**To:** **Outside Counsel for CRE Residential (Homebuilder) transactions**

**From:** **Jennifer Rentenbach, Senior Counsel**

**Date: June 9, 2015**

**Subject: Update to Mortgage Instruments for Flood Insurance Regulatory Purposes (Personal Property)**

 Please note that we are providing this memorandum to only one contact at each of our outside law firms.

Please circulate this memorandum to each of your firm’s attorneys who may work on matters for the SunTrust

Commercial Real Estate (“CRE”) line of business.

 Standard language in our form mortgages, deeds of trust and deeds to secure debt (collectively “Mortgage Instruments”) grants SunTrust a security interest in all personal property (i.e. non-real property) located on the premises subject to the Mortgage Instrument. The provision in the Mortgage Instruments granting SunTrust a security interest in personal property requires SunTrust to make certain that the property owner has the regulatorily required amount of flood insurance coverage on the owner’s personal property if the building in which the personal property is housed is located in a Special Flood Hazard Area designated by FEMA. This means that SunTrust is required to ensure that appropriate flood insurance coverage on the personal property is in place throughout the life of the loan.

 SunTrust has made a business decision that for our CRE Residential (homebuilder) loan transactions that we will not require our clients to maintain flood insurance coverage on personal property. This business decision necessitates, for regulatory compliance, that we not take a security interest in personal property if that personal property is housed in a building that is located in a Special Flood Hazard Area. Accordingly, our CRE form Mortgage Instruments (located on the CRE Outside Counsel commercial loan documentation website) have been updated to add optional language to disclaim SunTrust’s security interest in personal property in situations where:

1. The personal property is required to be insured pursuant to any existing or future Federal statute, regulation, policy or guideline related to flood insurance (collectively, the “Flood Laws”) and
2. The personal property is not covered by flood insurance to the extent required by the Flood Laws.

In the above listed situations, the disclaimer in the Mortgage Instruments means that SunTrust does not have a security interest in the personal property if the building in which the personal property is housed is located in a Special Flood Hazard Area designated by FEMA. Accordingly, in such situations, SunTrust is not required to monitor the existence of flood insurance on personal property. **This optional language is included as a footnote reference at the end of Section 1.3(b) of each form Mortgage Instrument[[1]](#footnote-1), and it should be included within the body of each Mortgage Instrument prepared for ALL SunTrust CRE Residential (homebuilder) deals; however, it should not be included in other SunTrust CRE loan transactions, unless approved by SunTrust internal legal or the applicable SunTrust approving credit officer** (generally, for CRE deals other than our residential homebuilder deals, we do require and monitor flood insurance on personal property).

Please do not hesitate to contact me with any questions concerning this memorandum.

1. *The new footnote reference reads as follows:*

**For CRE Residential deals only (i.e., homebuilder deals), add the following subsection (c) to Section 1.3:**

“(c) Notwithstanding any other provision in this Security Instrument, to the extent any building located on the real property that is subject to this Security Instrument contains personal property owned by the Grantor, Lender disclaims any security interest created under this Security Instrument in such personal property if (i) such personal property is required to be insured pursuant to any existing or future Federal statute, regulation, policy or guideline related to flood insurance (collectively, the “**Flood Laws**”) and (ii) such personal property is not covered by flood insurance to the extent required by the Flood Laws.” [↑](#footnote-ref-1)