrower Address: 273 FOREST TRAIL, ISLE OF PALMS, SC 29451

LIBW/1052809.1

Return To:
Dodds & Hennessey
973 Houston Northcutt Blvd.
Mt Pleasant, SC 29464

POWELL RE



Prepared By:
Janice Green
SunTrust Mortgage Inc.
145 King Street
Charleston, SC 29401

BK U576PG574

MORTGAGE

AP# 00000000000000000000
LN# 00000000000000000000

THIS MORTGAGE is made this 15th day of March 2006, between the Mortgagor,
DAVID B POWELL AND CAROL ANN POWELL

(herein "Borrower"), and the Mortgagee,

SunTrust Mortgage, Inc., a Virginia Corporation
existing under the laws of the State of Virginia
901 Semmes Avenue, Richmond, VA 23224

, a corporation organized and
whose address is

(herein "Lender"),

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 144,000.00
indebtedness is evidenced by Borrower's note dated March 15, 2006 and extensions and renewals
thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not
sooner paid, due and payable on April 1, 2009

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all
other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the
performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey
to Lender and Lender's successors and assigns the following described property located in the County of
CHARLESTON, State of South Carolina:

See Exhibit "A" attached hereto and made a part hereof.

which has the address of 1001 OCEAN BOULEVARD
ISLE OF PALMS
(herein "Property Address");

(City), South Carolina 29451

(Street),
(Zip Code)

TO HAVE AND TO HOLD unto Lender and Lender's successors and assigns, forever, together with all the improvements
now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be
and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the
leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property".

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

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

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness
evidenced by the Note and late charges as provided in the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or a written waiver by Lender, Borrower shall pay to
Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum
(herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit
development assessments, if any) which may attain priority over this Mortgage and ground rents on the Property, if any, plus
one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage
insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and
reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that
Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender.

SOUTH CAROLINA - SECOND MORTGAGE - 1/BO - FNMA/FHLMC UNIFORM INSTRUMENT

76(SIC) (0408)

Page 1 of 4
VMP Mortgage Solutions, Inc. (800)521-7131

Form 3841
Revised 10/04



AP# 00000000000000000000

BK U576P6575

LN# 00000000000000000000

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, and then to the principal of the Note.

4. Prior Mortgages and Deeds of Trust; Charges; Liens. Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

5. Hazard 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 such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

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.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

6. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

7. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

10. 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 Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

12. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. Governing Law; Severability. The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

15. Rehabilitation Loan Agreement. Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

16. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Mortgage.

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 delivered or mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

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

17. Acceleration; Remedies. Except as provided in paragraph 16 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 20 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, 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 nonexistence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees, and costs of documentary evidence, abstracts and title reports, all of which shall be additional sums secured by this Mortgage.

18. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Mortgage due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

19. Assignment of Rents; Appointment of Receiver. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

20. Release. Upon payment of all sums secured by this Mortgage, this Mortgage shall become null and void, and Lender shall release this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

AP# [REDACTED]

LN# [REDACTED]

21. Waiver of Homestead. Borrower hereby waives all rights of homestead exemption in the Property.

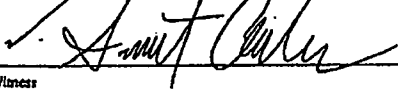
BK U576PG577

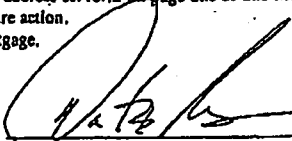
REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

Signed, sealed and delivered in the presence of:


Witness


DAVID B. POWELL (Seal)
-Borrower


Witness


CAROL ANN POWELL (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Sign Original Only)

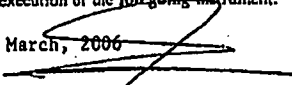
STATE OF SOUTH CAROLINA, CHARLESTON
I, William J. Hennessey, Jr.

County ss:
do hereby certify that

David B. Powell and Carol Ann Powell

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

Witness my hand and official seal this 15th day of March, 2006


Notary Public for South Carolina

My Commission Expires: 11/7/15

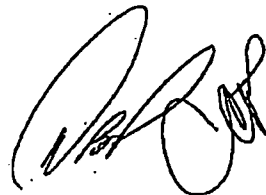
EXHIBIT "A"

EX U576PG578

All that certain piece, parcel or lot of land, situate, lying and being in the City of Isle of Palms, Charleston County, South Carolina and shown and designated as Lot 05N, 6602 SQFT, in a subdivision to be known as Pavilion Place, on a plat entitled, "CONDITIONAL PLAT PROPERTY LINE ADJUSTMENT @ LOTS 02, 03, 04, 05, 06, 07 & OLD ROAD R/W BLOCK 30 CONTAINING 0.771 ACRES LOCATED @ FRONT BEACH CITY OF ISLE OF PALMS CHARLESTON COUNTY SOUTH CAROLINA," by John E. Wade Jr., R.L.S., dated December 9, 2004 and recorded in Plat Book DE at Page 386 in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

Being the same property conveyed to David B. Powell and Carol Ann Powell by deed of John E. Littlefield dated January 12, 2005 and recorded in Book N522 at Page 324 in the RMC Office for Charleston County.

TMS # 568-11-00-149

A handwritten signature in black ink, appearing to be 'D. B. Powell', located in the bottom right corner of the page.

BK U576PG579
RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



FILED

March 20, 2006

1:17:34 PM

BK U576PG574

Charlie Lybrand, Register
Charleston County, SC

SPT
Filed By:

Dodds & Hennessy, L.L.P.

Attorneys at Law

P.O. Box 298

Charleston

SC 29402

DESCRIPTION

AMOUNT

	\$ 11.00
Postage	

TOTAL

\$ 11.00

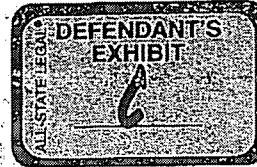
DRAWER:

A - bmm

DO NOT STAMP BELOW THIS LINE

APR 6 2006
L.H.F. [illegible]

ADDITIONAL COLLATERAL AGREEMENT



STATE OF South Carolina

COUNTY OF Charleston

Whereas, SunTrust Mortgage, Inc. ("Lender") has agreed to lend DAVID B POWELL

("Borrower")

\$ 720,000.00 to purchase real property located at 25 LONGHARSH ROAD
MYRTT PLEASANT SC 29466

and

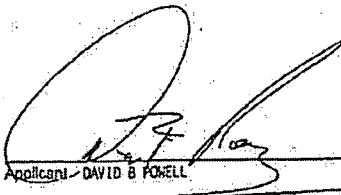
Whereas, to evidence such indebtedness to Lender, Borrower has agreed to give him promissory note ("Note") to Lender for \$ 720,000.00 and to give Lender a first mortgage on said real property at 25 LONGHARSH ROAD MYRTT PLEASANT SC 29466 and, as additional collateral, a second mortgage on 1001 OCEAN BOULEVARD, ISLE OF PALMS SC 29451 (also owned by Borrower), upon the following terms and conditions.

This AGREEMENT MADE AND ENTERED at the Town of Charleston this March 15, 2006 by and among SunTrust Mortgage, Inc., a Virginia Corporation ("Lender") and DAVID B POWELL ("Borrower") as follows:

1. In the event the loan for real property in the amount of \$ 720,000.00 located at 25 LONGHARSH ROAD MYRTT PLEASANT SC 29466 actually closes, upon the principal balance thereon having been paid down by \$ 144,000.00 (that is to \$ 576,000.00) Lender will satisfy of record the said second mortgage on 1001 OCEAN BOULEVARD, ISLE OF PALMS, SC 29451.
2. In the event the said \$ 720,000.00 loan to purchase 25 LONGHARSH ROAD MYRTT PLEASANT SC 29466 is not actually closed by March 15, 2006 the on Borrower's request, Lender will satisfy of record the said second mortgage on 1001 OCEAN BOULEVARD, ISLE OF PALMS, SC 29451.
3. The foregoing recitals ("Whereas" clauses) are here incorporated by reference. This agreement entered into on and as of the date first hereinabove written.

SunTrust Mortgage, Inc.

It's _____


Applicant - DAVID B POWELL

03/15/2006
Date

Applicant _____

Date _____

Applicant _____

Date _____

Applicant _____

Date _____

MIW - ADDITIONAL COLLATERAL AGMT CFM
601733 (05/03)



Borrower(s): POWELL, David B.
Loan No: [REDACTED]

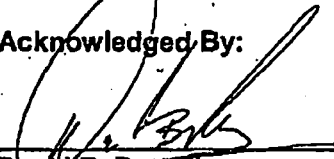
Cross Collateralization

Comparative Analysis of Properties:

<u>Property</u>	<u>Value</u>	<u>Loan</u>	<u>LTV</u>
25 Longmarsh Drive Mount Pleasant, S. C. 29466	\$ 720,000	\$ 720,000	100.0%
1001 Ocean Boulevard Isle of Palms, S. C. 29451	~~\$3,000,000~~ 1,620,000	\$ 803,000	26.8%
TOTALS	~~\$3,720,000~~ 2,340,000	~~\$1,523,000~~	~~40.94%~~ 65.0%

Upon the sale of 1001 Ocean Boulevard, Isle of Palms, S. C., the loan amount must be reduced by \$144,000 for a loan amount of \$576,000 representing 80% loan to value.

Acknowledged By:



David B. Powell

2-28-06

Date

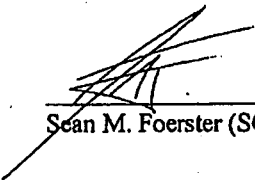
Date

CERTIFICATE OF SERVICE BY MAIL
Case # 2012-CP-10-7842

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing documents upon counsel of record by U.S. Mail, postage prepaid, on January 2, 2014, at the following addresses:

Document Served: Defendant's First Set of Requests for Admissions to Plaintiffs David B. Powell and Carol Ann Powell

Counsel Served:
David A. Collins, Esquire
P.O. Box 40578
Charleston, SC 29423



Sean M. Foerster (SC Bar # 77466)



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SunTrust Bank,

Plaintiff,

v.

David B. Powell; Carol Ann Powell; The South
Carolina Department of Revenue; Sewee Preserve
Property Owners' Association;

Defendant(s).

(003231-01057)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 09-CP-10-4990

MASTER'S ORDER OF SALE AND
DISBURSEMENT

Deficiency Judgment Waived

BY

FILED
2010 MAR 31 PM 12:08
JULIE J. ARMSTRONG
CLERK OF COURT

UNDER AUTHORITY of a Decree herein dated December 10, 2009, I offered for sale, to the highest bidder for cash, at public auction on March 16, 2010, the premises subjected to this suit, and I received a high bid of \$250,000.00, from Plaintiff; and I executed and delivered a Master's deed to SunTrust Bank, and I have disbursed the funds as follows:

CONSIDERATION	\$250,000.00
DEPOSIT (ORDER OF REFERENCE)	\$125.00
RECEIVED BY MASTER	\$3,370.24
TOTAL RECEIVED BY MASTER	\$3,495.24
DISBURSEMENTS	
MASTER'S FEES	\$100.00
NEWSPAPER ADVERTISEMENT	\$870.24
COUNTY COMMISSION	\$2,500.00
MASTER'S DEED	\$25.00
TOTAL OF MASTER'S COSTS	\$3,495.24

All the funds having been disbursed, I hereby ORDER the sale confirmed and the foreclosure case ended. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance in accordance with the Order of Reference.


Mikell R. Scarborough
Master in Equity

March 15, 2010
Charleston, SC

RTT_000102

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-7842

David B. Powell and Carol Ann Powell,)
)
Plaintiffs,)

v.)

SunTrust Bank a/k/a/ SunTrust Mortgage,)
Inc., Midland Funding LLC, and Pavilion)
Place Property Owners' Association, Inc.,)
)
Defendants.)

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT AND CROSS
MOTION FOR SUMMARY
JUDGMENT**

FILED
2015 JUN 18 AM 9:19
JULIE ARMSTRONG
CLERK OF COURT

Plaintiffs commenced this action in order to secure the release of a mortgage on property located at 001 Ocean Boulevard, Isle of Palms. Defendant SunTrust Bank has now filed a Motion for Summary Judgment, asserting that there is no genuine issue of material fact with respect to its right to foreclose its mortgage on this property. For the reasons that follow, this Motion should be denied. Plaintiffs would also move for Summary Judgment in their favor on their claims against SunTrust Bank.

Plaintiffs have no disagreement with the statement of facts as presented by SunTrust. However, SunTrust has omitted one significant element from this statement: the two mortgages, the primary one upon which SunTrust has already foreclosed, and the secondary one against the property which is the subject of this action, were incorporated into a single note. That note, as SunTrust does explain, was for the entire purchase price of a parcel of property in Mt. Pleasant. As a result of the failure to make timely payments on the note, SunTrust filed a foreclosure action, seeking solely and exclusively foreclosure of the Mt. Pleasant property. In its complaint on that property, it waived any deficiency judgment against Plaintiffs.

SunTrust claims, in its Motion, that the waiver of any deficiency against Plaintiffs does not affect its ability to foreclose on the second property which was used to collateralize the Promissory Note executed by Plaintiffs. It relies on S.C. Code § 29-3-310 and extensively on *Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 647 S.E.2d 214 (2007) for the proposition that until it receives total and full satisfaction of the debt, the waiver of deficiency does not prohibit it from continuing to proceed against the collateral. This reliance is misplaced, and *Lever* is, on its facts, sufficiently distinguishable so as to be completely inapposite.

SunTrust's continued reference in its Motion to the "Primary Mortgage" and the "Additional Mortgage" are intended to obscure the simple fact that both mortgages were being used as collateral to secure payment of one, and only one, Promissory Note. In its initial foreclosure action, SunTrust sought foreclosure of the Mt. Pleasant property in order to obtain payment of the balance owed on the Note. It waived any deficiency judgment. At the time SunTrust filed its original complaint, and waived any deficiency, it elected its remedy as far as collection of the Note was concerned. The sale of the Mt. Pleasant property operates to foreclose any further attempts to collect yet more money on the same Note.

This is a simple matter of *res judicata* and collateral estoppel, and has nothing to do with the statutory remedies as far as mortgages are concerned. *Lever*, upon which SunTrust relies, involves a situation in which the creditor specifically had not foreclosed upon its mortgage in any prior case, but had merely sought payment of the underlying debt. In those circumstances, the Court of Appeals held that the holding of an unpaid judgment does not operate to release the mortgage. In this case, however, the creditor has foreclosed. What SunTrust is attempting to do is to piece-meal its actions against the same defendants for the same obligation. This is contrary to the mandates of the Rules of Civil Procedure, and to any form of equity.

The Rules require that all actions against the same parties and arising from the same transactions be brought at one time. Although the Rules themselves address this issue only in terms of compulsory or permissive counterclaims, *see* S.C.R.C.P. 13, the principle is equally applicable to the plaintiff's complaint. *See, e.g., Nelson v. QHG of S.C., Inc.*, 354 S.C. 290, 304, 580 S.E.2d 171, 178 (2003) ("Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between these parties... Res judicata prevents a litigant 'from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.'") (citations omitted).

The *Lever* court found that suit on the Note itself did not release the mortgage, as payment had never been made and "the note given is only evidence of the debt and one of the means of collecting it, and if there is a mortgage, that is only another security for the same debt..." In this case, however, SunTrust sued not on the Note itself, independent of the mortgage, but sought foreclosure of the mortgage at the same time. By simultaneously waiving its rights to a deficiency judgment, it has closed off any further attempts to recover on the Note, in whatever form.

It is, furthermore, completely inequitable to permit SunTrust to both waive any deficiency and to seek further recovery. Had SunTrust sought a deficiency judgment against Plaintiffs, Plaintiffs would have been entitled to have their property appraised. S.C. Code § 29-3-680. They would have been protected against the possibility of a sale for less than fair market value by the appraisal, and they would have been entitled to credit against their debt of the appraised amount, regardless of the proceeds of the sale. *SCN Mortgage Corp. v. White*, 312 S.C. 384, 440 S.E.2d 858 (1994); S.C. Code § 29-3-740.

It is, of course, impossible to determine at this stage what the actual appraised value of the Mt. Pleasant property would have been had it been appraised prior to its being sold by SunTrust to a third party. It is equally impossible to determine how much credit Plaintiffs might have received as a result of that appraisal, and by what amount the remainder of any debt they owed to SunTrust would have been reduced. It is possible that it would have appraised at a value sufficient to satisfy the entire Note.¹ Plaintiffs would, however, have been protected to the full amount of the value of the property, rather than its final sales price. That protection does not exist where the creditor waives any deficiency:

The clear purpose of the appraisal statutes, and the offset against the debt of the actual appraised value, as opposed to sales price, is to ensure that the debtor's property is not sold for a fraction of its worth. Attempting to foreclose now on a second piece of property, under a Note for which SunTrust has already received payment, is a blatant attempt to avoid the effect of the appraisal statutes. It is completely inequitable, and operates to strip Plaintiffs of the safeguards afforded by those statutes.

Plaintiffs herein are entitled to summary judgment in their favor. As SunTrust itself notes, there exist no genuine issues of material fact. Plaintiffs executed a Promissory Note, secured by two pieces of property as collateral. SunTrust foreclosed upon one of those two parcels, and expressly waived its right to any deficiency judgment against Plaintiffs after the foreclosure sale. Because no deficiency was sought, Plaintiffs did not have access to the safeguards provided for by the South Carolina Code of Laws, and could not have their property appraised so that they could have benefit of any excess money applied to their debt.

¹ As SunTrust points out, Plaintiffs purchased the property for \$720,000. SunTrust sold it for \$260,000, a fraction of the original price. Although Plaintiffs recognize that there were major changes in the real estate market between the time they bought this house in 2006 and the time it was finally sold in 2010, those changes were unlikely to have been big enough to cause the value of a piece of real estate to drop by two-thirds.

Although SunTrust proceeded to bring suit on the Note and Mortgage, it failed to include one of the pieces of collateral. Now, having already received all of the remedies available to it under its action, it is apparently ready to proceed on a second part of the same litigation, an identical action, against the same parties, arising out of the same transaction, and not mentioned in its original complaint. This is both inequitable, and contrary to all precepts of *res judicata* and collateral estoppel.

Plaintiffs would respectfully request that the Motion for Summary Judgment of Defendant SunTrust Bank be denied. Plaintiffs would further respectfully request that their Motion be granted, and SunTrust be ordered to execute the papers necessary to release any purported mortgage interest in the property at 1001 Ocean Boulevard, Isle of Palms, South Carolina.

Respectfully submitted,

LAW OFFICE OF DAVID A. COLLINS, LLC



David Athell Collins
P.O. Box 40578
Charleston, SC 29405-0578
(843) 760-0220
(843) 552-2678 facsimile
Davidacollins2@aol.com
Attorney for Plaintiffs

4/16, 2015
Charleston, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

David B. Powell and Carol Ann Powell,

Plaintiffs,

v.

SunTrust Bank; Midland Funding LLC; and
Pavilion Place Property Owners' Association
Inc.

Defendants.

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2012-CP-10-07842

MOTION FOR RECONSIDERATION

FILED
2016 MAY 23 PM 3:03
JULIE J. ARMSTRONG
CLERK OF COURT

(19610.12 SMF)

TO: DAVID A. COLLINS, ESQUIRE, ATTORNEY FOR PLAINTIFFS DAVID B.
POWELL AND CAROL ANN POWELL:

Defendant SunTrust Bank ("SunTrust"), by and through its undersigned counsel, hereby respectfully moves pursuant to Rule 59(e), SCRCP, for the Court to reconsider its Order¹ entered herein on May 3, 2016, to reverse its grant of summary judgment in favor of Plaintiffs David B. Powell and Carol Ann Powell ("Powells"), and to, instead, grant summary judgment in favor of SunTrust on the Powells' Complaint, based on the following grounds:

Undisputed Facts

On March 15, 2006, David B. Powell ("David Powell") borrowed \$720,000 from SunTrust to purchase property located at 25 Longmarsh Road, Mt. Pleasant, SC 29466 ("Longmarsh Property"). David Powell gave SunTrust a promissory note ("Note") for the full loan amount. To secure the debt, the Powells gave SunTrust a mortgage covering the Longmarsh Property ("Primary Mortgage").

In order to obtain a 100% financing loan, and to avoid having to make a 20% down payment on the purchase, the Powells gave SunTrust another mortgage for \$144,000 ("Additional Mortgage") against another property they owned at 1001 Ocean Boulevard, Isle of Palms, SC 29451 ("subject property"). The Additional Mortgage was given pursuant to the terms of an Additional Collateral Agreement. The Additional Collateral Agreement provided:

¹ SunTrust, through its counsel, received written notice of the entry of the Order on May 9, 2016.

“In the event the loan for real property in the amount of \$720,000.00 located at 25 Longmarsh Road, Mount Pleasant, SC 29466 actually closes, upon the principal balance thereon having been paid down by \$144,000.00 (that is to \$576,000.00) Lender will satisfy of record the said second mortgage on 1001 Ocean Boulevard, Isle of Palms, SC 29541.”

On November 1, 2008, David Powell defaulted on the Note. Prior to defaulting, David Powell failed to pay down the principal balance of the loan by \$144,000.00 as required by the Additional Collateral Agreement. In fact, he failed to pay down any of the principal of the loan.

On August 11, 2009, SunTrust filed civil action # 2009-CP-10-4990 against the Powells for foreclosure of only the Primary Mortgage on the Longmarsh Property (the “Foreclosure Action”). In the Foreclosure Action, SunTrust waived its right to a personal judgment against David Powell for any deficiency, but did not waive its right to later pursue the foreclosure of any additional collateral it had for the loan in the event that the foreclosure of the Longmarsh Property failed to satisfy the entire debt.

On December 10, 2009, the Master in Equity for Charleston County entered a Judgment of Foreclosure and Sale against the Powells in the Foreclosure Action and ordered that the Longmarsh Property be sold at a foreclosure sale. SunTrust was the successful bidder at the foreclosure sale of the Longmarsh Property on March 16, 2010. SunTrust took a Master’s Deed to the Longmarsh Property dated March 25, 2010, and recorded in the Office of the Register Mesne Conveyance for Charleston County on March 31, 2010, in Mortgage Book O114 at Page 828.

On January 27, 2011, SunTrust sold the Longmarsh Property on the open market to a third party for the purchase price of \$260,000.00. After its transaction costs were subtracted, SunTrust received only \$246,223.54 in proceeds from the sale of the Longmarsh property.

After crediting the loan account with the \$246,223.54 in proceeds from the sale of the Longmarsh Property, the judgment debt still remains in an amount of \$549,887.20.

On November 30, 2012, the Powells filed this action against SunTrust pursuant to S.C. Code Ann. § 29-3-310 for a satisfaction of the Additional Mortgage on the grounds that: 1) the debt owed to SunTrust was satisfied in full through the foreclosure of the Primary Mortgage, and/or 2) SunTrust’s waiver of its right to personal judgment against David Powell for any deficiency somehow equated to a satisfaction of the underlying debt.

In response, SunTrust counterclaimed against the Powells for foreclosure of the Additional Mortgage.

On February 10, 2015, SunTrust filed a Motion for Summary Judgment on the Powells' Complaint. On June 18, 2015, the Powells filed a Cross-Motion for Summary Judgment.

On October 16, 2015², the Court held a hearing on both summary judgment motions. The Court denied SunTrust's motion for summary judgment and granted in part³ the Powells' motion for summary judgment. The Court's ruling extinguished the Additional Mortgage. The Court reasoned that 1) SunTrust's attempt to enforce the Additional Mortgage was barred by *res judicata*, and 2) SunTrust's actions in seeking to enforce the Additional Mortgage after waiving its deficiency rights were inequitable as they deprived the Powells of their appraisal rights under S.C. Code Ann. § 29-3-740.

Standard

"[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court alter or amend the judgment, but also as a vehicle to seek 'reconsideration' of issues and arguments." *Elam v. S. Carolina Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004)(internal quotations omitted). "A motion under Rule 59(e) long has been viewed as [a] 'motion for reconsideration' despite the absence of those words from the rule." *Id.* "Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Id.* at 21, 602 S.E.2d at 778-79. "There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument." *Id.* at 22, 602 S.E.2d at 779.

Argument

SunTrust respectfully requests that the Court reconsider its grant of summary judgment in favor of the Powells for the following reasons:

² The Court held an initial hearing on SunTrust's Motion for Summary Judgment on June 18, 2015, but took it under advisement and left the hearing open in order to hear the Powells' Motion for Summary Judgment (which they had just filed that day) at a later hearing.

³ While the Court ruled that the Additional Mortgage should be satisfied, it also ruled that SunTrust's conduct did not amount to a violation of S.C. Code Ann. § 29-3-310 given the circumstances in this case. SunTrust does not seek reconsideration of the latter part of the Court's ruling.

1. SunTrust's waiver of its right to a personal judgment against David Powell for any deficiency did not extinguish the underlying debt.

SunTrust's waiver of its right to a deficiency judgment against David Powell during the Foreclosure Action did not operate as a satisfaction of the underlying debt.

"In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage..." S.C. Code Ann. § 29-3-660 (emphasis added). By its very terms, the deficiency judgment statute concerns only the right of the lender to a personal judgment against the borrower.

By waiving its right to a deficiency judgment, a mortgagee does not thereby release any of the collateral secured by its mortgage. *Sellars v. First Colonial Corp.*, 276 S.C. 548, 551, 280 S.E.2d 805, 806 (1981)(foreclosure sale of property and deficiency waiver by lender did not void lender's security interest in rents and profits from property). "A mortgagee who chooses to forego a deficiency judgment simply elects to rely solely on the mortgage security for satisfaction of his debt; in other words, he relinquishes only his right to pursue assets of the mortgagor over and above those covered by the mortgage." *Id.*; see also *Jones v. Equicredit Corp. of S. Carolina*, 347 S.C. 535, 544, 556 S.E.2d 713, 718 (Ct. App. 2001)(foreclosure sale of property and deficiency waiver by lender did not void lender's security interest in hazard insurance proceeds from same property).

SunTrust is aware of no case law in South Carolina holding that a waiver of the right to a personal judgment for any deficiency on the debt operates as a complete satisfaction of the debt or of any mortgage securing the repayment of the debt. "The bond is not the debt, nor is the mortgage the debt; the debt is the borrowed money..." *Platt v. Carroll*, 125 S.C. 493, 119 S.E. 180, 185 (1923)(Cothran, J., concurring).

SunTrust lent \$720,000 to David Powell based on his agreement that SunTrust would have the following avenues for recovery of its money in the event of his default: 1) foreclosure of the Primary Mortgage and sale of the Longmarsh Property, 2) foreclosure of the Additional Mortgage and sale of the subject property (if David Powell failed to pay down the principal by the agreed amount), and 3) a suit on the Note to obtain a personal money judgment against David

Powell, which, if necessary, SunTrust could then seek to enforce as a judgment lien against other property not already subject to the Primary Mortgage or Additional Mortgage.

SunTrust's waiver of its rights under the deficiency judgment statute concerned only avenue #3—its right to a personal money judgment against David Powell—and nothing more. SunTrust never waived its right to pursue satisfaction of the debt from sources other than David Powell personally, such as through the foreclosure of additional loan collateral. Thus, SunTrust's waiver of its statutory deficiency judgment rights had no effect on the underlying debt or the enforceability of the Additional Mortgage.

2. SunTrust's counterclaim for foreclosure of the Additional Mortgage is not barred by *res judicata*.

"Res judicata is shown if (1) the identities of the parties is the same as a prior litigation; (2) the subject matter is the same as in the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." *Zinn v. CFI Sales & Mktg., Ltd*, 415 S.C. 93, 105-06, 780 S.E.2d 611, 618 (Ct. App. 2015). "Our courts, however, have found that the doctrine of res judicata is not an 'ironclad bar' to a later lawsuit." *Id.*

SunTrust's counterclaim for foreclosure of the Additional Mortgage in this case does not concern the same subject matter as the Foreclosure Action, and there has been no adjudication of SunTrust's rights under the Additional Mortgage or the Additional Collateral Agreement in a prior action.

"A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action." *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 220-21, 746 S.E.2d 478, 481 (Ct. App. 2013). "An action for foreclosure adjudicates and cuts off the mortgagor's interest in real property." *Bartles v. Livingston*, 282 S.C. 448, 454, 319 S.E.2d 707, 711 (Ct. App. 1984).

In the Foreclosure Action, SunTrust chose to pursue its remedy of foreclosure of the Primary Mortgage against the Longmarsh Property rather than to sue David Powell for collection on the Note. The subject matter of the Foreclosure Action included only the foreclosure of the lien of the Primary Mortgage and the extinguishment of the Powells' interest in the Longmarsh Property. There was no adjudication in the Foreclosure Action as to SunTrust's rights under the

Additional Mortgage or the Additional Collateral Agreement. There was no adjudication in the Foreclosure Action that the underlying debt was extinguished by that action.

SunTrust's counterclaim for foreclosure of the Additional Mortgage in this action concerns the enforcement of a different lien created by a different security agreement against a different property. It also concerns David Powell's failure to comply with the Additional Collateral Agreement.

In a factually similar and instructive case, the Supreme Judicial Court of Maine considered the applicability of *res judicata* to successive foreclosure actions of different mortgages securing the payment of a single promissory note. *Camden Nat. Bank v. Peterson*, 957 A.2d 591 (Me. 2008). In *Peterson*, the borrower signed a single promissory note and granted the bank two mortgages to secure its payment: a first mortgage for the full debt amount that encumbered the borrower's primary residence, and a second mortgage for a smaller portion of the debt that encumbered an abutting parcel of unimproved land also owned by the borrower. *Id.* at 592. The bank first initiated a foreclosure action concerning only the first mortgage, and it obtained a foreclosure judgment in that action. *Id.* A year later, the bank filed a different foreclosure action concerning the second mortgage, to which the borrower asserted a defense of *res judicata*. *Id.*

The Supreme Judicial Court of Maine held that "[a]lthough this foreclosure action involves only one promissory note given by [borrower] to the Bank, it deals with a mortgage contract that is separate and distinct from the mortgage involved in the [first foreclosure] action." *Id.* "Because this case involves the foreclosure on the second of two mortgages given by [borrower] to the Bank, *res judicata* does not bar the Bank from pursuing the foreclosure." *Id.* at 592-93.

Like in *Peterson*, SunTrust's counterclaim in this case seeks the enforcement of a different security agreement than the one that was the subject of the Foreclosure Action. Therefore, *res judicata* should not bar SunTrust from seeking to enforce its rights under the Additional Mortgage or the Additional Collateral Agreement.

To hold *res judicata* applicable to this set of facts would establish a bright line rule mandating that lenders in South Carolina who waive their deficiency judgment rights must foreclose against all loan collateral at once or else forfeit their security interest in any additional loan collateral, regardless of whether the underlying debt still exists. This would discourage

lenders from ever waiving their deficiency rights with respect to loans secured by more than one piece of collateral, regardless of whether the lenders actually want to pursue a personal judgment against the borrowers or not. This rule would work a hardship not only on mortgage lenders, but on mortgage borrowers as well because it could result in the mandatory foreclosure of collateral in excess of what is necessary to satisfy the underlying debt.

At the time of the initiation of the Foreclosure Action, SunTrust would not have known whether or not the foreclosure sale of the Longmarsh Property would generate sufficient funds to satisfy the debt in full. It would have been premature and unfair to the Powells to foreclose the Additional Mortgage before determining whether it would be necessary to satisfy the debt.

For all of these reasons, *res judicata* does not bar SunTrust from seeking to enforce its rights under the Additional Mortgage.

3. The Powells' rights under the Appraisal Statute are irrelevant to the enforceability of the Additional Mortgage.

The Powells' statutory appraisal rights in connection with the Foreclosure Action are irrelevant to the enforceability of the Additional Mortgage because the Appraisal Statute does not operate to extinguish the underlying mortgage debt, merely the personal liability for the deficiency. The statute at issue, which is entitled "Return of appraisers; effect of return on deficiency judgment," reads:

If the value returned after deduction therefrom of the amount of the price at which the property was sold under direction of the court be equal to or exceed the amount of the deficiency remaining upon the judgment after application of the net proceeds of sale the judgment shall be thereupon extinguished and cancelled of record by the clerk and if such returned value, after deduction of the amount of the sale price, be less than the deficiency the latter shall be abated and deemed paid, pro tanto, and be thereafter enforceable for only the remainder...

S.C. Code Ann. § 29-3-740 (emphasis added). By its language, the appraisal statute operates only to limit the amount of the *personal judgment* against a debtor for the deficiency remaining on the debt. It does not operate to extinguish any portion of the underlying debt itself. "The bond is not the debt, nor is the mortgage the debt; the debt is the borrowed money..." *Platt v. Carroll*, 125 S.C. 493, 119 S.E. 180, 185 (1923)(Cothran, J., concurring).

Had the Powells exercised their appraisal rights during the Foreclosure Action, that exercise would have only affected the amount of any money judgment against David Powell for

the deficiency. It would not have affected the amount of the remaining debt underlying the Additional Mortgage.

4. The propositions of law set forth in *Lever v. Lighting Galleries Inc.* are applicable to this case.

While the case of *Lever v. Lighting Galleries Inc.* is not factually identical to this case, SunTrust relied upon it for the following propositions of law that are applicable here regardless of any factual differences:

“A mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action.” *Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 33, 647 S.E.2d 214, 216 (2007).

“A creditor shall not have two satisfactions for the same debt, but there is no inconsistency in his pursuing two remedies.” *Lever*, 374 S.C. at 35-36, 647 S.E.2d at 217-18 (2007). Only if “one produces satisfaction, [does it become] a bar to the other.” *Id.*

“A mortgage being given as a security for a debt, the general rule is that no mere change in the mode or time of payment, nothing short of an actual payment of the debt or an express release, will operate as a discharge of the mortgage.” *Lever*, 374 S.C. at 35, 647 S.E.2d at 217 (quoting *Nichols v. Briggs*, 18 S.C. 473 (1883)). “The lien lasts as long as the debt.” *Id.*

SunTrust cited to this case mainly for the purpose of disputing the Powells’ contention that its decision to first foreclose the Primary Mortgage constituted an election of remedies barring SunTrust from pursuing its other means of recovery of the debt, such as the foreclosure of the Additional Mortgage. Under the law set forth in *Lever*, SunTrust did not have to elect only one remedy to recover the debt—it could continue to pursue any and all of its available remedies until the debt was fully satisfied. The only consequence of first pursuing an alternative remedy that fails to fully satisfy the debt is to eliminate that remedy, not to extinguish the debt or bar the pursuit of additional remedies until the debt is satisfied.

Conclusion

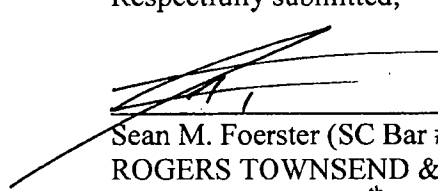
There is no genuine dispute of material fact that a significant portion of the loan secured by the Additional Mortgage remains unpaid and that SunTrust never waived its right to enforce the Additional Mortgage. Neither SunTrust’s waiver of its deficiency rights nor the doctrine of *res judicata* bar it from enforcing its rights under the Additional Mortgage or the Additional Collateral Agreement. Further, whether or not the Powells could have sought a real estate

appraisal during the Foreclosure Action has no bearing on the enforceability of the Additional Mortgage.

For these reasons, SunTrust respectfully requests that the Court reconsider its Order of May 3, 2016, reverse its grant of summary judgment in favor of Plaintiffs David B. Powell and Carol Ann Powell ("Powells"), and grant summary judgment in favor of SunTrust on the Powells' Complaint.

This motion is based on the pleadings, the affidavit and exhibits and unanswered Requests for Admissions filed with its motion for summary judgment, the case law, the South Carolina Rules of Civil Procedure, and the statutes of South Carolina. The undersigned counsel certifies that consultation with Plaintiffs' counsel prior to filing this motion would have served no useful purpose.

Respectfully submitted,



Sean M. Foerster (SC Bar # 77466)
ROGERS TOWNSEND & THOMAS, PC
1221 Main Street, 14th Floor (29201)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
sean.foerster@rtt-law.com

Attorneys for Defendant SunTrust Bank
Rogers Townsend & Thomas, PC and its staff are debt collectors.

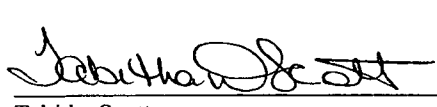
May 19, 2016

CERTIFICATE OF SERVICE BY MAIL
Case # 2012-CP-10-07842

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on May 19, 2016, at the following addresses:

Document Served: Motion for Reconsideration

Counsel Served:
David A. Collins, Esquire
P.O. Box 40578
Charleston, SC 29423



Tabitha Scott
Paralegal for Sean M. Foerster, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Markley Dennis, Jr.

Appellate Case No. 2016-001496

RECEIVED

DEC 28 2016

SC Court of Appeals

David B. Powell and Carol Ann Powell Respondents,

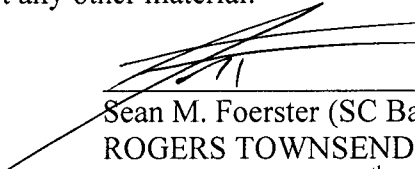
v.

SunTrust Bank, Midland Funding LLC,
and Pavilion Place Property Owners' Association, Inc. Defendants,

Of whom SunTrust Bank is the..... Appellant.

CERTIFICATE OF COUNSEL

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


Sean M. Foerster (SC Bar # 77466)
ROGERS TOWNSEND & THOMAS, PC
1221 Main Street, 14th Floor (29201)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803) 771-7900
sean.foerster@rtt-law.com

Attorneys for the Appellant SunTrust Bank

December 28, 2016