

**NORTH CAROLINA
DURHAM COUNTY**

**CITY OF DURHAM
RESIDENTIAL MORTGAGE LOAN PROGRAM
ORIGINATING AND UNDERWRITING AGREEMENT**

This AGREEMENT dated, made, and entered into as of the _____ day of _____, 2013 by and between **SUNTRUST MORTGAGE, INC.**, a company organized and existing under the laws of North Carolina, the “Originating and Underwriting Agent, (hereinafter Contractor”) and the **CITY OF DURHAM**, a North Carolina municipal corporation (the “City”).

SECTION 1. BACKGROUND AND PURPOSE

The Contractor is engaged in the business of taking applications and originating mortgage loans secured by mortgages, deeds of trust or other security instruments. The City has requested that the Contractor originate and underwrite Residential Mortgage Loans, Rehabilitation Forgivable Mortgage Loans and Forgivable Mortgage Loans in accordance with City-determined program guidelines and underwriting criteria as agent for and on behalf of the City, upon the terms and conditions set forth in this Agreement, and the Contractor has agreed to the same. The Loan Program provides housing assistance to low-to-moderate income households.,

SECTION 2. SERVICES AND SCOPE TO BE PERFORMED

In accordance with customary and generally accepted industry procedures, with all City-determined originating and underwriting procedures and with any specific procedures agreed upon and lead by the Contractor, as agent for the City, and on behalf of the City, shall:

- a) Obtain the borrower’s completed pre-application package after it has been received and reviewed by the City of Durham, and analyze credit report to determine and document program eligibility;
- b) Meet with the borrower and assist with the completion of the FNMA 1003 application. The City of Durham will submit the application with supportive documentation to obtain an in-file credit report on each applicant;
- c) Assist with the review of all applications, credit history and income to determine eligibility for a loan;

- d) Assist with the underwriting and origination of City loans complete with all documentation and information obtained from the borrower for the determination of the eligibility and approval of the borrower and property being purchased or rehabilitated;
- e) Ensure that all documents and mortgage loan requests are in compliance with the City's guidelines relative to debts and income ratios, income analysis, appraisal, credit history etc., as outlined in the City of Durham's Reference Guide for Residential Mortgage Loans, City of Durham Forgivable Mortgage Loan Programs and City of Durham Rehabilitation Forgivable Mortgage Loan Program;
- f) Ensure earnest monies are deposited and communicate with City staff and others involved in the loan process to obtain information and documents necessary to complete the first mortgage loan approval;
- g) Prepare all documents that are customary and appropriate to properly document, secure, and make loans enforceable;
- h) Coordinate and schedule loan closings with the borrower(s) and closing attorney(s), along with preparation and submission of request for funds for the first and second mortgage to the City. A detailed list that outlines specific loan terms, payment, Loan-to Value etc., will be submitted to the City along with the request for funds;
- i) Prepare all required closing documents for the City's first or second position loan and deliver the originals to the closing attorney for the scheduled closing;
- j) Engage legal counsel with assistance from the borrower satisfactory to the City to provide opinions as to the validity of liens or encumbrances on all property related to the loan, or which will require a search of the Secretary of State and/or Register of Deeds' records in order to determine the validity of such lien(s);
- k) In the event title insurance is required by the City, the Agent will ensure that the title insurance policy names the City as mortgagee or beneficiary with the applicable loan position. Additionally, agent will ensure that all necessary title information and coverage is updated in order for the City to continue to be protected;
- l) Submit a complete file to include all loan related information and documents pertaining to the City's first and second loan upon completion of the loan closing;

- m) Continue to provide lending assistance relative to current lending practices, policies and procedures;
- n) Provide the same originating and underwriting needs and requirements for first and second mortgage loans for subordinations, assumptions, and refinancing.

SECTION 3. COMPENSATION

City shall pay to the Contractor compensation for all services performed under this agreement according to Attachment A hereto, which is incorporated herein by reference and made an integral part of this agreement and in accordance to Table A: 3-Year Projected Cost. Total compensation to the Contractor will vary based on the number of loan closings, applications received, loan assumptions, and subordination requests, and will be mutually determined annually. All fees, and therefore specific compensation, will be based on the actual number of loans and/or occurrences. If project annual cost exceeds contract amount, then a contract amendment will be performed. Based on projections, the estimated total compensation to the Contractor would be as follows:

SECTION 5: CONTRACTOR'S BILLINGS TO CITY - COMPENSATION

The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City, such information as may be reasonably requested by the City. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall pay the Contractor for the Work as indicated in Attachment A. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized in Attachment A.

SECTION 6. TERM

The term of this 3-year Agreement shall be June 5, 2013 – June 4, 2016. Either the City or the Contractor may terminate this contract with 60 days' prior written notice. If terminated, all fees due hereunder shall be paid, and all obligations between the parties shall be performed.

SECTION 7: INSURANCE

Commercial General Liability, covering

- premises/operations
- products/completed operations
- broad form property damages
- explosion, collapse, and underground hazards if the hazards exist in the performance of this contract
- contractual liability
- independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than \$1,000,000.00 per occurrence; aggregate limit not less than \$2,000,000.00 per year

Bankers E&O Insurance, covering

- covering claims arising out appraisal work performed under this contract
- self-insured retentions/deductibles in excess of \$10,000.00 must be approved by the City Finance Director
- coverage may be provided either by specific policy or as part of the Commercial General Liability Policy
- combined single limit not less than \$5,000,000.00 per occurrence; aggregate limit not less than \$5,000,000.00 per year; if coverage is only available on claims made

basis, then additional coverage requirements may apply, subject to review of the City's Risk Manager

Automobile Liability Insurance, covering

- owned, hired, or borrowed vehicles
- employee vehicles, if used in performance of this contract
- combined single limit not less than \$1,000,000.00 per occurrence; aggregate limit not less than \$2,000,000.00 per year

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract)
- employers' liability, any limits

Financial Institution Bond

- Limit not less than \$5,000,000.00

Insurance shall be provided by:

- Companies authorized to do business in the State of North Carolina
- Companies with Best rating of A or better

Insurance shall be evidenced by a certificate:

- Providing notice to the City of not less than thirty (30) days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:

City of Durham, North Carolina
Attention: Finance Director
101 City Hall Plaza
Durham, North Carolina 27701

- Both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before contractor can begin any work under this contract.

SECTION 8: PERFORMANCE OF WORK BY THE CITY

If the Contractor fails to perform the Work in accordance with the scope and services detailed in this Agreement, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

SECTION 9. NOTICE

(a) All notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Reginald J. Johnson, Director of the Department of Community Department
City of Durham
101 City Hall Plaza
Durham, NC 27701-3329
The fax number is (919)560-4090

To the Contractor:

SunTrust Mortgage, Inc.
901 Semmes Avenue
Richmond, VA 23224

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

SECTION 10. INDEMNIFICATION

Indemnity. To the fullest extent permitted by law, each party shall indemnify and hold harmless the other party and its officers, agents, officials and employees (Indemnified Party), from and against all liabilities, obligations, fines, penalties, damages, losses, charges, costs and expenses, including, without limitation, attorneys fees and disbursements, which may be imposed upon or reasonably incurred by the Indemnified Party by reason of the other party's failure to perform its obligations under this Agreement or to comply with applicable law.

SECTION 11. MISCELLANEOUS

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to

enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that

applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4)

“Duties” includes obligations. (5) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word “shall” is mandatory. (7) The word “day” means calendar day. (8) The word “Work” is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(l) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City’s Manager’s Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor’s services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

SECTION 12. TERMINATION FOR CONVENIENCE (“TFC”).

(a) *Procedure.* Without limiting any party’s right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City’s instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City’s decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

SECTION 13. TRADE SECRETS. CONFIDENTIALITY

The request for proposals (RFP) section titled “Trade Secrets and Confidentiality” shall

apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section (titled "Trade Secrets; Confidentiality") shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. For purposes of this contract, the word "candidate" in the RFP section just cited shall mean the "Contractor."

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

By: _____

Pre-Audit Certificate, if applicable

SUNTRUST MORTGAGE, INC

ATTEST:

By: _____

By: _____
President

(Affix corporate seal here)

NORTH CAROLINA
DURHAM COUNTY

I, _____ a notary public in and for said county and state, certify that _____ personally (1) appeared before me this day, (2) stated that he or she is President of SunTrust Mortgage, Inc. a company organized and existing under the laws of the State of North Carolina , (3) acknowledged that the foregoing contract or agreement with the City of Durham carries on the company's business in the usual way, and (4) acknowledged the due execution of the contract on behalf of the company. This the _____ day of _____, 2013.

Notary Public: _____

My Commission Expires: _____

ATTACHMENT A

SCOPE OF WORK

SunTrust Mortgage, Inc. will provide to the City of Durham on a fee for service basis the following services:

- Origination and Underwriting of all individual residential first and second mortgage loans to include rehabilitation mortgage loans and forgivable mortgage loans;
- Pre-application reviews for all applicants who apply for City assistance;
- Preparation and implementation of all Subordination Requests to the City for second mortgage loans;
- Origination and Underwriting of all Loan Assumptions Requests.

It shall be the responsibility of SunTrust Mortgage to complete the following actions in order to ensure the effective delivery of the above stated services:

- Make weekly visits to the City of Durham's office to retrieve pre-applications;
- Analyze credit reports for all pre-applications and underwrite pre-applications per the City's guidelines including debt ratios, credit history, etc.;
- Make written recommendations to the City and submit to City on a weekly basis;
- Make final recommendations to the City based on the complete loan file including a collateral appraisal once the first mortgage lender has submitted the loan file to SunTrust Mortgage;
- Request funds from the City for loan closing and provide information relative to settlement agent, closing date, and final original loan documents for record keeping purposes;
- Evaluate, originate and/or underwrite all subordination, refinancing and loan assumption requests in accordance with the City's guidelines.

Payment

The City of Durham will pay SunTrust Mortgage not more than the following fees for each listed service:

- \$ 1,100.00: Originating and Underwriting
- \$ 30.00: Pre-application Reviews
- \$ 150.00: Preparation and implementation of all Subordination Requests
- \$ 100.00: Preparation and implementation of all second mortgage Loan Assumptions

Total reimbursement amount not to exceed \$95,100.00 for the 3 years of the contract.

City of Durham is responsible for the following:

- Submit applications and generate credit reports on a weekly basis to the Contractor;
- Approve and decline all loan applications with the assistance of the Contractor; and
- Authorize the final credit and funding decisions based on the Contractor's opinion.