

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the quarterly period ended June 30, 2009**

or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the transition period from \_\_\_\_\_ to \_\_\_\_\_.**

**Commission File Number: 1-14100**

**IMPAC MORTGAGE HOLDINGS, INC.**

(Exact name of registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction of  
incorporation or organization)

**33-0675505**  
(I.R.S. Employer  
Identification No.)

**1950 Jamboree Road, Irvine, California 92612**  
(Address of principal executive offices)

**(949) 475-3600**  
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Exchange Act Rule 12b-2) Yes  No

There were 7,618,146 shares of common stock outstanding as of August 7, 2009.

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IMPAC MORTGAGE HOLDINGS, INC.

FORM 10-Q QUARTERLY REPORT

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**PART I. FINANCIAL INFORMATION**

**ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS**

**IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES  
CONSOLIDATED BALANCE SHEETS  
(in thousands, except share data)**

	<u>June 30,</u> <u>2009</u>	<u>December 31,</u> <u>2008</u>
	<u>(Unaudited)</u>	
<b>ASSETS</b>		
Cash and cash equivalents	\$ 30,694	\$ 46,215
Restricted cash	1,250	1,243
Short-term investments	5,026	-
Trust assets		
Investment securities available-for-sale	1,332	2,068
Securitized mortgage collateral	6,018,391	5,894,424
Derivative assets	179	37
Real estate owned	274,481	599,084
Total trust assets	<u>6,294,383</u>	<u>6,495,613</u>
Assets of discontinued operations	122,734	141,053
Other assets	26,948	31,393
Total assets	<u>\$ 6,481,035</u>	<u>\$ 6,715,517</u>
<b>LIABILITIES</b>		
Trust liabilities		
Securitized mortgage borrowings	\$ 6,080,637	\$ 6,193,984
Derivative liabilities	184,851	273,584
Total trust liabilities	<u>6,265,488</u>	<u>6,467,568</u>
Long-term debt	9,797	15,403
Liabilities of discontinued operations	191,909	217,241
Other liabilities	7,617	6,053
Total liabilities	<u>6,474,811</u>	<u>6,706,265</u>
Commitments and contingencies		
<b>STOCKHOLDERS' EQUITY</b>		
Series A junior participating preferred stock, \$0.01 par value; 2,500,000 shares authorized; none issued and outstanding	-	-
Series B 9.375% redeemable preferred stock, \$0.01 par value; liquidation value \$16,904; 2,000,000 shares authorized, 676,156 noncumulative and 2,000,000 cumulative shares issued and outstanding as of June 30, 2009 and December 31, 2008, respectively	7	20
Series C 9.125% redeemable preferred stock, \$0.01 par value; liquidation value \$35,389; 5,500,000 shares authorized; 1,415,564 noncumulative and 4,470,600 cumulative shares issued and outstanding as of June 30, 2009 and December 31, 2008, respectively	14	45
Common stock, \$0.01 par value; 200,000,000 shares authorized; 7,618,146 shares issued and outstanding as of June 30, 2009 and December 31, 2008, respectively	76	76
Additional paid-in capital	1,179,440	1,177,697
Net accumulated deficit:		
Cumulative dividends declared	(822,520)	(815,077)
Retained deficit	(350,793)	(353,509)
Net accumulated deficit	<u>(1,173,313)</u>	<u>(1,168,586)</u>
Total stockholders' equity	<u>6,224</u>	<u>9,252</u>
Total liabilities and stockholders' equity	<u>\$ 6,481,035</u>	<u>\$ 6,715,517</u>

See accompanying notes to consolidated financial statements.

**IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except per share data)  
(Unaudited)

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2009	2008	2009	2008
<b>INTEREST INCOME</b>	\$ 454,258	\$ 407,855	\$ 1,166,907	\$ 679,811
<b>INTEREST EXPENSE</b>	451,305	403,599	1,160,312	668,206
Net interest income	2,953	4,256	6,595	11,605
<b>NON-INTEREST INCOME:</b>				
Change in fair value of net trust assets, excluding REO	54,912	(11,161)	187,842	(7,633)
Losses from real estate owned	(46,723)	(4,830)	(174,923)	(9,086)
Non-interest income - net trust assets	8,189	(15,991)	12,919	(16,719)
Change in fair value of long-term debt	329	(997)	341	(5,020)
Real estate advisory fees	-	4,696	-	8,540
Mortgage and real estate services fees	13,233	1,612	18,782	4,155
Other	(185)	(68)	(226)	(713)
Total non-interest income	21,566	(10,748)	31,816	(9,757)
<b>NON-INTEREST EXPENSE:</b>				
General and administrative	6,110	4,925	10,449	8,912
Personnel expense	10,359	2,820	16,637	5,150
Total non-interest expense	16,469	7,745	27,086	14,062
Net earnings (loss) from continuing operations before income taxes	8,050	(14,237)	11,325	(12,214)
Income tax expense from continuing operations	20	2,202	2,018	8,728
Net earnings (loss) from continuing operations	8,030	(16,439)	9,307	(20,942)
Net loss from discontinued operations, net of tax	(4,195)	(11,048)	(6,591)	(10,360)
Net earnings (loss)	3,835	(27,487)	2,716	(31,302)
Cash dividends on preferred stock	(7,443)	(3,722)	(7,443)	(7,443)
Net loss attributable to common stockholders	\$ (3,608)	\$ (31,209)	\$ (4,727)	\$ (38,745)
Net loss per common share - basic and diluted:				
Earnings (loss) from continuing operations	\$ 0.08	\$ (2.65)	\$ 0.24	\$ (3.73)
Loss from discontinued operations	(0.55)	(1.45)	(0.86)	(1.36)
Net loss per share attributable to common stockholders	\$ (0.47)	\$ (4.10)	\$ (0.62)	\$ (5.09)

See accompanying notes to consolidated financial statements

**IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)  
(Unaudited)

	<b>For the Six Months Ended June 30,</b>	
	<b>2009</b>	<b>2008</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net earnings (loss) from continuing operations	\$ 9,307	\$ (20,942)
Losses from real estate owned	174,923	9,086
Amortization and impairment of deferred charge, net	1,998	8,728
Amortization and impairment of mortgage servicing rights	-	948
Change in fair value of net trust assets, excluding REO	(297,870)	(63,734)
Change in fair value of long-term debt	(341)	5,020
Accretion of interest income and expense	381,079	(25,191)
Stock-based compensation	2,858	653
Net cash (used in) provided by operating activities of discontinued operations	(1,864)	91,219
Net change in other assets and liabilities	(63,288)	(41,444)
<b>Net cash provided by (used in) operating activities</b>	<b>206,802</b>	<b>(35,657)</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Net change in securitized mortgage collateral	439,369	1,342,015
Net change in mortgages held-for-investment	397	22
Purchase of premises and equipment	(284)	386
Purchase of short-term investments	(5,041)	-
Net principal change on investment securities available-for-sale	2,593	1,196
Proceeds from the sale of real estate owned	407,573	197,796
Net cash provided by investing activities of discontinued operations	5,949	11,805
<b>Net cash provided by investing activities</b>	<b>850,556</b>	<b>1,553,220</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Settlement of trust preferred securities	(3,900)	-
Repurchase of preferred stock	(1,259)	-
Preferred stock dividends paid	(7,443)	(7,443)
Repayment of securitized mortgage borrowings	(1,042,689)	(1,393,987)
Net cash used in financing activities of discontinued operations	(16,969)	(116,465)
<b>Net cash used in financing activities</b>	<b>(1,072,260)</b>	<b>(1,517,895)</b>
Net change in cash and cash equivalents	(14,902)	(332)
Cash and cash equivalents at beginning of period	46,228	26,462
Cash and cash equivalents at end of period - Continuing Operations	30,694	25,971
Cash and cash equivalents at end of period - Discontinued Operations	632	159
Cash and cash equivalents at end of period	<b>\$ 31,326</b>	<b>\$ 26,130</b>
<b>NON-CASH TRANSACTIONS (Continuing and Discontinued Operations):</b>		
Transfer of loans held-for-sale and held-for-investment to real estate owned	\$ 9,555	\$ -
Transfer of securitized mortgage collateral to real estate owned	192,388	435,038

See accompanying notes to consolidated financial statements.

**IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES**  
**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS**  
(dollars in thousands, except per share data or as otherwise indicated)

**Note A—Summary of Business, Significant Accounting Policies and Legal Proceedings**

**1. Business Summary and Financial Statement Presentation**

***Business Summary***

Impac Mortgage Holdings, Inc. (the Company or IMH) is a Maryland corporation incorporated in August 1995 and has the following subsidiaries: IMH Assets Corp. (IMH Assets), Impac Warehouse Lending Group, Inc. (IWLG), and Impac Funding Corporation (IFC), together with its wholly-owned subsidiaries Impac Secured Assets Corp. (ISAC) and Impac Commercial Capital Corporation (ICCC).

In the first quarter of 2009, the Company created a new subsidiary, Integrated Real Estate Service Corporation (IRES), which includes mortgage and real estate related fee-based businesses and entities.

The Company's operations include its continuing and discontinued operations. The continuing operations primarily include the long-term mortgage portfolio (residual interests in securitizations reflected as net trust assets and liabilities in the consolidated balance sheets), and the mortgage and real estate related fee-based businesses. The discontinued operations include the former non-conforming mortgage and retail operations conducted by IFC, commercial operations conducted by ICCG, and warehouse lending operations conducted by IWLG.

During the first quarter of 2009, the Company revoked its election to be taxed as a REIT, effective January 1, 2009. As a result of revoking this election, the Company will be subject to income taxes as a regular corporation. As of December 31, 2008, the Company had estimated federal and California net operating loss carryforwards of \$353.6 million and \$526.1 million, respectively. These amounts are subject to change based on the completion and filing of the Company's income tax returns.

The information contained throughout this document is presented on a continuing basis, unless otherwise stated.

***Financial Statement Presentation***

The accompanying unaudited consolidated financial statements of IMH and its subsidiaries (as defined above) have been prepared in accordance with Accounting Principles Generally Accepted in the United States of America (GAAP) for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments, consisting of normal recurring adjustments considered necessary for a fair presentation, have been included. Operating results for the three and six month periods ended June 30, 2009 are not necessarily indicative of the results that may be expected for the year ending December 31, 2009. These interim period condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements, which are included in the Company's Annual Report on Form 10-K for the year ended December 31, 2008, filed with the United States Securities and Exchange Commission (SEC).

All significant inter-company balances and transactions have been eliminated in consolidation. In addition, certain amounts in the prior periods' consolidated financial statements have been reclassified to conform to the current year presentation.

Management has made a number of estimates and assumptions relating to the reporting of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period to prepare these consolidated financial statements in conformity with GAAP. The items affected by management's estimates and assumptions include the valuation of trust assets and liabilities, the valuation of repurchase liabilities related to sold loans, the valuation of long-term debt, and the valuation of loans held-for-sale. Actual results could differ from those estimates and assumptions.

## **Market Conditions and Status of Operations**

The economy continued to contract in the first half of 2009. Labor markets deteriorated rapidly as U.S. firms reduced the number of jobs driving the U.S. unemployment rate higher in June. Higher unemployment and weaker overall economic conditions have led to a significant increase in the number of defaults, while continued weak housing prices have driven a significant increase in loss severities. Defaults continue to remain elevated as the economy and housing market continues to struggle. The credit performance of the Company's long-term mortgage portfolio continues to be negatively affected by these economic conditions. Delinquencies and nonperforming loans and assets continue to increase as a percentage of loans outstanding. Additional deterioration in the overall economic environment, including continued deterioration in the labor market, could cause delinquencies to increase beyond the Company's current expectations, resulting in additional increases in losses and reductions in fair value. Offsetting these losses and reductions in fair value were increases in the fair value of the Company's trust assets and trust liabilities as a result of accounting guidance adopted during the quarter, which clarified the use of quoted prices in determining fair values in markets that are inactive, thus moderating the need to use distressed prices in valuing financial asset and liabilities in illiquid markets as the Company had used in prior periods. Refer to Note A2 – *Recent Accounting Pronouncements* for additional information.

During the first quarter of 2009, the Company initiated various mortgage and real estate related fee-based businesses, including loan modifications, real estate disposition, monitoring and surveillance services, real estate brokerage and lending services and escrow services, and has begun to generate revenues from these businesses. For the three and six month periods ended June 30, 2009, mortgage and real estate services fees were \$13.2 million and \$18.8 million, respectively. However, since these businesses are newly formed and currently generate fees primarily from the Company's long-term mortgage portfolio, there remains uncertainty about their future success, including providing services to the marketplace.

In January 2009, the Company purchased and canceled \$25.0 million in outstanding trust preferred securities of Impac Capital Trust #2 for \$3.75 million and terminated the remaining debt.

In May 2009, the Company exchanged an aggregate of \$51.3 million in trust preferred securities of Impac Capital Trusts #1 and #3 for junior subordinated notes with an aggregate principal balance of \$62.0 million, with a maturity date in March 2034. Under the terms of the exchange, the interest rate for each note was reduced from the original 8.01 percent to 2.00 percent through 2013 with increases of 1.00 percent per year through 2017. Starting in 2018, the interest rates become variable at 3-month LIBOR plus 375 basis points. In connection with the exchange, the Company paid a fee of \$0.5 million. Refer to Note H – *Long-term Debt* for additional information.

In June 2009, the Company purchased and canceled \$1.0 million in outstanding trust preferred securities of Impac Capital Trust #4 for \$150 thousand.

As of July 30, 2009, the Company is current and no longer deferring interest on trust preferred securities.

In August 2009, the Company purchased and canceled \$2.5 million in outstanding trust preferred securities of Impac Capital Trust #4 for \$375 thousand, resulting in \$8.5 million in outstanding trust preferred securities. Refer to Note J – *Subsequent Events* for additional information.

As a result of the restructuring of \$51.3 million and purchase and cancelation of \$36.5 million in outstanding trust preferred securities, the Company reduced its annual interest expense obligation from \$7.8 million to \$2.0 million. With the restructuring and purchase and cancelations of trust preferred securities, the Company has \$8.5 million in outstanding trust preferred securities of Impac Capital Trust #4 and \$62.0 million in outstanding junior subordinated notes.

In June 2009, the Company completed the Offer to Purchase and Consent Solicitation (the "Offer to Purchase") of all of its 9.375% Series B Cumulative Redeemable Preferred Stock and 9.125% Series C Cumulative Redeemable Preferred Stock. The Series B Preferred Stock had a liquidation preference of \$50 million and the Series C Preferred Stock had a liquidation preference of \$111.8 million, for a total of \$161.8 million. Upon expiration of the Offer to Purchase, holders of approximately 67.7% of the Preferred Stock tendered an aggregate of 4,378,880 shares. Stockholders of the Company's Series B Preferred Stock tendered 1,323,844 shares at \$0.29297 per share for \$388 thousand. Stockholders of the Company's Series C Preferred Stock tendered 3,055,036 shares at \$0.28516 per share for \$871 thousand. The aggregate purchase price for the Preferred Stock was \$1.3 million. In addition, in connection with completing the Offer to Purchase, the Company paid \$7.4 million accumulated but unpaid dividends on its Preferred Stock. With the total cash payment of \$8.7 million, the Company eliminated \$109.5 million of liquidation preference on its Preferred Stock. After the completion of the Offer to Purchase, the Company has outstanding \$52.3 million liquidation preference of Series B and Series C Preferred Stock.

With completion of the Offer to Purchase and modification to the terms of the Series B Preferred Stock and Series C Preferred Stock, the Company eliminated its \$14.9 million annual preferred dividend obligation. Refer to *Note I – Preferred Stock Repurchase* for additional information.

## 2. Recent Accounting Pronouncements

### *Recently Adopted Accounting Pronouncements*

In May 2009, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standard (SFAS) No. 165, *Subsequent Events* (SFAS 165), which establishes general standards of and accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. SFAS 165 is effective for interim and annual periods ending after June 15, 2009. The adoption of SFAS 165 did not have an impact on the Company's consolidated financial statements.

In April 2009, the FASB issued three FASB Staff Positions (FSP) related to fair value measurements:

- FSP No. FAS 157-4 "Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly" (FSP 157-4)
- FSP No. FAS 107-1 and APB 28-1 "Interim Disclosures about Fair Value of Financial Instruments" (FSP FAS 107-1 and APB 28-1)
- FAS No. FAS 115-2 and FAS 124-2 "Recognition and Presentation of Other-Than-Temporary Impairments" (FSP FAS 115-2 and FAS 124-2)

FSP 157-4 provides additional guidance for estimating fair value in accordance with SFAS 157 when the volume and level of market activity for the asset or liability have significantly decreased. FSP 157-4 also includes guidance on identifying circumstances that indicate a transaction is not orderly. It acknowledges that in these circumstances quoted prices may not be determinative of fair value. This FSP emphasizes that even if there has been a significant decrease in the volume and level of market activity for the asset or liability and regardless of the valuation technique(s) used, the objective of a fair value measurement remains the same. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction (that is, not a forced liquidation or distressed sale) between market participants at the measurement date under current market conditions. Prior to issuance of this FSP 157-4, many companies, including the Company, interpreted SFAS 157 to emphasize the use of most recently available quoted market prices in determining fair value, regardless of whether markets had experienced a significant decline in the volume and level of activity relative to normal conditions or increased frequency of transactions that are not orderly.

Under the provisions of FSP 157-4, quoted prices for assets or liabilities in inactive markets may require adjustment due to uncertainty as to whether the underlying transactions are orderly. There is little information, if any, to evaluate if individual transactions are orderly in an inactive market. Accordingly, the Company is required to evaluate the facts and circumstances to determine whether the transaction is orderly based on the weight of the evidence. FSP 157-4 does not designate a specific method for adjusting a transaction or quoted price, however, it does provide guidance for determining how much weight to give a transaction or quoted price. Price quotes derived from transactions that are not orderly are not considered to be determinative of fair value and should be given less weight, if any, when measuring fair value.

FSP 157-4 is effective for interim and annual reporting periods ending after June 15, 2009, and shall be applied prospectively. The adoption of FSP 157-4 on April 1, 2009, resulted in an increase of \$13.3 million included in change in fair value of net trust assets in the accompanying consolidated statements of operations. Offsetting this increase at adoption were decreases in the fair values of trust assets and trust liabilities as a result of the Company increasing loss assumptions for its long-term mortgage portfolio due to increases in expected defaults and loss severities related to the weak economy and housing market.

FSP FAS 107-1 and APB 28-1 amends FASB Statement No. 107, "Disclosures about Fair Value of Financial Instruments", to require disclosures about fair value of financial instruments for interim reporting periods of publicly traded companies as well as in annual financial statements. This FSP also amends APB Opinion No. 28, "Interim Financial Reporting", to require those disclosures in summarized financial information at interim reporting periods. FSP FAS 107-1 and APB 28-1 is effective for interim reporting periods ending after June 15, 2009, with early adoption permitted for periods ending after March 15, 2009. The adoption of FSP FAS 107-1 and APB 28-1 did not have a significant effect on the Company's consolidated financial statements.

FSP FAS 115-2 and FAS 124-2 amends the other-than-temporary impairment guidance in U.S. GAAP for debt securities to make the guidance more operational and to improve the presentation and disclosure of other-than-temporary impairments on debt and equity securities in the financial statements. For debt securities, the statement requires that an entity assess whether it (a) has the intent to sell the debt security or (b) more likely than not will be required to sell the debt security before its anticipated recovery. If either of these conditions is met, the Company would be required to recognize other-than-temporary impairment. FSP FAS 115-2 and FAS 124-2 is effective for interim and annual reporting periods ending after June 15, 2009, with early adoption permitted for periods ending after March 15, 2009. The adoption of FSP FAS 115-2 and FAS 124-2 did not have a significant effect on the Company's consolidated financial statements.

Effective January 1, 2009, the Company adopted EITF No. 08-5, "Issuer's Accounting for Liabilities Measured at Fair Value with a Third-Party Credit Enhancement" (EITF 08-5). EITF 08-5 addresses whether issuer's of liabilities should consider the effect of the third-party credit enhancement when measuring the liability at fair value under FASB Statement No. 157 "Fair Value Measurements" (SFAS 157). EITF 08-5 requires that the issuer of a liability with a third-party credit enhancement that is inseparable from the liability shall not include the effect of the credit enhancement in the fair value measurement of the liability. The guidance in EITF 08-5 is effective in the first reporting period beginning on or after December 15, 2008, with the effect of initially applying its guidance being included in the change in fair value in the period of adoption. The adoption of EITF 08-5 did not have a significant impact on the Company's consolidated financial statements.

Effective, January 1, 2009, application of SFAS 157 to nonfinancial assets and liabilities is required. As a result of the adoption of SFAS 157 for nonfinancial assets and liabilities, the Company has included additional disclosures as of and for the three and six months ended June 30, 2009 for nonrecurring fair value measurements related to its nonfinancial assets and liabilities.

#### *Recent Accounting Pronouncements*

In June 2009, the FASB issued SFAS No. 168, "The FASB Accounting Standards Codification<sup>TM</sup> and the Hierarchy of Generally Accepted Accounting Principles"—a replacement of FASB Statement No 162 (SFAS 168). Under SFAS 168, The FASB Accounting Standards Codification (Codification) will become the source of authoritative U.S. generally accepted accounting principles (GAAP) recognized by the FASB to be applied by nongovernmental entities. Rules and interpretive releases of the Securities and Exchange Commission (SEC) under authority of federal securities laws are also sources of authoritative GAAP for SEC registrants. On the effective date of this Statement, the Codification will supersede all then-existing non-SEC accounting and reporting standards. All other non-grandfathered non-SEC accounting literature not included in the Codification will become non-authoritative. SFAS 168 is effective for financial statements issued for interim and annual periods ending after September 15, 2009. The issuance of SFAS 168 will not affect GAAP, however the Company will be required to eliminate references to the pre-codification accounting and reporting standard references in financial statements.

In June 2009, the FASB issued SFAS No. 166, "Accounting for Transfers of Financial Assets – An Amendment of FASB Statement 140" (SFAS 166) and SFAS No. 167, "Amendments to FASB Interpretation No. 46(R)" (SFAS 167). SFAS 166 eliminates the concept of a qualifying special purpose entity (QSPE), creates more stringent conditions for reporting a transfer of a portion of a financial asset as a sale, clarifies other sale-accounting criteria, and changes the initial measurement of a transferor's interest in transferred financial assets. Former QSPEs will be evaluated for consolidation based on the provisions of SFAS 167, which changes the approach to determining a VIE's primary beneficiary and requires companies to more frequently reassess whether they must consolidate or deconsolidate VIEs. The Company is currently evaluating the impact of these new pronouncements on its financial statements. While management of the Company has not completed its evaluation, the Company may be required to deconsolidate certain securitization trust assets and trust liabilities that are currently consolidated within the Company's financial statements because certain of these trusts may be VIEs of the Company, but the Company may not be the primary beneficiary. In addition, the Company has two unconsolidated trusts that may be VIEs of the Company and the Company may be the primary beneficiary, in which case the Company would be required to consolidate the related trust assets and liabilities.

### **3. Income Taxes and Deferred Charge**

During the first quarter of 2009, the Company revoked its election to be taxed as a REIT, effective January 1, 2009. As a result of revoking this election, the Company will be subject to income taxes as a regular corporation.

Prior to January 1, 2009, the Company operated as a REIT under the requirements of the Internal Revenue Code. Requirements for qualification as a REIT included various restrictions on ownership of IMH's stock, requirements concerning distribution of taxable income and certain restrictions on the nature of assets and sources of income.

As of December 31, 2008, the Company had estimated federal and California net operating loss carryforwards of \$353.6 million and \$526.1 million, respectively. As of December 31, 2008, the Company's taxable REIT subsidiary had an estimated federal net operating loss tax carryforward of \$293.4 million. The federal net operating loss carryforward of the Company's taxable REIT subsidiary, utilization of which may be limited to the Company's taxable REIT subsidiary, begins to expire in the year 2027. As of December 31, 2008, the Company and the Company's taxable REIT subsidiary had net deferred tax assets of approximately \$547.9 million and \$100.0 million, respectively. These amounts are subject to change based on the completion and filing of the Company's income tax returns. The Company recorded a full valuation allowance against the net deferred tax assets as it believes that as of June 30, 2009 it is more likely than not that the net deferred tax assets will not be recoverable.

In accordance with Accounting Research Bulletin No. 51, "Consolidated Financial Statements," the Company records a deferred charge representing the deferral of income tax expense on inter-company profits that resulted from the sale of mortgages from taxable subsidiaries to IMH in prior years. The deferred charge is included in other assets in the accompanying consolidated balance sheets and is amortized as a component of income tax expense in the accompanying consolidated statements of operations over the estimated life of the mortgages retained in the securitized mortgage collateral. The Company recorded a tax expense of \$20 thousand and \$2.0 million for the three and six months ended June 30, 2009, compared to \$2.2 million and \$8.7 million for the three and six months ended June 30, 2008, respectively. The tax expense is primarily the result of the amount of the deferred charge amortized and/or impaired resulting from credit losses, which does not result in any tax liability required to be paid.

#### **4. Legal Proceedings**

The Company is party to litigation and claims which are normal in the course of our operations.

In June 2009, the Company entered into a settlement agreement for an insignificant amount with plaintiffs in a purported class action matter entitled Vincent Marshall v. Impac Funding Corporation, et al., as further described in the Company's Annual Report on Form 10-K for the year ended December 31, 2008, requiring that all claims be dismissed with prejudice, with no admission of wrongdoing on the part of any defendant.

Please refer to IMH's report on Form 10-K for the year ended December 31, 2008 for a description of other litigation and claims.

We believe that we have meritorious defenses to the above claims and intend to defend these claims vigorously and as such the Company believes the final outcome of such matters will not have a material adverse effect on our financial condition or results of operations. Nevertheless, litigation is uncertain and we may not prevail in the lawsuits and can express no opinion as to their ultimate resolution. An adverse judgment in any of these matters could have a material adverse effect on our financial position and results of operations.

#### **Note B—Fair Value of Financial Instruments**

The use of fair value to measure the Company's financial instruments is fundamental to its consolidated financial statements and is a critical accounting estimate because a substantial portion of its assets and liabilities are recorded at estimated fair value.

The Company adopted FSP 157-4 effective April 1, 2009. FSP 157-4 addresses measuring fair value under SFAS 157 in situations where the volume and level of market activity has significantly decreased and transactions are not orderly. Under the provisions of the FSP 157-4, transactions or quoted prices may not be determinative of fair value for assets or liabilities in inactive markets.

Prior to adoption of the FSP 157-4, the Company used independent broker quoted prices (unadjusted and non-binding quotes) to measure fair value for substantially all of its securitized mortgage borrowings. In connection with the adoption, the Company determines when the level and volume of activity has declined significantly in relation to normal market conditions. FSP 157-4 guidance suggests less weight, if any, shall be applied on a transaction or price quote based on a market that is not orderly. Furthermore, the nature of the quote (indicative price or binding offer) should be considered when weighting the available evidence. In the absence of price quotes based on orderly transactions, the Company may use valuation techniques that reflect market participant assumptions.

For securitized mortgage collateral and securitized mortgage borrowings, the underlying Alt-A residential and commercial loans and mortgage-backed securities market has experienced a significant decline in market activity with a lack of orderly transactions. The methodology used to measure fair value included the use of internal pricing techniques such as the net present value of future expected cash flows (with observable market participant assumptions, where available) discounted at a rate of return based on market participant requirements. The significant assumptions utilized in the internal pricing techniques, which were based on the characteristics of the underlying collateral, included estimated credit losses, estimated prepayment speeds and appropriate discount rates. For the impact of adopting FSP 157-4 to our consolidated financial statements, see Note 2 – *Recent Accounting Pronouncements*.

The following table presents the fair value of financial instruments included in the consolidated financial statements as of the periods indicated:

	June 30, 2009		December 31, 2008	
	Carrying Amount	Estimated Fair Value	Carrying Amount	Estimated Fair Value
<b>Assets</b>				
Cash and cash equivalents	\$ 30,694	\$ 30,694	\$ 46,215	46,215
Restricted cash	1,250	1,250	1,243	1,243
Short-term investments	5,026	5,054	-	-
Investment securities available-for-sale	1,332	1,332	2,068	2,068
Securitized mortgage collateral	6,018,391	6,018,391	5,894,424	5,894,424
Derivative assets	179	179	37	37
<b>Liabilities</b>				
Securitized mortgage borrowings	\$ 6,080,637	\$ 6,080,637	\$ 6,193,984	\$ 6,193,984
Derivative liabilities	184,851	184,851	273,584	273,584
Long-term debt	9,797	9,797	15,403	15,403

The estimated fair value amounts above have been determined by management using available market information and appropriate valuation methodologies. Considerable judgment is required to interpret market data to develop the estimates of fair value in both inactive and orderly markets. Accordingly, the estimates presented are not necessarily indicative of the amounts that could be realized in a current market exchange. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

The carrying amount of cash and cash equivalents and restricted cash approximates fair value. Short-term investments are recorded at amortized cost. The fair value of short-term investments is determined using quoted prices in active markets. Refer to *Recurring fair value measurements* below for a description of the valuation methods used to determine the fair value of investment securities available for sale, securitized mortgage collateral and borrowings, derivative assets and liabilities and long-term debt.

#### ***Recurring fair value measurements***

The application of fair value estimates may be on a recurring or non-recurring basis depending on the accounting principles applicable to the specific asset or liability or whether management has elected to carry the item at its estimated fair value.

SFAS 157 specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company's market assumptions. These two types of inputs create the following fair value hierarchy:

- Level 1 — Quoted prices for identical instruments in active markets.
- Level 2 — Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets.
- Level 3 — Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

This hierarchy requires the Company to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value.

The following tables present, the Company's assets and liabilities that are measured at fair value on a recurring basis, including financial instruments for which the Company has elected the fair value option at June 30, 2009 and December 31, 2008, based on the fair value hierarchy of SFAS 157:

	<b>Recurring Fair Value Measurements</b>		
	<b>As of June 30, 2009</b>		
	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>
<b>Assets</b>			
Investment securities available-for-sale	\$ -	\$ -	\$ 1,332
Securitized mortgage collateral	-	-	6,018,391
Total assets at fair value	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 6,019,723</u>
<b>Liabilities</b>			
Securitized mortgage borrowings	\$ -	\$ -	\$ 6,080,637
Derivative liabilities, net (1)	-	-	184,672
Long-term debt	-	-	9,797
Total liabilities at fair value	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 6,275,106</u>

- (1) Derivative liabilities, net includes \$179 thousand in derivative assets and \$184.9 million in derivative liabilities, included within trust assets and trust liabilities, respectively.

	<b>Recurring Fair Value Measurements</b>		
	<b>As of December 31, 2008</b>		
	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>
<b>Assets</b>			
Investment securities available-for-sale	\$ -	\$ -	\$ 2,068
Securitized mortgage collateral	-	-	5,894,424
Total assets at fair value	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 5,896,492</u>
<b>Liabilities</b>			
Securitized mortgage borrowings	\$ -	\$ -	\$ 6,193,984
Derivative liabilities, net (1)	-	-	273,547
Long-term debt	-	-	15,403
Total liabilities at fair value	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 6,482,934</u>

- (1) Derivative liabilities, net includes \$37 thousand in derivative assets and \$273.6 million in derivative liabilities, included within trust assets and trust liabilities, respectively.

As a result of the lack of observable market data resulting from inactive markets, the Company has classified its investment securities available-for-sale, securitized mortgage collateral and borrowings, net derivative liabilities and long-term debt as Level 3 fair value measurements at June 30, 2009 and December 31, 2008. Level 3 assets and liabilities were 100 percent of total assets and total liabilities at fair value at June 30, 2009 and December 31, 2008.

The following tables present a reconciliation for all assets and liabilities measured at fair value on a recurring basis using significant unobservable inputs (Level 3) for the three and six months ended June 30, 2009 and 2008:

**Level 3 Recurring Fair Value Measurements**

**For the three months ended June 30, 2009**

	<b>Investment securities available-for-sale</b>	<b>Securitized mortgage collateral</b>	<b>Securitized mortgage borrowings</b>	<b>Derivative liabilities, net</b>	<b>Long-term debt</b>
Fair value, March 31, 2009	\$ 1,322	\$ 5,505,729	\$ (5,691,028)	\$ (232,320)	\$ (11,090)
Total gains (losses) included in earnings:					
Interest income (1)	53	233,411	-	-	-
Interest expense (1)	-	-	(417,215)	-	(325)
Change in fair value of net trust assets, excluding REO	805	594,624	(536,336)	(4,181)	-
Change in fair value of long-term debt	-	-	-	-	329
Total gains (losses) included in earnings	858	828,035	(953,551)	(4,181)	4
Transfers in and/or out of Level 3	-	-	-	-	-
Purchases, issuances and settlements	(848)	(315,373)	563,942	51,829	1,289
Fair value, June 30, 2009	\$ 1,332	\$ 6,018,391	\$ (6,080,637)	\$ (184,672)	\$ (9,797)
Unrealized gains (losses) still held (2)	\$ 27	\$ (7,070,940)	\$ 8,303,670	\$ (187,188)	\$ 63,823

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities. The total net interest income, including cash received and paid, was \$3.0 million for the three months ended June 30, 2009, as reflected in the consolidated statements of operations.
- (2) Represents the amount of unrealized gains (losses) relating to assets and liabilities classified as Level 3 that are still held at June 30, 2009.

**Level 3 Recurring Fair Value Measurements**

**For the three months ended June 30, 2008**

	<b>Investment securities available-for-sale</b>	<b>Securitized mortgage collateral</b>	<b>Securitized mortgage borrowings</b>	<b>Long-term debt</b>
Fair value, March 31, 2008	\$ 10,621	\$ 966,958	\$ (998,395)	\$ (45,129)
Total gains (losses) included in earnings:				
Interest income (1)	199	10,306	-	-
Interest expense (1)	-	-	(6,275)	(140)
Change in fair value of net trust assets, excluding REO	(1,517)	2,275	(6,113)	-
Change in fair value of long-term debt	-	-	-	(997)
Total (losses) gains included in earnings	(1,318)	12,581	(12,388)	(1,137)
Transfers in and/or out of Level 3 (2)	-	(645,986)	661,157	-
Purchases, issuances and settlements	(659)	(35,364)	32,658	-
Fair value, June 30, 2008	\$ 8,644	\$ 298,189	\$ (316,968)	\$ (46,266)
Unrealized (losses) gains still held (3)	\$ (2,461)	\$ (128,861)	\$ 131,747	\$ 54,115

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities. The total net interest income, including cash received and paid, was \$4.3 million for the three months ended June 30, 2008, as reflected in the consolidated statements of operations.
- (2) Transfers in and/or out of Level 3 are reflected using values as of the beginning of the period.
- (3) Represents the amount of unrealized (losses) gains relating to assets and liabilities classified as Level 3 that are still held at June 30, 2008.

**Level 3 Recurring Fair Value Measurements**

**For the six months ended June 30, 2009**

	<b>Investment securities available-for-sale</b>	<b>Securitized mortgage collateral</b>	<b>Securitized mortgage borrowings</b>	<b>Derivative liabilities, net</b>	<b>Long-term debt</b>
Fair value, December 31, 2008	\$ 2,068	\$ 5,894,424	\$ (6,193,984)	\$ (273,547)	\$ (15,403)
Total gains (losses) included in earnings:					
Interest income (1)	147	710,121	-	-	-
Interest expense (1)	-	-	(1,091,022)	-	(325)
Change in fair value of net trust assets, excluding REO	1,710	45,603	160,867	(20,338)	-
Change in fair value of long-term debt	-	-	-	-	341
Total gains (losses) included in earnings	1,857	755,724	(930,155)	(20,338)	16
Transfers in and/or out of Level 3	-	-	-	-	-
Purchases, issuances and settlements	(2,593)	(631,757)	1,043,502	109,213	5,590
Fair value, June 30, 2009	\$ 1,332	\$ 6,018,391	\$ (6,080,637)	\$ (184,672)	\$ (9,797)

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities. The total net interest income, including cash received and paid, was \$6.6 million for the six months ended June 30, 2009, as reflected in the consolidated statements of operations.

**Level 3 Recurring Fair Value Measurements**

**For the six months ended June 30, 2008**

	<b>Investment securities available-for-sale</b>	<b>Securitized mortgage collateral</b>	<b>Securitized mortgage borrowings</b>	<b>Long-term debt</b>
Fair value, January 1, 2008	\$ 15,248	\$ 782,574	\$ (767,704)	\$ (40,952)
Total gains (losses) included in earnings:				
Interest income (1)	399	10,217	-	-
Interest expense (1)	-	-	(15,176)	(294)
Change in fair value of net trust assets, excluding REO	(5,807)	(246,707)	280,991	-
Change in fair value of long-term debt	-	-	-	(5,020)
Total (losses) gains included in earnings	(5,408)	(236,490)	265,815	(5,314)
Transfers in and/or out of Level 3 (2)	-	(119,516)	98,688	-
Purchases, issuances and settlements	(1,196)	(128,379)	86,233	-
Fair value, June 30, 2008	\$ 8,644	\$ 298,189	\$ (316,968)	\$ (46,266)

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities. The total net interest income, including cash received and paid, was \$11.6 million for the six months ended June 30, 2008, as reflected in the consolidated statements of operations.

- (2) Transfers in and/or out of Level 3 are reflected using values as of the beginning of the period.

The following is a description of the measurement techniques for items recorded at fair value on a recurring basis.

*Investment securities available-for-sale* — The Company elected to carry all of its investment securities available-for-sale at fair value. The investment securities consist primarily of non-investment grade mortgage-backed securities. The fair value of the investment securities are measured based upon the Company's expectation of inputs that other market participants would use. Such assumptions include judgments about the underlying collateral, prepayment speeds, credit losses, forward interest rates and certain other factors. Given the market disruption and lack of observable market data as of June 30, 2009 and December 31, 2008, the fair value of the investment securities available-for-sale were measured using significant internal expectations of market participants' assumptions.

*Securitized mortgage collateral* — The Company elected to carry all of its securitized mortgage collateral at fair value. These assets consist primarily of non-conforming mortgage loans securitized between 2002 and 2007. Fair value measurements are based on the Company's internal models used to compute the net present value of future expected cash flows, with observable market participant assumptions, where available. The Company's assumptions include its expectations of inputs that other market participants would use in pricing these assets. These assumptions include judgments about the underlying collateral, prepayment speeds, estimated future credit losses, forward interest rates, investor yield requirements and certain other factors. As of June 30, 2009, securitized mortgage collateral had an unpaid principal balance of \$13.1 billion, compared to an estimated fair value of \$6.0 billion. The aggregate unpaid principal balance exceeds the fair value by \$7.1 billion at June 30, 2009. As of June 30, 2009, the unpaid principal balance of loans 90 days or more past due was \$2.9 billion compared to an estimated fair value of \$0.9 billion. The aggregate unpaid principal balances of loans 90 days or more past due exceed the fair value by \$2.0 billion at June 30, 2009.

*Securitized mortgage borrowings* — The Company elected to carry all of its securitized mortgage borrowings at fair value. These borrowings consist of individual tranches of bonds issued by securitization trusts and are primarily backed by non-conforming mortgage loans. Fair value measurements include the Company's judgments about the underlying collateral assumptions such as prepayment speeds, estimated future credit losses, forward interest rates, investor yield requirements and certain other factors. As of June 30, 2009, securitized mortgage borrowings had an outstanding principal balance of \$13.8 billion compared to an estimated fair value of \$6.1 billion. The aggregate outstanding principal balance exceeds the fair value by \$7.7 billion at June 30, 2009.

*Long-term debt* — The Company elected to carry all of its long-term debt (consisting of trust preferred securities and junior subordinated notes) at fair value. These securities were measured based upon an analysis prepared by the Company, which considered the Company's own credit risk, including consideration of recent settlements with trust preferred debt holders and discounted cash flow analysis of junior subordinated notes. As of June 30, 2009, long-term debt had an unpaid principal balance of \$73.6 million compared to an estimated fair value of \$9.8 million. The aggregate unpaid principal balance exceeds the fair value by \$63.8 million at June 30, 2009.

*Derivative assets and liabilities* — For non-exchange traded contracts, fair value is based on the amounts that would be required to settle the positions with the related counterparties as of the valuation date. Valuations of derivative assets and liabilities are based on observable market inputs, if available. To the extent observable market inputs are not available, fair values measurements include the Company's judgments about the future cash flows, forward interest rates and certain other factors, including counterparty risk. Additionally, these values also take into account the Company's own credit standing, to the extent applicable, thus included in the valuation of the derivative instrument is the value of the net credit differential between the counterparties to the derivative contract.

The following tables present changes in fair value of recurring fair value measurements for the three and six months ended June 30, 2009 and 2008, respectively:

<b>Recurring Fair Value Measurements</b>					
<b>Changes in Fair Value Included in Net Loss</b>					
<b>For the three months ended June 30, 2009</b>					
	<b>Interest Income (1)</b>	<b>Interest Expense (1)</b>	<b>Change in Fair Value of</b>		<b>Total</b>
			<b>Net Trust Assets</b>	<b>Long-term Debt</b>	
Investment securities available-for-sale	\$ 53	\$ -	\$ 805	\$ -	\$ 858
Securitized mortgage collateral	233,411	-	594,624	-	828,035
Securitized mortgage borrowings	-	(417,215)	(536,336)	-	(953,551)
Derivative instruments, net	-	-	(4,181) (2)	-	(4,181)
Long-term debt	-	(325)	-	329	4
<b>Total</b>	<b>\$ 233,464</b>	<b>\$ (417,540)</b>	<b>\$ 54,912</b>	<b>\$ 329</b>	<b>\$ (128,835)</b>

(1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities. The total net interest income, including cash received and paid, was \$3.0 million for the three months ended June 30, 2009, as reflected in the consolidated statements of operations.

(2) Included in this amount is \$48.0 million in changes in the fair value of derivative instruments, offset by \$52.2 million in cash payments from the securitization trusts for the three months ended June 30, 2009.

<b>Recurring Fair Value Measurements</b>					
<b>Changes in Fair Value Included in Net Loss</b>					
<b>For the three months ended June 30, 2008</b>					
	<b>Interest Income (1)</b>	<b>Interest Expense (1)</b>	<b>Change in Fair Value of</b>		<b>Total</b>
			<b>Net Trust Assets</b>	<b>Long-term Debt</b>	
Investment securities available-for-sale	\$ 198	\$ -	\$ (1,517)	\$ -	\$ (1,319)
Securitized mortgage collateral	125,700	-	(19,062)	-	106,638
Securitized mortgage borrowings	-	(269,159)	(88,886)	-	(358,045)
Derivative instruments, net	-	-	98,304(2)	-	98,304
Long-term debt	-	(140)	-	(997)	(1,137)
<b>Total</b>	<b>\$ 125,898</b>	<b>\$ (269,299)</b>	<b>\$ (11,161)</b>	<b>\$ (997)</b>	<b>\$ (155,559)</b>

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities. The total net interest income, including cash received and paid, was \$4.3 million for the three months ended June 30, 2008, as reflected in the consolidated statements of operations.
- (2) Included in this amount is \$143.8 million in changes in the fair value of derivative instruments offset by \$45.5 million in cash payments from the securitization trusts for the three months ended June 30, 2008.

<b>Recurring Fair Value Measurements</b>					
<b>Changes in Fair Value Included in Net Loss</b>					
<b>For the six months ended June 30, 2009</b>					
	<b>Interest Income (1)</b>	<b>Interest Expense (1)</b>	<b>Change in Fair Value of</b>		<b>Total</b>
			<b>Net Trust Assets</b>	<b>Long-term Debt</b>	
Investment securities available-for-sale	\$ 147	\$ -	\$ 1,710	\$ -	\$ 1,857
Securitized mortgage collateral	710,121	-	45,603	-	755,724
Securitized mortgage borrowings	-	(1,091,022)	160,867	-	(930,155)
Derivative instruments, net	-	-	(20,338)(2)	-	(20,338)
Long-term debt	-	(325)	-	341	16
<b>Total</b>	<b>\$ 710,268</b>	<b>\$ (1,091,347)</b>	<b>\$ 187,842(3)</b>	<b>\$ 341</b>	<b>\$ (192,896)</b>

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities. The total net interest income, including cash received and paid, was \$6.6 million for the six months ended June 30, 2009, as reflected in the consolidated statements of operations.
- (2) Included in this amount is \$89.7 million in changes in the fair value of derivative instruments, offset by \$110.0 million in cash payments from the securitization trusts for the six months ended June 30, 2009.
- (3) For the six months ended June 30, 2009, change in the fair value of trust assets, excluding REO was \$187.8 million. Excluded from the \$297.9 million change in fair value of net trust assets, excluding REO, in the accompanying consolidated statement of cash flows is \$110.0 million in cash payments from the securitization trusts related to the Company's net derivative liabilities.

<b>Recurring Fair Value Measurements</b>					
<b>Changes in Fair Value Included in Net Loss</b>					
<b>For the six months ended June 30, 2008</b>					
	<b>Interest Income (1)</b>	<b>Interest Expense (1)</b>	<b>Change in Fair Value of</b>		<b>Total</b>
			<b>Net Trust Assets</b>	<b>Long-term Debt</b>	
Investment securities available-for-sale	\$ 399	\$ -	\$ (5,807)	\$ -	\$ (5,408)
Securitized mortgage collateral	96,908	-	(3,248,563)	-	(3,151,655)
Securitized mortgage borrowings	-	(345,675)	3,330,248	-	2,984,573
Derivative instruments, net	-	-	(83,511)(2)	-	(83,511)
Long-term debt	-	(294)	-	(5,020)	(5,314)
<b>Total</b>	<b>\$ 97,307</b>	<b>\$ (345,969)</b>	<b>\$ (7,633)(3)</b>	<b>\$ (5,020)</b>	<b>\$ (261,315)</b>

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities. The total net interest income, including cash received and paid, was \$11.6 million for the six months ended June 30, 2008, as reflected in the consolidated statements of operations.
- (2) Included in this amount is \$12.2 million in changes in the fair value of derivative instruments and \$71.3 million in cash payments from the securitization trusts for the six months ended June 30, 2009.
- (3) For the six months ended June 30, 2008, change in the fair value of trust assets, excluding REO was (\$7.6) million. Excluded from the \$63.7 million change in fair value of net trust assets, excluding REO, in the accompanying consolidated statement of cash flows is \$71.3 million in cash payments from the securitization trusts related to the Company's net derivative liabilities.

In connection with the fair value option election for investment securities available-for-sale and securitized mortgage collateral and borrowings, interest income and interest expense is recognized using effective yields based on estimated fair values for these instruments. As the market's expectation of future credit losses has increased between periods, market participants have demanded higher yields, which have resulted in significant reductions in the fair values of these instruments. These reductions in fair value have significantly increased the effective yields used for purposes of recognizing interest income and interest expense on these instruments.

The change in fair value of the asset and liabilities above, excluding derivative instruments, are primarily due to the changes in credit risk. The change in fair value for derivative instruments is primarily due to the change in the forward LIBOR curve.

**Non-recurring fair value measurements**

The Company is required to measure certain assets and liabilities at fair value from time-to-time. These fair value measurements typically result from the application of specific accounting pronouncements under GAAP. The fair value measurements are considered non-recurring fair value measurements under SFAS 157.

*Loans held-for-sale* - Loans held-for-sale for which the fair value option was not elected are carried at lower of cost or market (LOCOM). When available, such measurements are based upon what secondary markets offer for portfolios with similar characteristics, and are considered Level 2 measurements. If market pricing is not available, such measurements are significantly impacted by the Company's expectations of other market participants' assumptions, and are considered Level 3 measurements. The Company utilizes internal pricing processes to estimate the fair value of loans held-for-sale, which is based on recent loan sales and estimates of the fair value of the underlying collateral. Loans held-for-sale, which are primarily included in assets of discontinued operations, are considered Level 3 fair value measurements at June 30, 2009 and December 31, 2008 based on the lack of observable market inputs.

*Real estate owned* - REO consists of residential real estate acquired in satisfaction of loans. Upon foreclosure, REO is adjusted to the estimated fair value of the residential real estate less estimated selling and holding costs, offset by expected mortgage insurance proceeds to be received, if any. Subsequently, REO is recorded at the lower of carrying value or estimated fair value less costs to sell. Fair values of REO are generally based on appraisals or market prices, and considered Level 2 measurements at June 30, 2009 and December 31, 2008.

*Lease liability* — In connection with the discontinuation of our non-conforming mortgage, retail mortgage, warehouse lending and commercial operations, a significant amount of office space that was previously occupied is no longer being used by the Company. The Company has subleased a significant amount of this office space. The Company has recorded a liability, included within discontinued operations, representing the present value of the minimum lease payments over the remaining life of the lease, offset by the expected proceeds from sublet revenue related to this office space. This liability is based on the present value techniques that incorporate the Company's judgments about estimated sublet revenue and discount rates. Therefore, this liability is considered a Level 3 measurement at June 30, 2009 and December 31, 2008.

The following tables present the fair values of those financial assets measured at fair value on a non-recurring basis at June 30, 2009 and December 31, 2008:

	Non-recurring Fair Value Measurements			Total Gains (Losses)	
	As of June 30, 2009			For the Three Months Ended	For the Six Months Ended
	Level 1	Level 2	Level 3	June 30, 2009	June 30, 2009
Loans held-for-sale (1)	\$ -	\$ -	\$ 85,235	\$ (7,445)	\$ (7,517)
REO (2)	-	172,019	-	(9,580)	(95,238)
Lease liability (3)	-	-	(3,935)	2,503	2,560

- (1) Includes \$0.3 million and \$84.9 million of loans held-for-sale within continuing and discontinued operations, respectively at June 30, 2009.
- (2) Includes \$167.3 million and \$4.7 million in REO within continuing and discontinued operations, respectively at June 30, 2009 which had additional impairment write-downs subsequent to the date of foreclosure. For the three months ended June 30, 2009, the \$9.6 million loss related to additional impairment write-downs during the period included \$9.1 million and \$0.5 million within continuing and discontinued operations, respectively. For the six months ended June 30, 2009, the \$95.2 million loss related to additional impairment write-downs during the period included \$93.3 million and \$1.9 million within continuing and discontinued operations, respectively.
- (3) Amounts are included in discontinued operations. For the three and six months ended June 30, 2009, the Company recorded \$2.5 million and \$2.6 million in gains resulting from reductions in lease liabilities as a result of changes in our expected minimum future lease payments, respectively.

	<u>Non-recurring Fair Value Measurements</u>			<u>Total Losses</u> <u>For the Year Ended</u> <u>December 31, 2008</u>
	<u>As of December 31, 2008</u>			
	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	
Loans held-for-sale (1)	\$ -	\$ -	\$ 108,223	\$ 45,960

(1) Includes \$0.4 million and \$107.8 million of loans held-for-sale within continuing and discontinued operations, respectively at December 31, 2008.

#### Note C— Stock Options

The fair value of options granted, which is amortized to expense over the option vesting period, is estimated on the date of grant using the Black-Scholes-Merton option pricing model with the following weighted average assumptions:

	<u>Six Months</u> <u>Ended June 30,</u>	
	<u>2009</u>	<u>2008</u>
Risk-free interest rate	2.86%	1.88% to 2.13%
Expected lives (in years)	5.50	3.25
Expected volatility (1)	259.16%	87.3% - 89.9%
Expected dividend yield (2)	0.00%	0.00%
Grant date fair value of share options	\$ 0.53	\$ 7.14 - 7.76

- (1) Expected volatilities are based on the historical volatility of the Company's stock over the expected option life.  
(2) Expected dividend yield is zero because a dividend on the common stock was not probable over the expected life of the options granted during the six months ended June 30, 2009 and 2008.

The following table summarizes activity, pricing and other information for the Company's stock options for the six months ended June 30, 2009:

	<u>Number of</u> <u>Shares</u>	<u>Weighted-</u> <u>Average</u> <u>Exercise</u> <u>Price (\$)</u>
Options outstanding at January 1, 2009	1,140,186	\$ 37.18
Options granted	842,300	0.53
Options exercised	-	-
Options forfeited / cancelled	(599,300)	27.62
Options outstanding at June 30, 2009	<u>1,383,186</u>	<u>\$ 19.00</u>
Options exercisable at June 30, 2009	<u>221,097</u>	<u>\$ 81.20</u>

As of June 30, 2009, there was approximately \$1.3 million of total unrecognized compensation cost related to nonvested share-based compensation arrangements granted under the plan. This cost is expected to be recognized over a weighted average period of 0.8 years.

In April 2009, the Company's officers and directors gave notice of the surrender of an aggregate of 581,000 options and the Board accepted and approved the cancellation of those listed options. In connection with the cancellation of these options, the Company recognized non-cash compensation expense of approximately \$1.7 million during the second quarter.

#### Note D—Reconciliation of Earnings Per Share

The following table presents the computation of basic and diluted net earnings per share including the dilutive effect of stock options and preferred stock outstanding for the periods indicated:

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2009	2008	2009	2008
<b>Numerator for basic earnings per share:</b>				
Net earnings (loss) from continuing operations	\$ 8,030	\$ (16,439)	\$ 9,307	\$ (20,942)
Net loss from discontinued operations	(4,195)	(11,048)	(6,591)	(10,360)
Less: Cash dividends on preferred stock	(7,443)	(3,722)	(7,443)	(7,443)
Net loss attributable to common stockholders	<u>\$ (3,608)</u>	<u>\$ (31,209)</u>	<u>\$ (4,727)</u>	<u>\$ (38,745)</u>
<b>Denominator for basic earnings per share:</b>				
Basic weighted average number of common shares outstanding during the period	<u>7,618</u>	<u>7,610</u>	<u>7,618</u>	<u>7,610</u>
<b>Denominator for diluted earnings per share:</b>				
Diluted weighted average number of common shares outstanding during the period	7,618	7,610	7,618	7,610
Net effect of dilutive stock options	-	-	-	-
Diluted weighted average common shares	<u>7,618</u>	<u>7,610</u>	<u>7,618</u>	<u>7,610</u>
<b>Net loss per common share - basic and diluted:</b>				
Earnings (loss) from continuing operations	\$ 0.08	\$ (2.65)	\$ 0.24	\$ (3.73)
Loss from discontinued operations	(0.55)	(1.45)	(0.86)	(1.36)
Net loss per share attributable to common stockholders	<u>\$ (0.47)</u>	<u>\$ (4.10)</u>	<u>\$ (0.62)</u>	<u>\$ (5.09)</u>

For the three and six months ended June 30, 2009, stock options to purchase 1.4 million shares were outstanding but not included in the above weighted average calculations because they were anti-dilutive.

For the three and six months ended June 30, 2008, stock options to purchase 1.3 million shares were outstanding but not included in the above weighted average calculations because they were anti-dilutive.

#### Note E—Segment Reporting

The Company has three reporting segments, consisting of the long-term mortgage portfolio, mortgage and real estate services and discontinued operations. The following tables present the selected financial data and operating results by reporting segment for the periods indicated:

	Continuing Operations			Consolidated
	Long-term Portfolio	Mortgage and Real Estate Services	Discontinued Operations	
<b>Balance Sheet Items as of June 30, 2009:</b>				
Securitized mortgage collateral	\$ 6,018,391	\$ -	\$ -	\$ 6,018,391
Total assets	6,332,286	26,015	122,734	6,481,035
Total liabilities	6,280,507	2,395	191,909	6,474,811
Total stockholders' equity (deficit)	51,779	23,620	(69,175)	6,224
<b>Balance Sheet Items as of December 31, 2008:</b>				
Securitized mortgage collateral	\$ 5,894,424	\$ -	\$ -	\$ 5,894,424
Total assets	6,574,464	-	141,053	6,715,517
Total liabilities	6,489,024	-	217,241	6,706,265
Total stockholders' equity (deficit)	85,440	-	(76,188)	9,252

	Continuing Operations			Reclassifications (1)	Consolidated
	Long-term Portfolio	Mortgage and Real Estate Services	Discontinued Operations		
<b>Statement of Operations Items for the three months ended June 30, 2009:</b>					
Net interest income (expense)	\$ 2,961	\$ (8)	\$ (665)	\$ 665	\$ 2,953
Non-interest income- net trust assets	8,189	-	-	-	8,189
Mortgage and real estate services fees	-	13,233	-	-	13,233
Other non-interest income (expense)	301	(157)	(6,859)	6,859	144
Non-interest expense and income taxes	(8,992)	(7,497)	3,329	(3,329)	(16,489)
Net earnings from continuing operations	<u>\$ 2,459</u>	<u>\$ 5,571</u>	<u>-</u>	<u>-</u>	<u>\$ 8,030</u>
Net loss from discontinued operations, net of tax	<u>\$ -</u>	<u>\$ -</u>	<u>\$ (4,195)</u>	<u>-</u>	<u>\$ (4,195)</u>
Net earnings	<u>\$ 2,459</u>	<u>\$ 5,571</u>		(4,195)	<u>\$ 3,835</u>

**Statement of Operations Items for the six months ended June 30, 2009:**

Net interest income (expense)	\$ 6,601	\$ (6)	\$ (1,078)	\$ 1,078	\$ 6,595
Non-interest income- net trust assets	12,919	-	-	-	12,919
Mortgage and real estate services fees	-	18,782	-	-	18,782
Other non-interest income (expense)	301	(186)	(8,780)	8,780	115
Non-interest expense and income taxes	(17,539)	(11,565)	3,267	(3,267)	(29,104)
Net earnings from continuing operations	<u>\$ 2,282</u>	<u>\$ 7,025</u>	<u>-</u>	<u>-</u>	<u>\$ 9,307</u>
Net loss from discontinued operations, net of tax	<u>\$ -</u>	<u>\$ -</u>	<u>\$ (6,591)</u>	<u>-</u>	<u>\$ (6,591)</u>
Net earnings	<u>\$ 2,282</u>	<u>\$ 7,025</u>		(6,591)	<u>\$ 2,716</u>

	Continuing Operations			Reclassifications (1)	Consolidated
	Long-term Portfolio	Mortgage and Real Estate Services	Discontinued Operations		
<b>Statement of Operations Items for the three months ended June 30, 2008:</b>					
Net interest income	\$ 4,256	\$ -	\$ 1,543	\$ (1,543)	\$ 4,256
Non-interest income- net trust assets	(15,991)	-	-	-	(15,991)
Mortgage and real estate services fees	-	1,612	-	-	1,612
Other non-interest income (expense)	4,464	(833)	(8,354)	8,354	3,631
Non-interest expense and income taxes	(9,535)	(412)	(4,237)	4,237	(9,947)
Net (loss) earnings from continuing operations	<u>\$ (16,806)</u>	<u>\$ 367</u>	<u>-</u>	<u>-</u>	<u>\$ (16,439)</u>
Net loss from discontinued operations, net of tax	<u>\$ -</u>	<u>\$ -</u>	<u>\$ (11,048)</u>	<u>-</u>	<u>\$ (11,048)</u>
Net (loss) earnings	<u>\$ (16,806)</u>	<u>\$ 367</u>		(11,048)	<u>\$ (27,487)</u>

**Statement of Operations Items for the six months ended June 30, 2008:**

Net interest income (expense)	\$ 11,610	\$ (5)	\$ 3,213	\$ (3,213)	\$ 11,605
Non-interest income- net trust assets	(16,719)	-	-	-	(16,719)
Mortgage and real estate services fees	-	4,155	-	-	4,155
Other non-interest income	2,794	13	979	(979)	2,807
Non-interest expense and income taxes	(21,922)	(868)	(14,552)	14,552	(22,790)
Net (loss) earnings from continuing operations	<u>\$ (24,237)</u>	<u>\$ 3,295</u>	<u>-</u>	<u>-</u>	<u>\$ (20,942)</u>
Net loss from discontinued operations, net of tax	<u>\$ -</u>	<u>\$ -</u>	<u>\$ (10,360)</u>	<u>-</u>	<u>\$ (10,360)</u>
Net (loss) earnings	<u>\$ (24,237)</u>	<u>\$ 3,295</u>		(10,360)	<u>\$ (31,302)</u>

(1) Amounts represent reclassifications of activity in the discontinued operations segment into net loss from discontinued operations, net of tax as presented in the consolidated statements of operations.

**Note F—Real Estate Owned (REO)**

Activity for the Company's REO consisted of the following:

	<u>At June 30, 2009</u>	<u>At December 31, 2008</u>
REO	\$ 338,614	\$ 635,285
Impairment (1)	(63,567)	(35,533)
Ending balance	<u>\$ 275,047</u>	<u>\$ 599,752</u>
REO inside trusts	\$ 274,481	\$ 599,084
REO outside trusts (2)	566	668
Total	<u>\$ 275,047</u>	<u>\$ 599,752</u>

(1) Impairment represents the cumulative write-downs of net realizable value subsequent to foreclosure.

(2) Amount represents REO related to former on-balance sheet securitizations, which were collapsed as the result of the Company exercising its clean-up call options. This REO is included in other assets in the accompanying consolidated balance sheets.

#### Note G—Restructured Financing (Discontinued Operations)

The Company's reverse repurchase financing, included in discontinued operations, is secured by the Company's mortgage loans held-for-sale with an unpaid principal balance of \$184.7 million, restricted cash of \$19.9 million and certain REOs. The following table presents the outstanding balance of the Company's Restructured Financing as of the dates indicated:

	<u>Discontinued Operations</u>	
	<u>as of June 30,</u> <u>2009</u>	<u>as of December 31,</u> <u>2008</u>
Reverse repurchase line (1)	<u>\$ 171,708</u>	<u>\$ 188,677</u>

(1) This line, which is guaranteed by IMH, is no longer funding loans and was restructured in 2008 as described below.

In September 2008, the Company entered into an agreement to restructure its reverse repurchase line (Restructured Financing) with its remaining lender. The balance of this Restructured Financing was \$171.7 million at June 30, 2009 and collateralized by loans held-for-sale within discontinued operations. The agreement removed all technical defaults from financial covenant noncompliance and any associated margin calls for the term of the agreement. The agreement calls for certain targets including a reduction of the borrowings balance to \$100 million by March 2010 with an advance rate of no more than 65 percent of the outstanding principal balance and \$50 million by September 2010 with an advance rate of no more than 55 percent of the outstanding principal balance. By meeting these targets, the agreement term can extend to March 2011. At June 30, 2009, the advance rate was 78 percent. The agreement also calls for monthly payments of \$1.5 million until the earlier of the Company raising capital or the end of the agreement term. If the Company is successful in raising capital, approximately 10 percent of the gross proceeds will be required to be paid as an additional payment and the monthly payment would then be reduced to \$750,000. The interest rate is LIBOR plus 325 basis points, and all cash collected from the securing mortgage loans is required to be paid to the lender. To the extent the cash collected from the collateral is not adequate to pay the interest expense due on the borrowings, interest expense would be paid to the lender from the Company's restricted cash account included in assets of discontinued operations or the Company's cash balances. Accomplishing the restructuring of this reverse repurchase line allows the Company to timely manage the remaining loans on the line for the eventual collection, refinance, sale or securitization without the risk of receiving margin calls. Upon an event of default, the Company is responsible for any shortfall if the value of the loans securing the financing is insufficient to repay the outstanding balance. During the three and six months ended June 30, 2009, the Company paid an additional \$4.5 million and \$9.0 million, respectively in payments, used by the lender to offset interest and settlement shortfalls, as required under the restructured terms.

#### Note H—Long-term Debt

The following table shows the composition of long-term debt as of the dates indicated:

	June 30, 2009	December 31, 2008
<b>Trust preferred securities:</b>		
Outstanding balance	\$ 11,000	\$ 88,250
Common securities	620	2,994
Fair value adjustment	(9,511)	(75,841)
<b>Total trust preferred securities</b>	<b>2,109</b>	<b>15,403</b>
<b>Junior subordinated notes:</b>		
Outstanding balance	62,000	-
Fair value adjustment	(54,312)	-
<b>Total junior subordinated notes</b>	<b>7,688</b>	<b>-</b>
<b>Total long-term debt</b>	<b>\$ 9,797</b>	<b>\$ 15,403</b>

In January 2009, the Company purchased and canceled \$25.0 million in outstanding trust preferred securities of Impac Capital Trust #2 for \$3.75 million and terminated the remaining debt.

In May 2009, the Company exchanged an aggregate of \$51.3 million in trust preferred securities of Impac Capital Trusts #1 and #3 for junior subordinated notes with an aggregate principal balance of \$62.0 million, with a maturity date in March 2034. Under the terms of the exchange, the interest rate for each note was reduced from the original 8.01 percent to 2.00 percent through 2013 with increases of 1.00 percent per year through 2017. Starting in 2018, the interest rates become variable at 3-month LIBOR plus 375 basis points. In connection with the exchange, the Company paid a fee of \$0.5 million.

In June 2009, the Company purchased and canceled \$1.0 million in outstanding trust preferred securities of Impac Capital Trust #4 for \$150 thousand.

As of July 30, 2009, the Company is current and no longer deferring interest on trust preferred securities.

In August 2009, the Company purchased and canceled \$2.5 million in outstanding trust preferred securities of Impac Capital Trust #4 for \$375 thousand, resulting in \$8.5 million in outstanding trust preferred securities.

As a result of the restructuring of \$51.3 million and purchase and cancellation of \$36.5 million in outstanding trust preferred securities, the Company reduced its annual interest expense obligation from \$7.8 million to \$2.0 million. With the restructuring and purchase and cancellations of trust preferred securities, the Company has \$8.5 million in outstanding trust preferred securities of Impac Capital Trust #4 and \$62.0 million in outstanding junior subordinated notes.

#### **Note I—Preferred Stock Repurchase**

In June 2009, the Company completed the Offer to Purchase and Consent Solicitation (the "Offer to Purchase") of all of its 9.375% Series B Cumulative Redeemable Preferred Stock and 9.125% Series C Cumulative Redeemable Preferred Stock. The Series B Preferred Stock had a liquidation preference of \$50 million and the Series C Preferred Stock had a liquidation preference of \$111.8 million, for a total of \$161.8 million. Upon expiration of the Offer to Purchase, holders of approximately 67.7% of the Preferred Stock tendered an aggregate of 4,378,880 shares. Stockholders of the Company's Series B Preferred Stock tendered 1,323,844 shares at \$0.29297 per share for \$388 thousand. Stockholders of the Company's Series C Preferred Stock tendered 3,055,036 shares at \$0.28516 per share for \$871 thousand. The aggregate purchase price for the Preferred Stock was \$1.3 million. In addition, in connection with completing the offer to purchase the Company paid \$7.4 million accumulated but unpaid dividends on its Preferred Stock. With the total cash payment of \$8.7 million, the Company eliminated \$109.5 million of liquidation preference on its Preferred Stock. After the completion of the Offer to Purchase, the Company has outstanding \$52.3 million liquidation preference of Series B and Series C Preferred Stock.

With completion of the Offer to Purchase and modification to the terms of the Series B Preferred Stock and Series C Preferred Stock, the Company eliminated its \$14.9 million annual preferred dividend obligation. Refer to *Note I – Preferred Stock Repurchase* for additional information.

As a condition to completing the offer to purchase, the common stockholders and preferred stockholders approved and consented to modify the terms of each of the Series B Cumulative Preferred Stock and Series C Preferred Stock to (i) make dividends, if any, non-cumulative, (ii) eliminate the provisions prohibiting the payment of dividends on junior stock and prohibiting the purchase or redemption of junior or parity stock if full cumulative dividends for all past dividend periods are not paid or declared and set apart for payment, (iii) eliminate any premiums payable upon the liquidation, dissolution or winding up of the Company, (iv) eliminate the provision prohibiting the Company from electing to redeem Preferred Stock prior to the fifth year anniversary of the issuance of such preferred stock, (v) eliminate the provision prohibiting the Company from redeeming less than all of the outstanding Preferred Stock if full cumulative dividends for all past dividend periods have not been paid or declared and set apart for payment, (vi) eliminate the right of holders of Preferred Stock to elect two directors if dividends are in arrears for six quarterly periods and (vii) eliminate the right of holders of Preferred Stock to consent to or approve the authorization or issuance of preferred stock senior to the Preferred Stock. The holders of each series of Preferred Stock retain the right to a \$25.00 liquidation preference in the event of a liquidation of the Company and the right to receive dividends on the Preferred Stock if any such dividends are declared.

#### **Note J—Subsequent Events**

Subsequent events have been evaluated through August 10, 2009, the date these financial statements were issued.

As discussed in Note H – *Long-term Debt*, in August 2009, the Company purchased and canceled \$2.5 million in outstanding trust preferred securities of Impac Capital Trust #4 for \$375 thousand.

## ITEM 2: MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

(dollars in thousands, except per share data or as otherwise indicated)

Unless the context otherwise requires, the terms "Company," "we," "us," and "our" refer to Impac Mortgage Holdings, Inc. (the Company or IMH), a Maryland corporation incorporated in August 1995, and its subsidiaries, IMH Assets Corp. (IMH Assets), Integrated Real Estate Services Corporation (IRES), Impac Warehouse Lending Group, Inc. (IWLG), and Impac Funding Corporation (IFC), together with its wholly-owned subsidiaries Impac Secured Assets Corp. (ISAC) and Impac Commercial Capital Corporation (ICCC).

### Forward-Looking Statements

This report on Form 10-K contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements, some of which are based on various assumptions and events that are beyond our control, may be identified by reference to a future period or periods or by the use of forward-looking terminology, such as "may," "will," "believe," "expect," "likely," "should," "could," "anticipate," or similar terms or variations on those terms or the negative of those terms. The forward-looking statements are based on current management expectations. Actual results may differ materially as a result of several factors, including, but not limited to the following: the ongoing volatility in the mortgage industry; our ability to successfully manage through the current market environment; our ability to meet liquidity needs from current cash flows or generate new sources of revenue; management's ability to successfully initiate and continue mortgage and real estate related fee-based business strategies; the ability to make interest and dividend payments; increases in default rates and mortgage related losses; potential difficulties in satisfying conditions (payment and covenants) in the Restructured Financing; our ability to obtain additional financing and the terms of any financing that we do obtain; inability to effectively liquidate properties to mitigate losses; increase in loan repurchase requests and ability to adequately settle repurchase obligations; decreases in value of our residual interests that differ from our assumptions; the ability of our common stock to continue trading in an active market; the outcome of litigation or regulatory actions pending against us or other legal contingencies; and our compliance with applicable local, state and federal laws and regulations and other general market and economic conditions.

For a discussion of these and other risks and uncertainties that could cause actual results to differ from those contained in the forward-looking statements, see "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in the Company's Annual Report on Form 10-K for the period ended December 31, 2008, the other reports we file under the Securities and Exchange Act of 1934, and the additional risk factors set forth below in this quarterly report. This document speaks only as of its date and we do not undertake, and specifically disclaim any obligation, to publicly release the results of any revisions that may be made to any forward-looking statements to reflect the occurrence of anticipated or unanticipated events or circumstances after the date of such statements.

### The Mortgage Banking Industry and Discussion of Relevant Fiscal Periods

The mortgage banking industry is continually vulnerable to current events that occur in the financial services industry. These events include changes in economic indicators, government regulation, interest rates, price competition, geographic shifts, disposable income, housing prices, market liquidity, market anticipation, and customer perception, as well as others. The factors that affect the industry change rapidly and can be unforeseeable.

Current events can diminish the relevance of "quarter over quarter" and "year-to-date over year-to-date" comparisons of financial information. In such instances, the Company attempts to present financial information in its Management's Discussion and Analysis of Financial Condition and Results of Operations that is the most relevant to its financial information.

### Status of Operations, Liquidity and Capital Resources

#### *Long-term mortgage portfolio*

During the first half of 2009, the Company continues to be significantly and negatively affected by the deteriorating real estate market and the weak economic environment. These factors have led to continued deterioration in the quality of the Company's long-term mortgage portfolio, as evidenced by the continued increases in delinquencies, foreclosures and credit losses. Existing conditions are unprecedented and inherently involve significant risks and uncertainty to the Company. The current market conditions have led to fewer sources of liquidity available to the Company to operate its business. These conditions continue to have an adverse effect on the performance of the Company's long-term mortgage portfolio, including significant losses on real estate owned. The Company has increased its loss assumptions for its long-term mortgage portfolio due to the increase in expected defaults and loss severities related to the weak economy and housing market.

## *Mortgage and real estate services*

During the first quarter of 2009, the Company initiated various mortgage and real estate related fee-based businesses, including loan modifications, real estate disposition, monitoring and surveillance services, real estate brokerage and lending services and escrow services, and has begun to generate revenues from these businesses. For the three and six month periods ended June 30, 2009, mortgage and real estate services fees were \$13.2 million and \$18.8 million, respectively. However, since these businesses are newly formed and currently generate fees primarily from the Company's long-term mortgage portfolio, there remains uncertainty about their future success, including providing services to the marketplace.

## *Liquidity and capital resources*

During the first six months of 2009, the Company continued to fund its operations primarily from the cash flows from its long-term mortgage portfolio and mortgage and real estate related fee-based businesses.

In January 2009, the Company purchased and canceled all of the \$25.0 million in outstanding trust preferred securities of Impac Capital Trust #2 for \$3.75 million and terminated the remaining debt.

In May 2009, the Company exchanged an aggregate of \$51.3 million in trust preferred securities of Impac Capital Trusts #1 and #3 for junior subordinated notes with an aggregate principal balance of \$62.0 million, with a maturity date in March 2034. Under the terms of the exchange, the interest rate for each note was reduced from the original 8.01 percent to 2.00 percent through 2013 with increases of 1.00 percent per year through 2017. Starting in 2018, the interest rates become variable at 3-month LIBOR plus 375 basis points. In connection with the exchange, the Company paid a fee of \$0.5 million.

In June 2009, the Company purchased and canceled \$1.0 million in outstanding trust preferred securities of Impac Capital Trust #4 for \$150 thousand.

As of July 30, 2009, the Company is current and no longer deferring interest on trust preferred securities.

In August 2009, the Company purchased and canceled \$2.5 million in outstanding trust preferred securities of Impac Capital Trust #4 for \$375 thousand.

For the three and six months ended June 30, 2009 and 2008, the Company paid \$0.8 million and \$1.2 million, respectively in interest on trust preferred securities.

As a result of the restructuring of \$51.3 million and the purchase and cancellation of \$36.5 million in outstanding trust preferred securities, the Company reduced its annual interest expense obligation from \$7.8 million to \$2.0 million. With the restructuring and purchase and cancellations of trust preferred securities, the Company has \$8.5 million in outstanding trust preferred securities of Impac Capital Trust #4 and \$62.0 million in outstanding junior subordinated notes.

In June 2009, the Company completed the Offer to Purchase and Consent Solicitation (the "Offer to Purchase") of all of its 9.375% Series B Cumulative Redeemable Preferred Stock and 9.125% Series C Cumulative Redeemable Preferred Stock. The Series B Preferred Stock had a liquidation preference of \$50 million and the Series C Preferred Stock had a liquidation preference of \$111.8 million, for a total of \$161.8 million. Upon expiration of the Offer to Purchase, holders of approximately 67.7% of the Preferred Stock tendered an aggregate of 4,378,880 shares. Stockholders of the Company's Series B Preferred Stock tendered 1,323,844 shares at \$0.29297 per share for \$388 thousand. Stockholders of the Company's Series C Preferred Stock tendered 3,055,036 shares at \$0.28516 per share for \$871 thousand. The aggregate purchase price for the Preferred Stock was \$1.3 million. In addition, in connection with the completion of the offer to purchase the Company paid \$7.4 million accumulated but unpaid dividends on its Preferred Stock. With the total cash payment of \$8.7 million, the Company eliminated \$109.5 million of liquidation preference on its Preferred Stock. After the completion of the Offer to Purchase, the Company has outstanding \$52.3 million liquidation preference of Series B and Series C Preferred Stock.

In connection with the Offer to Purchase, the Company filed Articles of Amendment to its charter with the State Department of Assessments and Taxation of Maryland to modify the terms of each of its 9.375% Series B Cumulative Redeemable Preferred Stock and 9.125% Series C Cumulative Redeemable Preferred Stock to (i) make dividends, if any, non-cumulative, (ii) eliminate the provisions prohibiting the payment of dividends on junior stock and prohibiting the purchase or redemption of junior or parity stock if full cumulative dividends for all past dividend periods are not paid or declared and set apart for payment, (iii) eliminate any premiums payable upon the liquidation, dissolution or winding up of the Company, (iv) eliminate the provision prohibiting the Company from electing to redeem Preferred Stock prior to the fifth year anniversary of the issuance of such Preferred Stock, (v) eliminate the provision prohibiting the Company from redeeming less than all of the outstanding Preferred Stock if full cumulative dividends for all past dividend periods have not been paid or declared and set apart for payment, (vi) eliminate the right of holders of preferred stock to elect two directors if dividends are in arrears for six quarterly periods and (vii) eliminate the right of holders of Preferred Stock to consent to or approve the authorization or issuance of Preferred Stock senior to the preferred stock.

With completion of the Offer to Purchase and modification to the terms of the Series B Preferred Stock and Series C Preferred Stock, the Company eliminated its \$14.9 million annual preferred dividend obligation.

During the three and six month periods ended June 30, 2008, the Company's sources of cash flow earnings also included real estate advisory fees. The real estate advisory agreement was terminated in the fourth quarter of 2008 and we received a fee of \$27.0 million for agreeing to terminate this relationship. During the three and six month periods ended June 30, 2008, we earned \$4.7 million and \$8.5 million, respectively in real estate advisory fees.

The primary use of liquidity within discontinued operations continues to be the Company's restructured reverse repurchase financing (Restructured Financing). As of June 30, 2009, the balance of the Restructured Financing was \$171.7 million secured by loans held for sale with an unpaid principal balance of \$184.7 million, restricted cash of \$19.9 million and certain real estate owned. Principal and interest received on the underlying collateral is remitted to the lender monthly. During the three and six month periods ended June 30, 2009, the Company paid an additional \$4.5 million and \$9.0 million in payments, used by the lender to offset interest and settlement shortfalls, as required under the restructured terms.

If we are not successful in (i) realizing cash flows from our residual interests in securitizations and (ii) realizing cash flows from new mortgage and real estate related fee-based businesses, we may not be able to satisfy our contractual obligations for 2010 and subsequent years, including repayment of the Restructured Financing and interest payments on long-term debt (which consists of trust preferred securities and junior subordinated notes).

To understand the financial position of the Company better, we believe it is important to understand the composition of the Company's stockholders' equity (deficit) and to which component of the business it relates. At June 30, 2009, the equity (deficit) within our continuing and discontinued operations was comprised of the following significant assets and liabilities:

	<b>Condensed Components of Stockholders' Equity (Deficit)</b>		
	<b>As of June 30, 2009</b>		
	<b>Continuing Operations</b>	<b>Discontinued Operations</b>	<b>Total</b>
Cash	\$ 30,694	\$ 632	\$ 31,326
Short-term investments	5,026	-	5,026
Residual interests in securitizations	28,895	-	28,895
Long-term debt (\$73,620 par)	(9,797)	-	(9,797)
Repurchase liabilities (1)	-	(68,495)	(68,495)
Lease liability (2)	-	(3,935)	(3,935)
Deferred charge	13,144	-	13,144
Net other assets	7,437	2,623	10,060
<b>Stockholders' equity (deficit)</b>	<b>\$ 75,399</b>	<b>\$ (69,175)</b>	<b>\$ 6,224</b>

(1) Balance includes the net amount owed to our lender, which are guaranteed by IMH, and the repurchase reserve.

(2) Guaranteed by IMH.

#### *Continuing operations*

At June 30, 2009, cash within our continuing operations decreased to \$30.7 million from \$46.2 million at December 31, 2008. The primary components of the change in cash between periods were the Company's \$5.0 million investment in highly liquid short-term investments during the first quarter of 2009 and its repurchase of preferred stock of \$1.3 million and payment of \$7.4 million in accumulated preferred stock dividends during the second quarter of 2009. Additionally, the Company paid \$3.9 million to purchase and cancel \$26.0 million in trust preferred securities.

Since our consolidated and unconsolidated securitization trusts are non-recourse, we have netted trust assets and liabilities to present the Company's interest in these trusts more simply, which are considered our residual interests in securitizations. For unconsolidated securitizations our residual interests represent the fair value of investment securities available-for-sale. For consolidated securitizations, our residual interests are represented by the fair value of securitized mortgage collateral and real estate owned, offset by the fair value of securitized mortgage borrowings and net derivative liabilities. We receive cash flows from our residual interests in securitizations to the extent they are available after required distributions to bondholders and maintaining overcollateralization levels within the trusts. The estimated fair value of the residual interests, represented by the difference in the fair value of trust assets and trust liabilities, was \$28.9 million at June 30, 2009, compared to \$28.0 million at December 31, 2008.

At June 30, 2009, we had deferred charges of \$13.1 million, which is amortized as a component of income tax expense in the consolidated statements of operations over the estimated life of the mortgages retained in the securitized mortgage collateral. The deferred charges represent the deferral of income tax expense on inter-company profits that resulted from the sale of mortgages from taxable subsidiaries to IMH in prior years. This balance is recorded as required by accounting principles generally accepted in the United States of America (GAAP) and does not have any realizable cash value.

Net other assets include \$2.5 million in premises and equipment, \$0.5 million in investment in capital trusts, \$1.3 million in restricted cash and \$1.5 million in prepaid expenses.

#### *Discontinued operations*

The Company's most significant liabilities at June 30, 2009 relate to its repurchase liabilities and a lease liability within discontinued operations.

The repurchase liabilities consist of a repurchase reserve and the net amount owed to our lender for the Restructured Financing, which is collateralized by loans held-for-sale, restricted cash balances and certain real estate owned. The balance of the Restructured Financing was approximately \$171.7 million at June 30, 2009. We are currently distributing all principal and interest received from the collateral securing the Restructured Financing to the lender. Additionally, the Restructured Financing calls for monthly payments of \$1.5 million.

We were required to make normal and customary representations and warranties about the loans we had previously sold to investors. Our whole loan sale agreements generally required us to repurchase loans if we breached a representation or warranty given to the loan purchaser. In addition, we also could be required to repurchase loans as a result of borrower fraud or if a payment default occurs on a mortgage loan shortly after its sale. The repurchase reserve is an estimate of losses from expected repurchases, and is based, in part, on the recent settlement of claims. At June 30, 2009, the repurchase reserve was \$11.2 million.

In connection with the discontinuation of our non-conforming mortgage, retail mortgage, warehouse lending and commercial operations, a significant amount of office space that was previously occupied is no longer being used by the Company. The Company has subleased a significant amount of this office space. At June 30, 2009, the Company had a liability of \$3.9 million included within discontinued operations, representing the present value of the minimum lease payments over the remaining life of the lease, offset by the expected proceeds from sublet revenue related to this office space.

#### **Market Conditions**

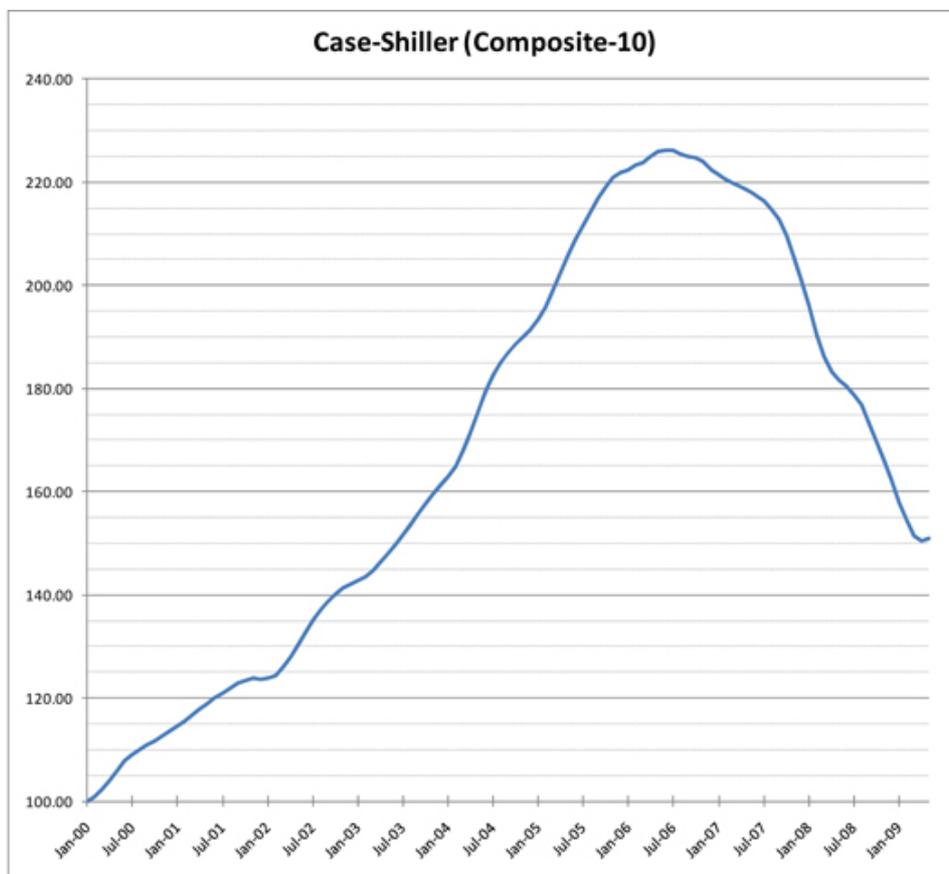
The economy continued to contract in the first half of 2009. Labor markets deteriorated rapidly as U.S. firms reduced the number of jobs driving the U.S. unemployment rate higher in June. Higher unemployment and weaker overall economic conditions have led to a significant increase in the number of defaults, while continued weak housing prices have driven a significant increase in loss severities. Defaults continue to remain elevated as the economy and housing market continues to struggle. The credit performance of the Company's long-term mortgage portfolio continues to be negatively affected by these economic conditions. Delinquencies and nonperforming loans and assets continue to increase as a percentage of loans outstanding. Additional deterioration in the overall economic environment, including continued deterioration in the labor market, could cause delinquencies to increase beyond the Company's current expectations, resulting in additional increases in losses and reductions in fair value.

We believe there is currently no index for Alt-A mortgage product, but the general direction and magnitude of price movement in the ABX 2007-1 index is reflective of the disruption in the market and general price movement experienced by the Company's securities. The index, which does not include any IMH bonds, is being used for illustrative purposes only because it is a non-conforming single-family mortgage index that has traded consistently in recent years. The ABX 2007-1 Index illustrates market prices for designated groups of subprime securities by credit rating. The index is shown here as an illustration of the price volatility in the general non-conforming mortgage market since the beginning of 2007 and does not reflect actual pricing on IMH bonds, which are backed by Alt-A loans rather than subprime loans. As shown below, the ABX 2007-1 Index displays dramatic declines in the value of such securities.



*Effects of Recent Market Activity*

As a result of the Company's inability to sell or securitize non-conforming loans during the second half of 2007, the Company discontinued funding loans. As a result, the Company discontinued substantially all of its mortgage (non-conforming single-family loans and commercial loans, which consist primarily of multi-family loans) and warehouse lending operations. Market conditions deteriorated in 2008 and continue to be depressed in 2009. As a result, the Company's investment in securitized non-conforming loans (residual interests) has been affected by the increase in estimated defaults and severities, evidenced by significant home price depreciation. The decline in single-family home prices can be seen in the chart below.



As depicted in the chart above, average home prices peaked in June 2006 at 226.29 and continued their dramatic decline through May 2009. The Standard & Poor's Case-Shiller 10-City Composite Home Price Index (the Index) for May 2009 was 151.0 (with the base of 100.00 for January 2000) and hasn't been this low since June 2003 when the Index was 149.7. Beginning in the third quarter of 2007, the Company believes there is a correlation between the borrowers' perceived equity in their homes and defaults. The original loan-to-value (defined as loan amount as a percentage of collateral value, "LTV") and original combined loan-to-value (defined as first lien plus total subordinate liens to collateral value, "CLTV") ratios of single-family mortgages remaining in the Company's securitized mortgage collateral as of June 30, 2009 was 72 percent and 81 percent, respectively. The current LTV and CLTV ratios likely increased from origination date as a result of the deterioration in the real estate market. We believe that home prices that have declined below the borrower's original purchase price have a higher risk of default within our portfolio. Based on the Index, home prices have declined 33 percent through May 2009 from the 2006 peak. Further, we believe the home prices in California and Florida, the states with the highest concentration of our mortgages, have declined even further than the Index. We have considered the deterioration in home prices in our loss estimates, which are a primary assumption used in the valuation of securitized mortgage collateral and borrowings.

### Critical Accounting Policies

Several of the critical accounting policies important to the portrayal of our financial condition and results of operations require management to make difficult and complex judgments that rely on estimates about the effect of matters that are inherently uncertain due to the affect of changing market conditions and/or consumer behavior. We believe our most critical accounting policies relate to the valuation of: (1) assets and liabilities that are highly dependent on internal valuation models and assumptions rather than market quotations (see Fair Value of Financial Instruments discussion below); (2) derivatives and other hedging instruments; (3) real estate owned and loans held-for-sale, including estimates of fair value, and related lower of cost or market (LOCOM) valuation reserve; and (4) repurchase reserve (included in liabilities of discontinued operations). Refer to our report on Form 10-K for the year ended December 31, 2008 for further discussion of our critical accounting policies and judgments.

Management discusses its critical accounting policies and related estimates with the Company's Audit Committee on a regular basis. We believe the judgments, estimates and assumptions used in the preparation of our consolidated financial statements are appropriate given the factual circumstances at the time. However, given the sensitivity of our consolidated financial statements to these critical accounting policies, the use of other judgments, estimates and assumptions could result in material differences in our results of operations or financial condition.

## **Fair Value of Financial Instruments**

SFAS 157 defines fair value, establishes a framework for measuring fair value and outlines a fair value hierarchy based on the inputs to valuation techniques used to measure fair value. SFAS 157 defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (also referred to as an exit price). SFAS 157 categorizes fair value measurements into a three-level hierarchy based on the extent to which the measurement relies on observable market inputs in measuring fair value. Level 1, which is the highest priority in the fair value hierarchy, is based on unadjusted quoted prices in active markets for identical assets or liabilities. Level 2 is based on observable market-based inputs, other than quoted prices, in active markets for identical assets or liabilities. Level 3, which is the lowest priority in the fair value hierarchy, is based on unobservable inputs. Assets and liabilities are classified within this hierarchy in their entirety based on the lowest level of any input that is significant to the fair value measurement.

The use of fair value to measure our financial instruments is fundamental to our financial statements and is a critical accounting estimate because a substantial portion of our assets and liabilities are recorded at estimated fair value. Financial instruments classified as Level 3 are generally based on unobservable inputs, and the process to determine fair value is generally more subjective and involves a high degree of management judgment and assumptions. These assumptions may have a significant effect on our estimates of fair value, and the use of different assumptions, as well as changes in market conditions, could have a material effect on our results of operations or financial condition.

As a result of the lack of observable market data resulting from inactive markets, the Company has classified all its investment securities available-for-sale, securitized mortgage collateral and borrowings, net derivative liabilities and long-term debt as Level 3 fair value measurements at June 30, 2009 and December 31, 2008. Level 3 assets and liabilities were 100 percent of total assets and liabilities at fair value at June 30, 2009 and December 31, 2008.

The Company adopted FSP No. SFAS 157-4 "Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly" (FSP 157-4) effective April 1, 2009. The FSP addresses measuring fair value under SFAS 157 in situations where the volume and level of market activity has significantly decreased and transactions are not orderly. Under the provisions of the FSP, transactions or quoted prices may not be determinative of fair value for assets or liabilities in inactive markets.

There is little information, if any, to evaluate if individual transactions are orderly in an inactive market. Accordingly, the Company is required to evaluate the facts and circumstances to determine whether the transaction is orderly based on the weight of the evidence. The FSP does not designate a specific method for adjusting a transaction or quoted price, however, it does provide guidance for determining how much weight to give a transaction or quoted price. Price quotes derived from transactions that are not orderly are not considered to be determinative of fair value and should be given less weight, if any, when measuring fair value.

FSP 157-4 is effective for interim and annual reporting periods beginning April 1, 2009, and shall be applied prospectively. The adoption of FSP 157-4 on April 1, 2009, resulted in a positive net change of \$13.3 million included in change in fair value of net trust assets in the consolidated statements of operations. Offsetting the positive net change at adoption were decreases in the fair values of trust assets and trust liabilities as a result of the Company increasing loss assumptions for its long-term mortgage portfolio due to increases in expected defaults and loss severities related to the weak economy and housing market.

## **Recurring basis**

*Investment securities available-for-sale*—The Company elected to carry all of its investment securities available-for-sale at fair value. The investment securities consist primarily of non-investment grade mortgage-backed securities. The fair value of the investment securities are measured based upon our expectation of inputs that other market participants would use. Such assumptions include our judgments about the underlying collateral, prepayment speeds, credit losses, and certain other factors. Given the market disruption and lack of observable market data as of June 30, 2009, the fair value of the investment securities available-for-sale were measured using significant internal expectations of market participants' assumptions.

*Securitized mortgage collateral*—The Company elected to carry all of its securitized mortgage collateral at fair value. These assets consist primarily of non-conforming single-family residential and multi-family mortgage loans securitized between 2002 and 2007. Fair value measurements are based on the Company's internal models used to compute the net present value of future expected cash flows with market participant assumptions, where available. The Company's assumptions include our expectations of inputs that other market participants would use in pricing these assets. These assumptions include our judgments about the underlying collateral, prepayment speeds, estimated future credit losses, forward interest rates, investor yield requirements and certain other factors.

*Securitized mortgage borrowings*—The Company elected to carry all of its securitized mortgage borrowings at fair value. These borrowings consist of individual tranches of bonds issued by securitization trusts and are primarily backed by non-conforming mortgage loans. Fair value measurements include our judgments about the underlying collateral assumptions such as prepayment speeds, estimated future credit losses, forward interest rates, investor yield requirements and certain other factors.

*Long-term debt*— The Company elected to carry all of its long-term debt (consisting of trust preferred securities and junior subordinated notes) at fair value. These securities were measured based upon an analysis prepared by the Company, which considered the Company's own credit risk, including consideration of recent settlements with trust preferred debt holders and discounted cash flow analysis of junior subordinated notes.

*Derivative assets and liabilities*—For non-exchange traded contracts, fair value is based on the amounts that would be required to settle the positions with the related counterparties as of the valuation date. Valuations of derivative assets and liabilities are based on observable market inputs, if available. To the extent observable market inputs are not available, fair values measurements include the Company's judgments about the future cash flows, forward interest rates and certain other factors, including counterparty risk. These values also take into account the Company's own credit standing, to the extent applicable, thus included in the valuation of the derivative instrument is the value of the net credit differential between the counterparties to the derivative contract.

The Company's primary objective is to limit the exposure to the variability in future cash flows attributable to the variability of one-month LIBOR, which is the underlying index of adjustable rate securitized mortgage borrowings. The Company also monitors on an ongoing basis the prepayment risks that arise in fluctuating interest rate environments. The Company's interest rate risk management policies are formulated with the intent to offset the potential adverse effects of changing interest rates on securitized mortgage borrowings.

To mitigate exposure to the effect of changing interest rates on cash flows on securitized mortgage borrowings, the Company purchased derivative instruments primarily in the form of interest rate swap agreements (swaps) and, to a lesser extent, interest rate cap agreements (caps) and interest rate floor agreements (floors). Due to the closure of the mortgage operations, the Company has not entered into a new derivative instrument since the third quarter of 2007.

On September 15, 2008, Lehman Brothers Holdings Inc. (LBHI) filed a petition for protection under Chapter 11 of the U.S. Bankruptcy Code. As of that date, LBHI, through affiliated companies, was an interest rate swap counterparty to several of the Company's CMO and REMIC securitizations. At June 30, 2009, the estimated value of derivative liabilities to LBHI, through its affiliated companies was approximately \$78.0 million and is included in derivative liabilities in the consolidated balance sheet. As the related securitization trusts are non-recourse to the Company, the Company is not required to replace or otherwise settle any derivative positions affected by counterparty default within the consolidated trusts.

### ***Non-recurring basis***

The Company is required to measure certain assets and liabilities at fair value. These fair value measurements typically result from the application of specific accounting pronouncements under GAAP. The fair value measurements are considered non-recurring fair value measurements under SFAS 157.

*Loans held-for-sale* - Loans held-for-sale for which the fair value option was not elected are carried at lower of cost or market (LOCOM). When available, such measurements are based upon what secondary markets offer for portfolios with similar characteristics, and are considered Level 2 measurements. If market pricing is not available, such measurements are significantly impacted by the Company's expectations of other market participants' assumptions, and are considered Level 3 measurements. The Company utilizes internal pricing processes to estimate the fair value of loans held-for-sale, which is based on recent loan sales and estimates of the fair value of the underlying collateral. Loans held-for-sale, which are primarily included in assets of discontinued operations, are considered Level 3 fair value measurements at June 30, 2009 and December 31, 2008 based on the lack of observable market inputs.

*Real estate owned* - REO, which consists of residential real estate acquired in satisfaction of loans, is carried at net realizable value. Upon foreclosure, REO is adjusted to the estimated fair value of the residential real estate less estimated selling and holding costs, offset by expected mortgage insurance proceeds to be received, if any. Subsequently, REO is recorded at the lower of carrying value or estimated fair value less costs to sell. Fair values of REO are generally based on appraisals or market prices, and considered Level 2 measurements at June 30, 2009 and December 31, 2008.

*Lease liability* – In connection with the discontinuation of our non-conforming mortgage, retail mortgage, warehouse lending and commercial operations, a significant amount of office space that was previously occupied is no longer being used by the Company. The Company has subleased a significant amount of this office space. The Company has recorded a liability, included within discontinued operations, representing the fair value of the minimum lease payments over the remaining life of the lease, offset by the expected proceeds from sublet revenue related to this office space. This liability is based on the present value techniques that incorporate the Company's judgments about estimated sublet revenue and discount rates. Therefore, this liability is considered a Level 3 measurement at June 30, 2009 and December 31, 2008.

We continue to refine our valuation methodologies as markets and products develop and the pricing for certain products becomes more or less transparent. While we believe our valuation methods are appropriate and consistent with those of other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a materially different estimate of fair value as of the reporting date.

## **Interest Income and Expense**

Interest income on securitized mortgage collateral and interest expense on securitized mortgage borrowings are recorded using the effective yield for the period based on the previous quarter's estimated fair value.

## **Selected Financial Results for the Three Months Ended June 30, 2009**

### *Continuing Operations*

- Net earnings of \$8.0 million for the second quarter of 2009, compared to a net loss of \$16.4 million for the comparable 2008 period.
- Net interest income of \$3.0 million for the second quarter of 2009, primarily from our long-term mortgage portfolio, compared to net interest income of \$4.3 million for the comparable 2008 period.
- Non-interest income - net trust assets of \$8.2 million for the second quarter of 2009, compared to \$(16.0) million for the comparable 2008 period.
- Mortgage and real estate services fees of \$13.2 million for the second quarter of 2009, compared to \$1.6 million for the comparable 2008 period.

### *Discontinued Operations*

- Net loss of \$4.2 million for the second quarter of 2009, compared to \$11.0 million for the comparable 2008 period.
- Restructured Financing was \$171.7 million at June 30, 2009, compared to \$188.7 million at December 31, 2008.
- Loans held-for-sale were \$84.9 million, including a fair value adjustment of \$100.6 million at June 30, 2009, compared to loans held-for-sale of \$107.8 million, including a \$109.1 million fair value adjustment at December 31, 2008.

## **Selected Financial Results for the Six Months Ended June 30, 2009**

### *Continuing Operations*

- Net earnings of \$9.3 million for the six months ended June 30, 2009, compared to a net loss of \$20.9 million for the comparable 2008 period.

- Net interest income of \$6.6 million for the six months ended June 30, 2009, primarily from our long-term mortgage portfolio, compared to net interest income of \$11.6 million for the comparable 2008 period.
- Non-interest income - net trust assets of \$12.9 million for the six months ended June 30, 2009, compared to \$(16.7) million for the comparable 2008 period.
- Mortgage and real estate services fees of \$18.8 million for the six months ended June 30, 2009, compared to \$4.2 million for the comparable 2008 period.

#### Discontinued Operations

- Net loss of \$6.6 million for the six months ended June 30, 2009, compared to \$10.4 million for the comparable 2008 period.

#### Estimated Taxable Income

While the Company has generated significant net operating loss carryforwards in recent periods, we do not expect to generate sufficient taxable income in future periods to be able to realize these tax benefits. Therefore, we have recorded a full valuation allowance against the net deferred tax assets as we believe that as of June 30, 2009 it is more likely than not that the net deferred tax assets will not be recoverable.

#### Financial Condition and Results of Operations

##### Financial Condition

##### Condensed Balance Sheet Data

	June 30, 2009	December 31, 2008	Increase (Decrease)	% Change
Investment securities available-for-sale	\$ 1,332	\$ 2,068	\$ (736)	(36)%
Securitized mortgage collateral	6,018,391	5,894,424	123,967	2
Derivative assets	179	37	142	384
Real estate owned	274,481	599,084	(324,603)	(54)
<b>Total trust assets</b>	<b>6,294,383</b>	<b>6,495,613</b>	<b>(201,230)</b>	<b>(3)</b>
Assets of discontinued operations	122,734	141,053	(18,319)	(13)
Other assets	63,918	78,851	(14,933)	(19)
<b>Total assets</b>	<b>\$ 6,481,035</b>	<b>\$ 6,715,517</b>	<b>\$ (234,482)</b>	<b>(3)%</b>
Securitized mortgage borrowings	\$ 6,080,637	\$ 6,193,984	\$ (113,347)	(2)%
Derivative liabilities	184,851	273,584	(88,733)	(32)
<b>Total trust liabilities</b>	<b>6,265,488</b>	<b>6,467,568</b>	<b>(202,080)</b>	<b>(3)</b>
Liabilities of discontinued operations	191,909	217,241	(25,332)	(12)
Other liabilities	17,414	21,456	(4,042)	(19)
<b>Total liabilities</b>	<b>6,474,811</b>	<b>6,706,265</b>	<b>(231,454)</b>	<b>(3)</b>
Total stockholders' equity	6,224	9,252	(3,028)	(33)
<b>Total liabilities and stockholders' equity</b>	<b>\$ 6,481,035</b>	<b>\$ 6,715,517</b>	<b>\$ (234,482)</b>	<b>(3)%</b>

Total assets and total liabilities were \$6.5 billion at June 30, 2009 as compared to \$6.7 billion at December 31, 2008. The decrease in total assets and liabilities are primarily attributable to decreases in the Company's trust assets and trust liabilities as summarized below:

- Securitized mortgage collateral increased \$124.0 million during the six months ended June 30, 2009. The increase in securitized mortgage collateral from \$5.9 billion at December 31, 2008 to \$6.0 billion at June 30, 2009 was primarily due to the adoption of FSP 157-4, which clarified the use of quoted prices in determining fair values in markets that are inactive, thus moderating the need to use distressed prices in valuing financial assets and liabilities in illiquid markets as the Company had used in prior periods. The increase in fair value was offset by increased loss assumptions and reductions in principal balances during the period. For the six months ended June 30, 2009, increases in fair value totaled \$755.7 million, offset by reductions in principal balances (resulting from transfers to REO and principal paydowns) of \$631.8 million.
- REO within the Company's securitization trusts decreased \$324.6 million to \$274.5 million at June 30, 2009. Increases in REO from foreclosures totaled \$192.0 million. Offsetting the increase in REO from foreclosures were \$423.3 million in liquidations and \$93.3 million in additional lower of cost or market write-downs subsequent to foreclosure.
- Securitized mortgage borrowings decreased \$113.3 million to \$6.1 billion at June 30, 2009. The decrease in securitized mortgage borrowings was primarily due to the adoption of FSP 157-4, which clarified the use of quoted prices in determining fair values in markets that are inactive, thus moderating the need to use distressed prices in valuing financial asset and liabilities in illiquid markets as the Company had used in prior periods. The increase in fair value was offset by increased loss assumptions and reductions in principal balances during the period. For the six months ended June 30, 2009, increases in fair value totaled \$930.2 million, offset by reductions in outstanding balances of \$1.0 billion.
- Derivative liabilities, net decreased \$88.9 million during the quarter to \$184.7 million at June 30, 2009. The decrease is the result of a \$20.3 million negative change in fair value, offset by cash payments from the securitization trusts of \$109.2 million.

Since our consolidated and unconsolidated securitization trusts are non-recourse to the Company, our economic risk is limited to our residual interests in these securitization trusts. Therefore, in the following table we have netted trust assets and trust liabilities to present these residual interests more simply. Our residual interests in securitizations are segregated between our single-family (SF) residential and multi-family (MF) residential portfolios and are represented by the difference between trust assets and trust liabilities. For unconsolidated securitizations, our residual interests represent the fair value of investment securities available-for-sale. For consolidated securitizations, our residual interests are represented by the fair value of securitized mortgage collateral and net realizable value of real estate owned, offset by the fair value of securitized mortgage borrowings and net derivative liabilities. The following tables present the estimated fair value of our residual interests by securitization vintage year and other related assumptions used to derive these values at June 30, 2009:

<b>Estimated Fair Value of Residual Interests by Vintage Year</b>				
		<b>SF</b>	<b>MF</b>	<b>Total</b>
2002-2003	(1)	\$ 10,079	\$ 6,683	\$ 16,762
2004		4,076	6,751	10,827
2005	(2)	32	393	425
2006	(2)	-	881	881
2007	(2)	-	-	-
<b>Total</b>		<b>\$ 14,187</b>	<b>\$ 14,708</b>	<b>\$ 28,895</b>
Weighted avg. prepayment rate		8%	19%	9%
Weighted avg. discount rate		30%	21%	25%

- 2002-2003 vintage year includes CMO 2007-A, since the majority of the mortgages collateralized in this securitization were originated during this period.
- The estimated fair values of residual interests in vintage years 2005 through 2007 is reflective of higher estimated future losses and investor yield requirements compared to earlier vintage years.

The fair value of trust assets is essentially the fair value of trust liabilities plus the fair value of the residual interests. The credit loss, prepayment and forward interest rate assumptions used in the fair value process were the same for trust assets, trust liabilities and residual interests, as the collateral assumptions determine collateral cash flows which are used to pay the bonds and residual interests. The only difference in assumptions was between the investor yield requirements on trust assets and liabilities (trust liabilities were slightly less on those securitization trusts with residual interests) and the discount rates used for residual interests. The table below reflects the estimated future credit losses and investor yield requirements for trust assets by product (SF and MF) and securitization vintage:

	Estimated Future Losses (1)		Investor Yield Requirement (2)	
	SF	MF	SF	MF
2002-2003	7%	2%	14%	14%
2004	19%	2%	16%	13%
2005	36%	8%	25%	19%
2006	47%	18%	24%	21%
2007	43%	15%	25%	20%

- (1) Estimated future losses derived by dividing future projected losses by unpaid principal balances at June 30, 2009.
- (2) Investor yield requirements represent the Company's estimate of the yield third-party market participants would require to price our trust assets and liabilities given our prepayment, credit loss and forward interest rate assumptions.

The adoption of FSP 157-4 clarified the use of quoted prices in determining fair value for assets and liabilities in inactive markets. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction. Upon adoption and at June 30, 2009, the Company relied on observable market participant assumptions for investor yield requirements resulting in an overall decrease in weighted average yield requirements as compared to prior periods. The increases in fair value as a result of decreased yield requirements was offset by increased loss assumptions due to increases in expected defaults and severities related to the weak economy and housing market.

The following table presents selected financial data as of the dates indicated:

	As of and Year-to-Date Ended,		
	June 30, 2009	March 31, 2009	December 31, 2008
Prior 12-month constant prepayment rate (CPR) - Residential	12%	11%	11%
Prior 12-month constant prepayment rate (CPR) - Commercial	8%	10%	10%
Total non-performing loans	\$ 3,166,056	\$ 3,278,977	\$ 3,040,291
Total non-performing loans to total loans	22.4%	21.8%	19.4%
Total non-performing assets (1)	\$ 3,450,125	\$ 3,727,684	\$ 3,646,742
Total non-performing assets to total assets (2)	20.1%	25.4%	25.8%

- (1) Non-performing assets include the unpaid principal balance of non-performing loans (loans that are 90 days or more delinquent, including loans in foreclosure and delinquent bankruptcies) and REO.
- (2) Non-performing assets to total assets is presented as the fair value of loans 90 or more days delinquent, foreclosures and delinquent bankruptcies plus REO as a percentage of total assets.

We believe that in order for us to generate cash flows from the long-term mortgage portfolio, we must successfully manage the following operational and market risks:

- liquidity risk;
- credit risk;
- interest rate risk; and
- prepayment risk.

*Liquidity Risk.* Refer to "Status of Operations, Liquidity and Capital Resources."

*Credit risk.* We manage credit risk by actively managing delinquencies and defaults through our servicers. Starting with the second half of 2007 we have not retained any mortgages in our long-term mortgage portfolio. Our securitized mortgage collateral primarily consists of Alt-A mortgages which are generally within typical Fannie Mae and Freddie Mac guidelines but have loan characteristics, which may include higher loan balances, higher loan-to-value ratios or lower documentation requirements (including stated-income loans), that make them non-conforming under those guidelines.

As of June 30, 2009, single-family and multi-family securitized mortgage collateral had an original weighted average credit score of 701 and 731, an original weighted average LTV ratio of 73 and 66 percent and an original CLTV of 83 percent and 66 percent, respectively. The current LTV and CLTV ratios likely have increased from origination date as a result of the deterioration of the real estate market.

Using historical losses, current portfolio statistics and market conditions and available market data, the Company has estimated future loan losses, which are included in the fair value adjustment to our securitized mortgage collateral. While the credit performance for the loans has been clearly far worse than the Company's initial expectations when the loans were originated, the ultimate level of realized losses will largely be influenced by events that will likely unfold over the next several years, including the severity of housing price declines and overall strength of the economy. If market conditions continue to deteriorate in excess of our expectations, the Company may need to recognize additional fair value reductions to our securitized mortgage collateral, which may also affect the value of the related securitized mortgage borrowings.

We monitor our servicers to attempt to ensure that they perform loss mitigation, foreclosure and collection functions according to their servicing practices and each securitization trust's pooling and servicing agreement. We have met with the management of our servicers to assess our borrowers' current ability to pay their mortgages and to make arrangements with selected delinquent borrowers which will result in the best interest of the trust, borrower and the Company, in an effort to minimize the number of mortgages which become seriously delinquent. When resolving delinquent mortgages, servicers are required to take timely action. The servicer is required to determine payment collection under various circumstances, which will result in the maximum financial benefit. This is accomplished by either working with the borrower to bring the mortgage current or by foreclosing and liquidating the property. When a borrower fails to make required payments on a mortgage and does not cure the delinquency within 60 days, we generally record a notice of default and commence foreclosure proceedings, or arrange alternative terms of forbearance. If the mortgage is not reinstated within the time permitted by law for reinstatement, the property may then be sold at a foreclosure sale. At a foreclosure sale, the trusts consolidated on our balance sheet generally acquire title to the property.

We use the Mortgage Bankers Association (MBA) method to define delinquency as a contractually required payment being 30 days or more past due. We measure delinquencies from the date of the last payment due date in which a payment was received. Delinquencies for loans 60 days late or greater, foreclosures and delinquent bankruptcies were \$3.5 billion or 24.9 percent as of June 30, 2009.

The following table summarizes the unpaid principal balances of non-performing loans in our mortgage portfolio, included in securitized mortgage collateral, loans held-for-investment and loans held-for-sale for continuing and discontinued operations combined, that were 60 or more days delinquent (utilizing the MBA method) for the periods indicated:

	<b>At June 30, 2009</b>	<b>%</b>	<b>At December 31, 2008</b>	<b>%</b>
<b>Loans held for sale (1)</b>				
60 - 89 days delinquent	\$ 5,904	0.0%	\$ 13,694	0.1%
90 or more days delinquent	61,705	0.4%	63,541	0.4%
Foreclosures (2)	70,501	0.5%	65,661	0.4%
Total 60+ days delinquent loans held-for-sale	<u>138,110</u>	1.0%	<u>142,896</u>	0.9%
<b>Securitized mortgage collateral</b>				
60 - 89 days delinquent	\$ 342,102	2.4%	\$ 494,960	3.2%
90 or more days delinquent	1,115,239	7.9%	1,096,366	7.0%
Foreclosures (2)	1,656,515	11.7%	1,614,472	10.3%
Delinquent bankruptcies (3)	262,096	1.9%	200,251	1.3%
Total 60+ days delinquent long-term mortgage portfolio	<u>3,375,952</u>	23.9%	<u>3,406,049</u>	21.7%
Total 60 or more days delinquent	<u>\$ 3,514,062</u>	24.9%	<u>\$ 3,548,945</u>	22.7%
Total collateral	<u>\$ 14,105,650</u>		<u>\$ 15,666,243</u>	

(1) Loans held-for-sale are substantially included in discontinued operations in the consolidated balance sheets.

- (2) Represents properties in the process of foreclosure.
- (3) Represents bankruptcies that are 30 days or more delinquent.

The following table summarizes securitized mortgage collateral, loans held-for-investment, loans held-for-sale and real estate owned, that were non-performing for continuing and discontinued operations combined for the periods indicated (excludes 60-89 days delinquent):

	<b>At June 30, 2009</b>	<b>%</b>	<b>At December 31, 2008</b>	<b>%</b>
90 or more days delinquent, foreclosures and delinquent bankruptcies	\$ 3,166,056	92%	\$ 3,040,291	83%
Real estate owned	284,069	8%	606,451	17%
<b>Total non-performing assets</b>	<b>\$ 3,450,125</b>	<b>100%</b>	<b>\$ 3,646,742</b>	<b>100%</b>

Non-performing assets consist of non-performing loans (mortgages that are 90 days or more delinquent, including loans in foreclosure and delinquent bankruptcies) plus REO. It is our policy to place a mortgage on non-accrual status when it becomes 90 days delinquent and to reverse from revenue any accrued interest, except for interest income on securitized mortgage collateral when the scheduled payment is received from the servicer. The servicers are required to advance principal and interest on loans within the securitization trusts to the extent the advances are considered recoverable. As of June 30, 2009, non-performing assets (representing the fair value of loans 90 or more days delinquent, foreclosures and delinquent bankruptcies plus REO) as a percentage of the total assets was 20 percent. At December 31, 2008, non-performing assets to total assets was 26 percent.

REO, which consists of residential real estate acquired in satisfaction of loans, is carried at the lower of cost or net realizable value less estimated selling costs. Adjustments to the carrying value of REO at the time of foreclosure are included in the change in the fair value of net trust assets. Changes in the Company's estimates of net realizable value subsequent to the time of foreclosure and through the time of ultimate disposition are recorded as gains or losses from real estate owned in the consolidated statements of operations. REO, for continuing and discontinued operations, at June 30, 2009 decreased \$324.7 million or 54 percent from December 31, 2008 as a result of increased liquidations during the six month period ended June 30, 2009. Foreclosures continue to increase resulting from higher delinquencies and deterioration in the prevailing real estate market and, in part, due to borrowers' inability to obtain replacement financing.

We realized a loss on sale of real estate owned in the amount \$37.6 million and \$81.6 million for the three and six months ended June 30, 2009, respectively, compared to gains of \$1.8 million and \$5.2 million, respectively for the comparable 2008 periods. Additionally, during the three and six month ended June 30, 2009, the Company recorded write-downs of the net realizable value of the REO in the amount of \$9.1 million and \$93.3 million, respectively, compared to \$6.6 million and \$14.3 million, respectively for the comparable 2008 periods. These write-downs of the net realizable value reflect declines in value of the REO subsequent to foreclosure date.

The following table presents the balances of REO for continuing operations:

	<b>At June 30, 2009</b>	<b>At December 31, 2008</b>
REO	\$ 338,614	\$ 635,285
Impairment (1)	(63,567)	(35,533)
<b>Ending balance</b>	<b>\$ 275,047</b>	<b>\$ 599,752</b>
REO inside trusts	\$ 274,481	\$ 599,084
REO outside trusts (2)	566	668
<b>Total</b>	<b>\$ 275,047</b>	<b>\$ 599,752</b>

- (1) Impairment represents the cumulative write-downs of net realizable value subsequent to foreclosure.
- (2) Amount represents REO related to former on-balance sheet securitizations, which were collapsed as the result of the Company exercising its clean-up call options. This REO is included in other assets in the accompanying consolidated balance sheets.

In calculating the cash flows to assess the fair value of the securitized mortgage collateral, the Company estimates the future losses embedded in our loan portfolio. In evaluating the adequacy of these losses, management takes many factors into consideration. For instance, a detailed analysis of historical loan performance data is accumulated and reviewed. This data is analyzed for loss performance and prepayment performance by product type, origination year and securitization issuance. The data is also broken down by collection status. Our estimate of losses for these loans is developed by estimating both the rate of default of the loans and the amount of loss in the event of default. The rate of default is assigned to the loans based on their attributes (e.g., original loan-to-value, borrower credit score, documentation type, geographic location, etc.) and collection status. The rate of default is based on analysis of migration of loans from each aging category. The loss severity is determined by estimating the net proceeds from the ultimate sale of the foreclosed property. The results of that analysis are then applied to the current mortgage portfolio and an estimate is created. We believe that pooling of mortgages with similar characteristics is an appropriate methodology in which to evaluate the future loan losses.

Management recognizes that there are qualitative factors that must be taken into consideration when evaluating and measuring losses in the loan portfolios. These items include, but are not limited to, economic indicators that may affect the borrower's ability to pay, changes in value of collateral, political factors, market conditions, competitor's performance, market perception, historical losses, and industry statistics. The assessment for losses, is based on delinquency trends and prior loss experience and management's judgment and assumptions regarding various matters, including general economic conditions and loan portfolio composition. Management continually evaluates these assumptions and various relevant factors affecting credit quality and inherent losses.

*Interest Rate Risk.* Refer to Item 3. "Quantitative and Qualitative Disclosures About Market Risk."

*Prepayment Risk.* The Company historically used prepayment penalties as a method of partially mitigating prepayment risk for those borrowers that have the ability to refinance. Mortgage industry evidence suggests that changes in home appreciation rates and lower payment option mortgage products had been a significant factor affecting borrowers refinancing decisions. However, the recent economic downturn, lack of available credit and decline in property values has limited borrowers' ability to refinance. Additionally, as mortgage rates increase and housing prices decline, borrowers will find it more difficult to refinance to obtain cheaper financing. If borrowers are unable to pay their mortgage payments at the adjusted rate, delinquencies may increase. The three-month average combined voluntary prepayment rate of single-family and multi-family loans held as securitized mortgage collateral increased to 14 percent at June 30, 2009 from 10 percent as of December 31, 2008.

## Results of Operations

*For the Three and Six Months Ended June 30, 2009 compared to the Three and Six Months Ended June 30, 2008*

### Condensed Statements of Operations Data

	For the Three Months Ended June 30,			
	2009	2008	Increase (Decrease)	% Change
Interest income	\$ 454,258	\$ 407,855	\$ 46,403	11%
Interest expense	451,305	403,599	47,706	12
Net interest income	2,953	4,256	(1,303)	(31)
Total non-interest income	21,566	(10,748)	32,314	301
Total non-interest expense	16,469	7,745	8,724	113
Income tax expense	20	2,202	(2,182)	(99)
Net earnings (loss) from continuing operations	8,030	(16,439)	24,469	149
Net loss from discontinued operations, net of tax	(4,195)	(11,048)	6,853	62
Net earnings (loss)	\$ 3,835	\$ (27,487)	\$ 31,322	114
Cash dividends on preferred stock	\$ (7,443)	\$ (3,722)	\$ (3,721)	(100)
Net loss attributable to common stockholders	\$ (3,608)	\$ (31,209)	\$ 27,601	88%
Net loss per common share - basic and diluted:	\$ (0.47)	\$ (4.10)	\$ 3.63	88%

	For the Six Months Ended June 30,			
	2009	2008	Increase (Decrease)	% Change
Interest income	\$ 1,166,907	\$ 679,811	\$ 487,096	72%
Interest expense	1,160,312	668,206	492,106	74
Net interest income	6,595	11,605	(5,010)	(43)
Total non-interest income	31,816	(9,757)	41,573	426
Total non-interest expense	27,086	14,062	13,024	93
Income tax expense	2,018	8,728	(6,710)	(77)
Net earnings (loss) from continuing operations	9,307	(20,942)	30,249	144
Net loss from discontinued operations, net of tax	(6,591)	(10,360)	3,769	36
Net earnings (loss)	\$ 2,716	\$ (31,302)	\$ 34,018	109
Cash dividends on preferred stock	\$ (7,443)	\$ (7,443)	\$ -	-
Net loss attributable to common stockholders	\$ (4,727)	\$ (38,745)	\$ 34,018	88%
Net loss per common share - basic and diluted:	\$ (0.62)	\$ (5.09)	\$ 4.47	88%

#### Net Interest Income

We earn net interest income primarily from mortgage assets which include securitized mortgage collateral, loans held-for-sale and investment securities available-for-sale, or collectively, "mortgage assets," and, to a lesser extent, interest income earned on cash and cash equivalents. Interest expense is primarily interest paid on borrowings on mortgage assets, which include securitized mortgage borrowings. Interest income and interest expense during the period represents the effective yield, based on the fair value of the trust assets and liabilities.

The following tables summarize average balance, interest and weighted average yield on mortgage assets and borrowings, included within continuing and discontinued operations, for the periods indicated. Cash receipts and payments on derivative instruments hedging interest rate risk related to our securitized mortgage borrowings are not included in the results below. These cash receipts and payments are included as a component of the change in fair value of net trust assets.

	For the Three Months Ended June 30,					
	2009			2008		
	Average Balance	Interest	Yield	Average Balance	Interest	Yield
<b>MORTGAGE ASSETS</b>						
Investment securities, available-for-sale	\$ 950	\$ 103	43.37%	\$ 10,333	\$ 687	26.59%
Securitized mortgage collateral	6,912,164	454,044	26.28%	11,344,758	406,988	14.35%
Loans held-for-investment and held-for-sale (1)	196,072	776	1.58%	288,723	3,193	4.42%
Total mortgage assets\ interest income	\$ 7,109,186	\$ 454,923	25.60%	\$ 11,643,814	\$ 410,868	14.11%
<b>BORROWINGS</b>						
Securitized mortgage borrowings	\$ 7,029,307	\$ 450,429	25.63%	\$ 11,645,457	\$ 401,432	13.79%
Reverse repurchase agreements	176,736	1,618	3.66%	231,489	1,797	3.11%
Total borrowings on mortgage assets\ interest expense	\$ 7,206,043	\$ 452,047	25.09%	\$ 11,876,946	\$ 403,229	13.58%
<b>Net Interest Spread (2)</b>		\$ 2,876	0.51%		\$ 7,639	0.53%
<b>Net Interest Margin (3)</b>			0.16%			0.26%

- (1) The held-for-sale balance excludes the lower of cost or market (LOCOM) write-down on the loans.
- (2) Net interest spread on mortgage assets is calculated by subtracting the weighted average yield on total borrowings on mortgage assets from the weighted average yield on total mortgage assets.
- (3) Net interest margin on mortgage assets is calculated by subtracting interest expense on total borrowings on mortgage assets from interest income on total mortgage assets and then dividing by total average mortgage assets.

Net interest income spread for the three months ended June 30, 2009 decreased \$4.7 million to \$2.9 million from \$7.6 million for the three months ended June 30, 2008. The decrease in net interest spread was primarily attributable to overall declines in averages balances between periods, coupled with a decrease in the net interest margin from 0.26 percent for the three months ended June 30, 2008 to 0.16 percent for the three months ended June 30, 2009.

During the three months ended June 30, 2009, the yield on mortgage assets increased to 25.60 percent from 14.11 percent in the comparable 2008 period. The yield on total borrowings increased to 25.09 percent for the three months ended June 30, 2009 from 13.58 percent for comparable 2008 period. In connection with the fair value accounting for investment securities available-for-sale and securitized mortgage collateral and borrowings, interest income and interest expense is recognized using effective yields based on estimated fair values for these instruments. As the market's expectation of future credit losses has increased between periods, market participants have demanded higher yields, which have resulted in significant reductions in the fair values of these instruments. These reductions in fair value have significantly increased the effective yields used for purposes of recognizing interest income and interest expense on these instruments.

	For the Six Months Ended June 30,					
	2009			2008		
	Average Balance	Interest	Yield	Average Balance	Interest	Yield
<b>MORTGAGE ASSETS</b>						
Investment securities, available-for-sale	\$ 1,184	\$ 233	39.36%	\$ 12,738	\$ 1,420	22.30%
Securitized mortgage collateral	6,572,918	1,166,124	35.48%	13,383,352	676,886	10.12%
Loans held-for-investment and held-for-sale (1)	204,936	1,905	1.86%	308,866	7,448	4.82%
Total mortgage assets\ interest income	<u>\$ 6,779,038</u>	<u>\$ 1,168,262</u>	34.47%	<u>\$ 13,704,956</u>	<u>\$ 685,754</u>	10.01%
<b>BORROWINGS</b>						
Securitized mortgage borrowings	\$ 6,750,866	\$ 1,158,894	34.33%	\$ 13,686,955	\$ 663,248	9.69%
Reverse repurchase agreements	180,799	3,333	3.69%	258,649	5,159	3.99%
Total borrowings on mortgage assets\ interest expense	<u>\$ 6,931,665</u>	<u>\$ 1,162,227</u>	33.53%	<u>\$ 13,945,604</u>	<u>\$ 668,407</u>	9.59%
<b>Net Interest Spread (2)</b>		\$ 6,035	0.94%		\$ 17,347	0.42%
<b>Net Interest Margin (3)</b>			0.18%			0.25%

(1) The held-for-sale balance excludes the lower of cost or market (LOCOM) write-down on the loans.

(2) Net interest spread on mortgage assets is calculated by subtracting the weighted average yield on total borrowings on mortgage assets from the weighted average yield on total mortgage assets.

(3) Net interest margin on mortgage assets is calculated by subtracting interest expense on total borrowings on mortgage assets from interest income on total mortgage assets and then dividing by total average mortgage assets.

Net interest income spread for the six months ended June 30, 2009 decreased \$11.3 million to \$6.0 million from \$17.3 million for the six months ended June 30, 2008. The decrease in net interest spread was primarily attributable to overall declines in averages balances between periods, coupled with a decrease in the net interest margin from 0.25 percent for the six months ended June 30, 2008 to 0.18 percent for the six months ended June 30, 2009.

During the six months ended June 30, 2009, the yield on mortgage assets increased to 34.47 percent from 10.01 percent in the comparable 2008 period. The yield on total borrowings increased to 33.53 percent for the six months ended June 30, 2009 from 9.59 percent for comparable 2008 period. In connection with the fair value accounting for investment securities available-for-sale and securitized mortgage collateral and borrowings, interest income and interest expense is recognized using effective yields based on estimated fair values for these instruments. As the market's expectation of future credit losses has increased between periods, market participants have demanded higher yields, which have resulted in significant reductions in the fair values of these instruments. These reductions in fair value have significantly increased the effective yields used for purposes of recognizing interest income and interest expense on these instruments.

## Changes in Non-Interest Income

	<b>For the Three Months Ended June 30,</b>			
	<b>2009</b>	<b>2008</b>	<b>Increase (Decrease)</b>	<b>% Change</b>
Change in fair value of net trust assets, excluding REO	\$ 54,912	\$ (11,161)	\$ 66,073	592%
Losses from real estate owned	(46,723)	(4,830)	(41,893)	(867)
Non-interest income - net trust assets	8,189	(15,991)	24,180	151
Change in fair value of long-term debt	329	(997)	1,326	133
Real estate advisory fees	-	4,696	(4,696)	(100)
Mortgage and real estate services fees	13,233	1,612	11,621	721
Other	(185)	(68)	(117)	(172)
Total non-interest income	<u>\$ 21,566</u>	<u>\$ (10,748)</u>	<u>\$ 32,314</u>	301%

Non-interest income – net trust assets. Since our consolidated and unconsolidated securitization trusts are non-recourse to the Company, our economic risk is limited to our residual interests in these securitization trusts. To better understand the economics on our residual interests in securitizations, it is necessary to consider the net effect of changes in fair value of net trust assets and losses from real estate owned. All estimated future losses are included in the estimate of the fair value of securitized mortgage collateral and REO. Losses on REO are reported separately in the consolidated statement of operations as REO is a nonfinancial asset which is the only component of trust assets and liabilities that is not recorded at fair value. Therefore, REO value at the time of sale or losses from further write-downs are recorded separately in the Company's consolidated statement of operations. The net effect of changes in value related to our investment in all trust assets and liabilities is shown as non-interest income—net trust assets, which includes losses from real estate owned. Non-interest income related to our net trust assets (residual interests in securitizations) was \$8.2 million for the three months ended June 30, 2009, compared to a loss of \$16.0 million in the comparable 2008 period. The individual components of the non-interest income from net trust assets were comprised of:

Change in fair value of net trust assets, excluding REO. For the quarter ended June 30, 2009, the Company recognized a \$54.9 million gain from the change in fair value of net trust assets, excluding REO. The gain was the result of the adoption of FSP 157-4, which clarified the use of quoted prices in determining fair values in markets that are inactive, thus moderating the need to use distressed prices in valuing financial assets and liabilities in illiquid markets as the Company had used in prior periods. Offsetting the gain recognized in connection with the adoption of FSP 157-4 were declines in fair value resulting from the Company increasing its loss assumptions for its long-term mortgage portfolio due to the increase in expected defaults and loss severities related to the weak economy and housing market. The net gain recognized during the period was comprised of gains from the increase in fair value of investment securities-for-sale and securitized mortgage collateral of \$0.8 million and \$594.6 million, respectively. Offsetting these gains were losses resulting from increases in the fair value of securitized mortgage borrowings and derivative instruments, net of \$536.3 million and \$4.2 million, respectively.

For the quarter ended June 30, 2008, the Company recognized an \$11.2 million loss from the change in fair value of net trust assets, excluding REO. This loss was comprised of reductions in the fair value of investment securities available-for-sale and securitized mortgage collateral of \$1.5 million and \$19.1 million, respectively and increases in the fair value of securitized mortgage borrowings of \$88.9 million. Offsetting these losses was a gain of \$98.3 million resulting from changes in the fair value of derivative instruments. The overall losses were related to decreases in fair values resulting from increased investor yield requirements and estimated losses.

Losses from real estate owned. Losses from real estate owned were \$46.7 million for the three months ended June 30, 2009. This loss was comprised of a \$37.6 million loss on sale of real estate owned, coupled with \$9.1 million in additional impairment write-downs during the period. During the second quarter of 2009, loss severities resulting from liquidations in areas where we have high concentration of foreclosed properties (such as California and Florida) have continued to increase over previous periods as a result of continued deterioration in the U.S. economy and real estate markets. These continued declines in housing prices have resulted in liquidations of foreclosed assets at prices below expected levels as well as additional impairment write-downs of REO since foreclosure.

Losses from real estate owned were \$4.8 million for the three months ended June 30, 2008, comprised of \$1.8 million in gains from the sale of real estate owned, offset by \$6.6 million in additional impairment write-downs.

Change in the fair value of long-term debt. Change in the fair value of long-term debt was a gain of \$329 thousand for the three months ended June 30, 2009, compared to a loss of \$1.0 million for the comparable 2008 period. Long-term debt (consisting of trust preferred securities and junior subordinated notes) is measured based upon an analysis prepared by the Company, which considers the Company's own credit risk, including consideration of recent settlements with trust preferred debt holders and discounted cash flow analysis of junior subordinated notes. The \$329 thousand and \$(1.0) million change in fair value of long-term debt for the three months ended June 30, 2009 and 2008, respectively, was attributable to changes in overall estimated fair value for the securities during the periods.

Mortgage and real estate services fees. During the first quarter of 2009, the Company initiated various mortgage and real estate related fee-based businesses. The Company has begun to generate revenues from these businesses primarily from the Company's long-term mortgage portfolio. For the three months ended June 30, 2009, mortgage and real estate services fees, which primarily include loan modification fees and monitoring and surveillance services fees, were \$13.2 million compared to \$1.6 million in monitoring fees in the comparable 2008 period.

#### Changes in Non-Interest Income

	<b>For the Six Months Ended June 30,</b>			
	<b>2009</b>	<b>2008</b>	<b>Increase (Decrease)</b>	<b>% Change</b>
Change in fair value of net trust assets, excluding REO	\$ 187,842	\$ (7,633)	\$ 195,475	2,561%
Losses from real estate owned	(174,923)	(9,086)	(165,837)	(1,825)
Non-interest income - net trust assets	12,919	(16,719)	29,638	177
Change in fair value of long-term debt	341	(5,020)	5,361	107
Real estate advisory fees	-	8,540	(8,540)	(100)
Mortgage and real estate services fees	18,782	4,155	14,627	352
Other	(226)	(713)	487	68
Total non-interest income	<u>\$ 31,816</u>	<u>\$ (9,757)</u>	<u>\$ 41,573</u>	426%

Non-interest income – net trust assets. Since our consolidated and unconsolidated securitization trusts are non-recourse to the Company, our economic risk is limited to our residual interests in these securitization trusts. To better understand the economics on our residual interests in securitizations, it is necessary to consider the net effect of changes in fair value of net trust assets and losses from real estate owned. All estimated future losses are included in the estimate of the fair value of securitized mortgage collateral and REO. Losses on REO are reported separately in the consolidated statement of operations as REO is a nonfinancial asset which is the only component of trust assets and liabilities that is not recorded at fair value. Therefore, REO value at the time of sale or losses from further write-downs are recorded separately in the Company's consolidated statement of operations. The net effect of changes in value related to our investment in all trust assets and trust liabilities is shown as non-interest income—net trust assets, which includes losses from real estate owned. Non-interest income related to our net trust assets (residual interests in securitizations) was \$12.9 million for the six months ended June 30, 2009, compared to a loss of \$16.7 million in the comparable 2008 period. The individual components of the non-interest income from net trust assets were comprised of:

Change in fair value of net trust assets, excluding REO. For the six months ended June 30, 2009, the Company recognized a \$187.8 million gain from the change in fair value of net trust assets, excluding REO. The gain was the result of the adoption of FSP 157-4, which clarified the use of quoted prices in determining fair values in markets that are inactive, thus moderating the need to use distressed prices in valuing financial assets and liabilities in illiquid markets as the Company had used in prior periods. Offsetting the gain recognized in connection with the adoption of FSP 157-4 were declines in fair value resulting from the Company increasing its loss assumptions for its long-term mortgage portfolio due to the increase in expected defaults and loss severities related to the weak economy and housing market. The net gain recognized during the period comprised of gains resulting from the increase in fair value of investment securities-for-sale and securitized mortgage collateral and a reduction in the fair value of securitized mortgage borrowings of \$1.7 million, \$45.6 million and \$160.9 million, respectively. Offsetting these gains were losses from the change in fair value of derivative instruments, net of \$20.3 million.

For the six months ended June 30, 2008, the Company recognized a \$7.6 million loss from the change in fair value of net trust assets, excluding REO. This loss was comprised of losses resulting from the reductions in the fair value of investment securities available for sale, securitized mortgage collateral and derivative instruments of \$5.8 million, \$3.2 billion and \$83.5 million, respectively. Offsetting these losses were gains from reductions in the fair value of securitized mortgage borrowings of \$3.3 billion. The overall losses were related to decreases in fair values resulting from increased investor yield requirements and estimated losses.

Losses from real estate owned. Losses from real estate owned were \$174.9 million for the six months ended June 30, 2009. This loss was comprised of an \$81.6 million loss on sale of real estate owned, coupled with \$93.3 million in additional impairment write-downs during the period. During the first six months of 2009, loss severities resulting from liquidations in areas where we have high concentration of foreclosed properties (such as California and Florida) have continued to increase significantly over previous periods as a result of continued deterioration in the U.S. economy and real estate markets. These continued declines in housing prices have resulted in liquidations of foreclosed assets at prices below expected levels as well as additional impairment write-downs of REO since foreclosure.

Losses from real estate owned were \$9.1 million for the six months ended June 30, 2008, comprised of \$5.2 million in gains from the sale of real estate owned, offset by \$14.3 million in additional impairment write-downs.

Change in the fair value of long-term debt. Change in the fair value of long-term debt was a gain of \$341 thousand for the six months ended June 30, 2009, compared to a loss of \$5.0 million for the comparable 2008 period. Long-term debt (consisting of trust preferred securities and junior subordinated notes) is measured based upon an analysis prepared by the Company, which considers the Company's own credit risk, including consideration of recent settlements with trust preferred debt holders and discounted cash flow analysis of junior subordinated notes. The \$341 thousand and \$5.0 million change in fair value of long-term debt for the six months ended June 30, 2009 and 2008, respectively, was attributable to changes in overall estimated fair value for the securities during the periods.

Mortgage and real estate services fees. During the first quarter of 2009, the Company initiated various mortgage and real estate related fee-based businesses. The Company has begun to generate revenues from these businesses primarily from the Company's long-term mortgage portfolio. For the six months ended June 30, 2009, mortgage and real estate services fees, which primarily include loan modification fees and monitoring and surveillance services fees, were \$18.8 million compared to \$4.2 million in monitoring fees in the comparable 2008 period.

#### Non-Interest Expense

#### Changes in Non-Interest Expense

	<b>For the Three Months Ended June 30,</b>			
	<b>2009</b>	<b>2008</b>	<b>Increase (Decrease)</b>	<b>% Change</b>
General and administrative	\$ 6,110	\$ 4,925	\$ 1,185	24%
Personnel expense	10,359	2,820	7,539	267
<b>Total operating expense</b>	<b>\$ 16,469</b>	<b>\$ 7,745</b>	<b>\$ 8,724</b>	<b>113%</b>

Total non-interest expense was \$16.5 million for the three months ended June 30, 2009, compared to \$7.7 million for the comparable period of 2008. The \$8.7 million increase in non-interest expense was primarily attributable to a \$7.5 million increase in personnel expense over the previous period. The increase in personnel expense is attributable to a greater amount of the Company's personnel being utilized within the continuing operations versus discontinued operations, as a result of our new mortgage and real estate related fee-based businesses. Additionally, in April 2009, the Company's officers and directors gave notice of the surrender of an aggregate of 581,000 options and the Board accepted and approved the cancellation of those listed options. In connection with the cancellation of these options, the Company recognized non-cash compensation expense of approximately \$1.7 million during the second quarter.

	<b>For the Six Months Ended June 30,</b>			
	<b>2009</b>	<b>2008</b>	<b>Increase (Decrease)</b>	<b>% Change</b>
General and administrative	\$ 10,449	\$ 8,912	\$ 1,537	17%
Personnel expense	16,637	5,150	11,487	223
Total operating expense	<u>\$ 27,086</u>	<u>\$ 14,062</u>	<u>\$ 13,024</u>	93%

Total non-interest expense was \$27.1 million for the six months ended June 30, 2009, compared to \$14.1 million for the comparable period of 2008. The \$13.0 million increase in non-interest expense was primarily attributable to an \$11.5 million increase in personnel expenses over the previous period. The increase in personnel expense is attributable to a greater amount of the Company's personnel being utilized within the continuing operations versus discontinued operations, as a result of our new mortgage and real estate related fee-based businesses. Additionally, in April 2009, the Company's officers and directors gave notice of the surrender of an aggregate of 581,000 options and the Board accepted and approved the cancellation of those listed options. In connection with the cancellation of these options, the Company recognized non-cash compensation expense of approximately \$1.7 million during the second quarter.

### ***Results of Operations by Business Segment***

#### **Long-term Portfolio**

#### Condensed Statements of Operations Data

	<b>For the Three Months Ended June 30,</b>			
	<b>2009</b>	<b>2008</b>	<b>Increase (Decrease)</b>	<b>% Change</b>
Net interest income	\$ 2,961	\$ 4,256	\$ (1,295)	(30)%
Change in fair value of net trust assets, excluding REO	54,912	(11,161)	66,073	592
Losses from real estate owned	(46,723)	(4,830)	(41,893)	(867)
Non-interest income- net trust assets	8,189	(15,991)	24,180	151
Change in fair value of long-term debt	329	(997)	1,326	133
Other non-interest income	(28)	5,461	(5,489)	(101)
Total non-interest income	8,490	(11,527)	20,017	174
Non-interest expense and income taxes	8,992	9,535	(543)	(6)
Net earnings (loss)	<u>\$ 2,459</u>	<u>\$ (16,806)</u>	<u>\$ 19,265</u>	115%

Net earnings for the three months ended June 30, 2009 increased \$19.3 million to net earnings of \$2.5 million from a net loss of \$16.8 million for the comparable period of 2008. This increase is primarily attributable to a \$20.0 million increase in total non-interest income. Non-interest income from net trust assets increased \$24.2 million to an \$8.2 million gain in the three months ended June 30, 2009, compared to a loss of \$16.0 million for the comparable period in 2008. The increase in the fair value of net trust assets was primarily due to the adoption of FSP 157-4, which clarified the use of quoted prices in determining fair values in markets that are inactive, thus moderating the need to use distressed prices in valuing financial assets and liabilities in illiquid markets as the Company had used in prior periods. The increase in fair value was offset by increased loss assumptions and reductions in principal balances during the period. Other non-interest income decreased \$5.5 million during the three months ended June 30, 2009 to \$(28) thousand from \$5.5 million. The decrease is attributable to the elimination of real estate advisory fees that were terminated during the fourth quarter of 2008.

	<b>For the Six Months Ended June 30,</b>			
	<b>2009</b>	<b>2008</b>	<b>Increase (Decrease)</b>	<b>% Change</b>
Net interest income	\$ 6,601	\$ 11,610	\$ (5,009)	(43)%
Change in fair value of net trust assets, excluding REO	187,842	(7,633)	195,475	2,561
Losses from real estate owned	(174,923)	(9,086)	(165,837)	(1,825)
Non-interest income- net trust assets	12,919	(16,719)	29,638	177
Change in fair value of long-term debt	341	(5,020)	5,361	107
Other non-interest income	(40)	7,814	(7,854)	(101)
Total non-interest income	13,220	(13,925)	27,145	195
Non-interest expense and income taxes	17,539	21,922	(4,383)	(20)
Net earnings (loss)	<u>\$ 2,282</u>	<u>\$ (24,237)</u>	<u>\$ 26,519</u>	<u>109%</u>

Net earnings for the six months ended June 30, 2009 increased \$26.5 million to net earnings of \$2.3 million from a net loss of \$24.2 million for the comparable period of 2008. This increase is primarily attributable to a \$27.1 million increase in total non-interest income offset by a \$4.4 million decrease in non-interest expense. Non-interest income from net trust assets increased \$29.6 million to a \$12.9 million gain in the six months ended June 30, 2009, compared to a loss of \$16.7 million for the comparable period in 2008. The increase in the fair value of net trust assets was due to the adoption of FSP 157-4, which clarified the use of quoted prices in determining fair values in markets that are inactive, thus moderating the need to use distressed prices in valuing financial assets and liabilities in illiquid markets as the Company had used in prior periods. The increase in fair value was offset by increased loss assumptions and reductions in principal balances during the period. Other non-interest income decreased \$7.9 million during the three months ended June 30, 2009 to \$(40) thousand, from \$7.8 million in the comparable period. The change in other non-interest income is attributable to real estate advisory fees that were terminated during the fourth quarter of 2008. Non-interest expense and income taxes decreased \$4.4 million to \$17.5 million, primarily attributable to the reduction in the amortization of the deferred charge.

### **Mortgage and Real Estate Services**

During the first quarter of 2009, the Company initiated various mortgage and real estate related fee-based businesses, including loan modifications, real estate disposition, monitoring and surveillance services, real estate brokerage and lending services and escrow services, and has begun to generate revenues from these businesses. These businesses are newly formed and currently generate fees primarily from the Company's long-term mortgage portfolio, there remains uncertainty about their future success, including providing services to the marketplace.

#### Condensed Statements of Operations Data

	<b>For the Three Months Ended June 30,</b>			
	<b>2009</b>	<b>2008</b>	<b>Increase (Decrease)</b>	<b>% Change</b>
Net interest expense	\$ (8)	\$ -	\$ (8)	N/A%
Mortgage and real estate services fees	13,233	1,612	11,621	721
Other non-interest income	(157)	(833)	676	81
Total non-interest income	13,076	779	12,297	1,579
Personnel expense	(5,727)	(286)	(5,441)	(1,902)
Non-interest expense and income taxes	(1,770)	(126)	(1,644)	(1,305)
Net earnings	<u>\$ 5,571</u>	<u>\$ 367</u>	<u>\$ 5,204</u>	<u>1,418%</u>

For the three months ended June 30, 2009, mortgage and real estate services fees were \$13.2 million compared to \$1.6 million in the comparable period for 2008. For the three months ended June 30, 2009, mortgage and real estate services fees primarily includes loan modification fees and monitoring and surveillance services fees generated primarily from the Company's long-term mortgage portfolio. In 2008, mortgage and real estate services fees represented monitoring fees.

For the three months ended June 30, 2009, personnel expense increased \$5.4 million to \$5.7 million as a result of the initiation of the new mortgage and real estate related fee-based businesses.

	<b>For the Six Months Ended June 30,</b>			
	<b>2009</b>	<b>2008</b>	<b>Increase (Decrease)</b>	<b>% Change</b>
Net interest expense	\$ (6)	\$ (5)	\$ (1)	(20)%
Mortgage and real estate services fees	18,782	4,155	14,627	352
Other non-interest income	(186)	13	(199)	(1,531)
Total non-interest income	18,596	4,168	14,428	346
Personnel expense	(8,602)	(623)	(7,979)	(1,281)
Non-interest expense and income taxes	(2,963)	(245)	(2,718)	(1,109)
Net earnings	<u>\$ 7,025</u>	<u>\$ 3,295</u>	<u>\$ 3,730</u>	113%

For the six months ended June 30, 2009, mortgage and real estate services fees were \$18.8 million compared to \$4.2 million in the comparable period for 2008. For the six months ended June 30, 2009, mortgage and real estate services fees primarily includes loan modification fees and monitoring and surveillance services fees generated primarily from the Company's long-term mortgage portfolio. In 2008, mortgage and real estate services fees represented monitoring fees.

For the six months ended June 30, 2009, personnel expense increased \$8.0 million to \$8.6 million as a result of the initiation of the new mortgage and real estate related fee-based businesses.

### **Discontinued Operations**

#### Condensed Statements of Operations Data

	<b>For the Three Months Ended June 30,</b>			
	<b>2009</b>	<b>2008</b>	<b>Increase (Decrease)</b>	<b>% Change</b>
Net interest (expense) income	\$ (665)	\$ 1,543	\$ (2,208)	(143)%
Loss on sale of loans	(8,052)	(8,246)	194	2
Recovery (provision) for repurchases	1,932	(1,823)	3,755	206
Other non-interest income	(739)	1,715	(2,454)	(143)
Total non-interest income	(6,859)	(8,354)	1,495	18
Personnel expense	(158)	(3,680)	3,522	96
Non-interest expense and income taxes	3,487	(557)	4,044	726
Net loss	<u>\$ (4,195)</u>	<u>\$ (11,048)</u>	<u>\$ 6,853</u>	62%

Net loss for the discontinued operations was \$4.2 million for the three months ended June 30, 2009, compared to a net loss of \$11.0 million for the comparable period in 2008. Net interest income decreased \$2.2 million to net interest expense of \$665 thousand as a result of deterioration in loans held for sale and the resulting decreases in interest income. Provision for repurchases decreased \$3.8 million to a recovery of \$1.9 million for the three months ended June 30, 2009, compared to a provision for repurchases of \$1.8 million in the comparable period of 2008. The \$3.8 million decrease is the result of changes in estimated repurchase obligations between periods. The \$3.5 million decrease in personnel expense during the three months ended June 30, 2009 over the comparable period was a result of a greater amount of the Company's personnel being utilized within the continuing operations versus discontinued operations. The \$4.0 million decrease in non-interest expense and income taxes is primarily attributable to a \$2.5 million gain resulting from reduction in the lease liabilities as a result of changes in our expected minimum future lease payments.

**For the Six Months Ended June 30,**

	<b>2009</b>	<b>2008</b>	<b>Increase (Decrease)</b>	<b>% Change</b>
Net interest (expense) income	\$ (1,078)	\$ 3,213	\$ (4,291)	(134)%
Loss on sale of loans	(8,010)	(8,711)	701	8
Recovery for repurchases	1,176	8,435	(7,259)	(86)
Other non-interest income	(1,946)	1,255	(3,201)	(255)
Total non-interest income	(8,780)	979	(9,759)	(997)
Personnel expense	(505)	(8,973)	8,468	94
Non-interest expense and income taxes	3,772	(5,579)	9,351	168
Net loss	<u>\$ (6,591)</u>	<u>\$ (10,360)</u>	<u>\$ 3,769</u>	36%

Net loss for discontinued operations was \$6.6 million for the six months ended June 30, 2009, compared to a net loss of \$10.4 million for the comparable period in 2008. Net interest income decreased \$4.3 million to net interest expense of \$1.1 million as a result of deterioration in loans held for sale and the resulting decreases in interest income. Recovery from repurchases decreased \$7.3 million to \$1.2 million for the six months ended June 30, 2009, compared to \$8.4 million in the comparable period of 2008. The \$7.3 million decrease is the result of changes in estimated repurchase obligations between periods, primarily related to favorable settlements of repurchase obligation during the first six months of 2008. The \$8.5 million decrease in personnel expense during the six months ended June 30, 2009 over the comparable period was a result of a greater amount of the Company's personnel being utilized within the continuing operations versus discontinued operations. As a result of the discontinuation of certain operations, non-interest expense and income taxes decreased \$9.4 million between periods primarily due to a reductions of \$4.2 million in occupancy expense (primarily composed of \$2.6 million in gains resulting from the reduction in the lease liabilities as a result of changes in our expected minimum future lease payments), \$2.4 million in legal and professional expense and \$3.0 million in general and administrative expenses.

**ITEM 3: QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

For quantitative and qualitative disclosures about market risk, see Item 7A, "Quantitative and Qualitative Disclosures About Market Risk," included in our annual report on Form 10-K for the year ended December 31, 2008. Our exposures to market risks have not changed materially since December 31, 2008.

**ITEM 4: CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

The Company maintains disclosure controls and procedures (as defined in the Securities Exchange Act of 1934 Rules 13a-15(e) or 15d-15(e)) designed to ensure that information required to be disclosed in reports filed or submitted under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in its reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

As required by Rules 13a-15 and 15d-15 under the Exchange Act, in connection with the filing of this Quarterly Report on Form 10-Q, our management, under the supervision and with the participation of our CEO and CFO, conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e). Based on that evaluation, the Company's chief executive officer and chief financial officer concluded that, as of that date, the Company's disclosure controls and procedures were effective at a reasonable assurance level.

## **Changes in Internal Control Over Financial Reporting**

There has been no change in the Company's internal control over financial reporting during the Company's quarter ended June 30, 2009, that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **ITEM 1: LEGAL PROCEEDINGS**

The Company is party to litigation and claims which are normal in the course of our operations.

In June 2009, the Company entered into a settlement agreement for an insignificant amount with plaintiffs in a purported class action matter entitled Vincent Marshall v. Impac Funding Corporation, et al., as further described in the Company's Annual Report on Form 10-K for the year ended December 31, 2008, requiring that all claims be dismissed with prejudice, with no admission of wrongdoing on the part of any defendant.

In the matter of Sheldon Pittleman v. Impac Mortgage Holdings, Inc. et al filed in the United States district Court, Central district California against IMH and several of its senior officers a Third Amended Complaint was filed. A motion to dismiss was filed by the defendants on December 15, 2008. On March 10, 2009, the court sustained the defendants' motion to dismiss without leave to amend. The Plaintiffs have filed a Notice of Appeal of the Order Granting the Motion to Dismiss With Prejudice and the Judgment thereon on April 7, 2009.

Please refer to IMH's report on Form 10-K for the year ended December 31, 2008 for a description of other litigation and claims.

We believe that we have meritorious defenses to the above claims and intend to defend these claims vigorously and as such the Company believes the final outcome of such matters will not have a material adverse effect on our financial condition or results of operations. Nevertheless, litigation is uncertain and we may not prevail in the lawsuits and can express no opinion as to their ultimate resolution. An adverse judgment in any of these matters could have a material adverse effect on us.

### **ITEM 1A: RISK FACTORS**

**There have been recent reports of litigation in the mortgage industry related to securitizations.**

As defaults, delinquencies, foreclosures, and continuing losses in the real estate market continue, there have been recent lawsuits by various investors, insurers, underwriters and others against various participants in securitizations, such as sponsors, depositors, underwriters, and loan sellers. Some lawsuits have alleged that the mortgage loans had origination defects, that there were misrepresentations made about the mortgage loans and the parties failed to repurchase defective loans. Historically, we both securitized and sold mortgage loans to third parties that may have been deposited or included in pools for securitizations. In connection with these lawsuits, we may be asked to repurchase these mortgage loans, provide indemnification against such claims or we may become subject to litigation related to the securitizations. As a result, we may incur significant legal and other expenses in defending against claims and litigation and we may be required to pay settlement costs, damages, penalties or other charges which could adversely affect our financial results.

Our Annual Report on Form 10-K for the year ended December 31, 2008 includes a detailed discussion of our risk factors. The information presented below updates and should be read in conjunction with the risk factors and information disclosed in that Form 10-K.

### **ITEM 2: UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

None.

### **ITEM 3: DEFAULTS UPON SENIOR SECURITIES**

None.

### **ITEM 4: SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

*Special Meeting of Common Stockholders*

The Company held a special meeting of common stockholders on June 29, 2009 to approve amendments to the Company's Charter to modify the preferential terms of the Series B Preferred Stock and Series C Preferred Stock, including modifications to dividend, liquidation premium and voting rights, as more fully described in the proxy statement dated May 29, 2009. The common stockholders voted on the matter as follows:

<b>FOR</b>	<b>WITHELD</b>	<b>ABSTENTIONS</b>	<b>BROKER NON-VOTES</b>
3,892,289	237,351	73,905	—

#### *Consent Solicitation of Preferred Stockholders*

In connection with the Company's offer to purchase share of its Series B Preferred Stock and Series C Preferred Stock, the Company also solicited consents from the holders of Preferred Stock to modify the preferential terms of each series of Preferred Stock, including modifications to dividend, liquidation premium and voting rights, as more fully described in the offering circular dated May 29, 2009. On June 29, 2009, voting together as a class, 4,378,880 shares of Preferred Stock provided consent approving the modifications to the terms of the Preferred Stock.

The Articles of Amendment to the Series B Preferred Stock and Series C Preferred Stock are filed as exhibits to the Company's Current Report on Form 8-K filed with the SEC on June 30, 2009.

#### **ITEM 5: OTHER INFORMATION**

##### *Amendment to Declaration of Trust #4 and Supplement to Indenture*

On July 14, 2009, the Company, Wilmington Trust Company, as institutional trustee, and holders of capital securities of Impac Capital Trust #4 ("Trust #4") entered into Amendment No. 1 to the Amended and Restated Declaration of Trust #4 dated October 18, 2005 in order to (a) allow for the surrender of (i) Capital Securities of Trust #4 held by the Company or any of its affiliates, and (ii) Common Securities of Trust #4 proportionate to the Capital Securities surrendered, and in exchange receive a principal amount of debentures equal to the respective liquidation amount of the Capital Securities and Common Securities so surrendered so that the principal amount of debentures so issued in exchange may then be surrendered to the trustee for cancellation; (b) allow the holder of the Common Securities or the obligor under the Indenture to purchase outstanding Capital Securities; and (c) terminate any right by the Company to defer interest payments on the Capital Securities of Trust #4.

On July 14, 2009, the Company and Wilmington Trust Company also entered into a First Supplemental Indenture to the Indenture dated October 18, 2005 to amend the Indenture to terminate the Company's right to defer interest payments on the debt securities.

The above information included in this Item 5 is provided in accordance with Item 1.01 of Form 8-K.

##### *Other*

The information in Part II, Item 5 of the Company's Form 10-Q for the period ended March 31, 2009 relating to Amendment No. 4 to 2001 Stock Plan, Option Cancellations, and Exchange of Trust Preferred Securities for Notes is hereby incorporated by reference into this Item 5.

#### **ITEM 6: EXHIBITS**

##### (a) Exhibits:

- 4.1 First Supplemental Indenture dated as of July 14, 2009 between Wilmington Trust Company and Impac Mortgage Holdings, Inc. to Indenture dated October 18, 2005.
- 10.1 Amendment No. 1 dated as of July 14, 2009 among Wilmington Trust Company, Impac Mortgage Holdings, Inc. and holders of Capital Securities to Amended and Restated Declaration of Trust dated October 18, 2005.
- 10.2 Exchange Agreement dated May 8, 2009 between Impac Mortgage Holdings, Inc., Taberna Preferred Funding I, Ltd., and Taberna Preferred Funding II, Ltd.
- 10.3 Junior Subordinated Indenture dated May 8, 2009 between Impac Mortgage Holdings, Inc. and The Bank of New York Mellon Trust Company, National Association, as trustee, related to Junior Subordinated Note due 2034 in the principal amount of \$30,244,000.
- 10.4 Junior Subordinated Indenture dated May 8, 2009 between Impac Mortgage Holdings, Inc. and The Bank of New York Mellon Trust Company, National Association, as trustee, related to Junior Subordinated Note due 2034 in the principal amount of \$31,756,000.
- 21.1 Subsidiaries of the Company.
- 31.1 Certification of Chief Executive Officer pursuant to Item 601(b)(31) of Regulation S-K, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer pursuant to Item 601(b)(31) of Regulation S-K, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1\* Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

\* This exhibit shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date hereof and irrespective of any general incorporation language in any filings.

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**IMPAC MORTGAGE HOLDINGS, INC.**

/s/ Todd R. Taylor

\_\_\_\_\_

Todd R. Taylor

Chief Financial Officer

(authorized officer of registrant and principal financial officer)

August 10, 2009

## FIRST SUPPLEMENTAL INDENTURE

This First Supplemental Indenture (this "First Supplemental Indenture") is executed as of July 14, 2009 by Impac Mortgage Holdings, Inc., a Maryland corporation (the "Company"), and Wilmington Trust Company, as Trustee (in such capacity, the "Trustee"). Capitalized terms used herein and not defined shall have the meanings given to them in the Indenture (as defined below).

### RECITALS

WHEREAS, the Company and the Trustee have heretofore executed and delivered an indenture (the "Indenture"), dated as of October 18, 2005;

WHEREAS, the parties hereto desire to amend the Indenture to terminate the Company's right to defer interest payments on the Debt Securities pursuant to Section 2.11 therein;

WHEREAS, Section 9.01(d) of the Indenture permits, without the consent of the Securityholders, the Company and the Trustee to enter into supplemental indentures to make any change that does not adversely affect the rights of any Securityholder in any material respect; and

WHEREAS, pursuant to Section 9.01 of the Indenture, each of the Company and the Trustee wish to hereby consent to the execution of this supplemental indenture.

NOW THEREFORE, this First Supplemental Indenture Witnesseth:

For and in consideration of the foregoing, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities as follows:

1. Deletion of Section 2.11 of the Indenture. Section 2.11 of the Indenture is hereby deleted in its entirety.
2. Amendment of Section 3.08 of the Indenture. Section 3.08 of the Indenture is hereby deleted in its entirety and replaced with the following:

"If Debt Securities are initially issued to the Trust or a trustee of such Trust in connection with the issuance of Trust Securities by the Trust (regardless of whether Debt Securities continue to be held by such Trust) and (i) there shall have occurred and be continuing an Event of Default, or (ii) the Company shall be in default with respect to its payment of any obligations, then the Company may not (A) declare or pay any dividends or distributions on, or redeem, purchase, acquire, or make a liquidation payment with respect to, any of the Company's capital stock or (B) make any payment of principal of or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank *pari passu* in all respects with or junior in interest to the Debt Securities (other than (a) repurchases, redemptions or other acquisitions of shares of capital stock of the Company (I) in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of one or more employees, officers, directors or consultants, (II) in connection with a dividend reinvestment or stockholder stock purchase plan or (III) in connection with the issuance of capital stock of the Company (or securities convertible into or exercisable for such capital stock), as consideration in an acquisition transaction entered into prior to the occurrence of (i) or (ii) above, (b) as a result of any exchange or conversion of any class or series of the Company's capital stock (or any capital stock of a subsidiary of the Company) for any class or series of the Company's capital stock or of any class or series of the Company's indebtedness for any class or series of the Company's capital stock, (c) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, (d) any declaration of a dividend in connection with any stockholder's rights plan, or the issuance of rights, stock or other property under any stockholder's rights plan, or the redemption or repurchase of rights pursuant thereto, or (e) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks *pari passu* with or junior to such stock).

3. Deletion of “Deferred Interest” and Extension Period from Indenture. Section 1.01 of the Indenture is hereby amended to delete the definitions “Deferred Interest” and “Extension Period”, and all references to, and uses of, the terms “Deferred Interest” and “Extension Period” in Sections 2.08, 3.01(c) and (d), 3.06, 5.01, and 5.02, as applicable, and any other section that uses such terms but is not specifically identified herein.

4. Consent. Pursuant to Section 9.01 of the Indenture, each of the Company and the Trustee hereby consents to the execution of this First Supplemental Indenture.

5. Effect of this First Supplemental Indenture. Upon the execution of this First Supplemental Indenture pursuant to the provisions of Article IX of the Indenture, the Indenture shall be and be deemed to be modified and amended in accordance herewith and the respective rights, limitations of rights, obligations, duties and immunities under the Indenture of the Trustee, the Company and the holders of Debt Securities shall thereafter be determined, exercised and enforced thereunder subject in all respects to such modifications and amendments and all the terms and conditions of this Supplemental Indenture shall be and be deemed to be part of the terms and provisions of the Indenture for any and all purposes.

6. Miscellaneous. This instrument may be executed in any number of facsimile counterparts, each of which shall be an original, but which together constitute one and the same instrument. This instrument may be executed and delivered by facsimile.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed, all as of the date first above written.

IMPAC MORTGAGE HOLDINGS, INC.

By: /s/ Ronald M. Morrison

Name: Ronald M. Morrison

Title: Executive Vice President

Wilmington Trust Company,

As Trustee

By: /s/ Michael G. Oller, Jr.

Name: Michael G. Oller, Jr.

Title: Assistant Vice President

**AMENDMENT NO. 1  
TO  
AMENDED AND RESTATED DECLARATION OF TRUST  
  
IMPAC CAPITAL TRUST #4**

This AMENDMENT NO. 1 to AMENDED AND RESTATED DECLARATION OF TRUST (this "Amendment"), dated and effective as of July 14, 2009, is entered into by Wilmington Trust Company, as Institutional Trustee (the "Institutional Trustee"), Impac Mortgage Holdings, Inc., a Maryland corporation (the "Company") as Holder of the Common Securities, and Holders of a Majority in liquidation amount of the Capital Securities. Terms not otherwise defined herein shall have the respective meanings ascribed to them in the Amended and Restated Declaration of Trust dated October 18, 2005 (the "Declaration") and the Indenture dated as of October 18, 2005 between the Company and Wilmington Trust Company, as Trustee (the "Indenture"), as applicable.

WHEREAS, the parties desire to amend the Declaration pursuant to the requirements of Section 11.1 therein to:

- (a) allow for the surrender of (i) Capital Securities held by the Sponsor or any of its Affiliates, and (ii) Common Securities proportionate to the Capital Securities surrendered pursuant to clause (i), and in exchange receive a principal amount of Debentures equal to the respective liquidation amount of the Capital Securities and Common Securities so surrendered so that pursuant to Section 2.09 of the Indenture the principal amount of Debentures so issued in exchange may then be surrendered to the Trustee (as defined in the Indenture) for cancellation,
- (b) allow the Holder of the Common Securities or the obligor under the Indenture to purchase outstanding Capital Securities, and
- (c) terminate any right by the Sponsor to defer interest payments on the Capital Securities;

WHEREAS, pursuant to Section 11.1(a), among other requirements, the Declaration may only be amended by a written instrument approved and executed by the Institutional Trustee and the Holders of a Majority in liquidation amount of the Common Securities, and pursuant to Section 11.1(c), no amendment shall be made unless Holders of a Majority in liquidation amount of the Capital Securities shall have consented to such amendment;

WHEREAS, there are 20,000 Capital Securities of the Trust issued and outstanding;

WHEREAS, the Company is the Sponsor of the Trust and holds all of the outstanding 620 Common Securities of the Trust;

WHEREAS, the Trust has purchased an aggregate of 9,000 of the Capital Securities; and

WHEREAS, Section 3818 of Chapter 38 of Title 12 of the Delaware Code provides that any interest acquired by the statutory trust shall be deemed canceled and accordingly only 11,000 of the 20,000 Capital Securities are deemed outstanding.

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NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties, intending to be legally bound hereby, amend the Declaration and agree as follows:

1. The Declaration is hereby amended by inserting in Article VI thereof the following new Section 6.8:

“SECTION 6.8 Exchanges.

(a) If at any time or from time to time the Sponsor or any of its Affiliates or the Trust (in each case, a “Sponsor Affiliate”) is a Holder of any Capital Securities, such Sponsor Affiliate may, at such Holder’s election, surrender to the Institutional Trustee all or such portion of its Capital Securities it Holds and, subject to compliance with Section 2.05 of the Indenture, receive, in exchange therefor, a principal amount of Debentures equal to the Liquidation Distribution of the Capital Securities so surrendered; provided that, in the case of Capital Securities surrendered by the Trust, the applicable amount of Debentures will be distributed to the Sponsor. Such election (i) shall be exercisable on any Business Day, provided that such Business Day is not a record date or any day falling between a record date and a Distribution Payment Date (an “Exchange Date”) by such Sponsor Affiliate delivering to the Institutional Trustee a written notice of such election specifying the Liquidation Distribution of Capital Securities with respect to which such election is being made and the Exchange Date on which such exchange shall occur, which Exchange Date shall be not less than ten (10) Business Days after the date of receipt by the Institutional Trustee of such election notice and (ii) shall be conditioned upon such Sponsor Affiliate having delivered or caused to be delivered to the Institutional Trustee or its designee the Capital Securities that are the subject of such election by 10:00 A.M. New York time, on the Exchange Date on which such exchange is to occur. After the exchange, such Capital Securities surrendered in the exchange as aforesaid will be canceled and will no longer be deemed to be outstanding and all rights of the Sponsor Affiliate with respect to such Capital Securities will cease.

(b) In the case of any exchange described in Section 6.8(a), on the Exchange Date, the Sponsor Affiliate shall further surrender or cause to be surrendered to the Institutional Trustee that amount of Common Securities, and the Institutional Trustee on behalf of the Trust shall, issue to the Sponsor Affiliate or, in the case where Capital Securities are surrendered by the Trust, the Sponsor Debentures for the Common Securities so surrendered, in the principal amount of Debentures equal to the quotient of (i) the aggregate Liquidation Distribution of the Capital Securities surrendered by the Sponsor Affiliate pursuant to Section 6.8(a), divided by (ii) the aggregate Liquidation Distribution of all Capital Securities outstanding immediately prior to such exchange pursuant to Section 6.8(a). The Institutional Trustee shall cancel the amount of Common Securities so contemporaneously surrendered by the Sponsor Affiliate in exchange for Debentures as aforesaid and thereupon such surrendered Common Securities shall no longer be deemed outstanding and all rights of the Sponsor Affiliate with respect to such Capital Securities will cease. The Sponsor Affiliate shall deliver or cause to be delivered to the Institutional Trustee or its designee contemporaneously with the Capital Securities surrendered for exchange pursuant to Section 6.8(a) the required amount of Common Securities to be exchanged. Upon their issuance, the Debentures so issued pursuant to Sections 6.8(a) and 6.8(b) shall in all respects be governed by the Indenture.”

2. Paragraph 4(e)(v) of Annex I of the Declaration is deleted in its entirety and replaced with the following:

“(v) Subject to the foregoing and applicable law (including, without limitation, United States federal securities laws), the Sponsor or any of its subsidiaries may at any time and from time to time purchase outstanding Capital Securities by tender, in the open market or by private agreement.”

3. The Declaration is hereby amended as follows:

(a) Section 2(e) of Annex I is deleted in its entirety and replaced with the following:

“Distributions on the Securities will be cumulative, will accrue from the date of original issuance, and will be payable quarterly in arrears on April 30, July 30, October 30, and January 30 of each year, commencing on January 30, 2006 (each, a “Distribution Payment Date”). Distributions on the Securities must be paid on the dates payable to the extent that the Trust has funds legally available for the payment of such distributions in the Property Account of the Trust. The Trust’s funds available for Distribution to the Holders of the Securities will be limited to payments received from the Debenture Issuer.”;

(b) Section 1.1 of Article I is amended by deleting the definitions “Deferred Interest” and “Extension Period”; and

(c) all references to, and uses of, the terms “Deferred Interest” and “Extension Period” in Sections 2(a), 2(f), 5.1, 6.7(c)(i)(B) and (C) and Annex I, as applicable, as well as in the certificates for the Capital Securities (whether issued or to be issued in the future), and any other section and exhibit that uses such terms but is not specifically identified herein, are deleted.

4. As amended as set forth in Paragraphs 1, 2 and 3 hereof, the Declaration shall remain in full force and effect.

5. This Amendment may be executed in any number of facsimile counterparts, each of which shall be an original, but which together constitute one and the same instrument. This Amendment may be executed and delivered by facsimile. This Amendment is binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this Amendment No. 1 to the Declaration to be duly executed as of the day and year first above written.

Wilmington Trust Company,  
As Institutional Trustee

By: /s/ Michael G. Oller, Jr.  
Name: Michael G. Oller, Jr.  
Title: Assistant Vice President

Impac Mortgage Holdings, Inc.  
Holder of 620 Common Securities

By: /s/ Ronald M. Morrison  
Name: Ronald M. Morrison  
Title: Executive Vice President

Amster Trading Company  
Holder of 8,000 Capital Securities

By: /s/ Howard Amster  
Name: Howard Amster  
Title: President

Ramat Securities Ltd.  
Holder of 2,000 Capital Securities

By: /s/ Howard Amster  
Name: Howard Amster  
Title: Manager

Tamra F. Gould Trust u/a dated November 5, 2004  
Holder of 1,000 Capital Securities

By: /s/ Tamra Gould  
Name: Tamra Gould  
Title: Trustee

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EXCHANGE AGREEMENT

among

IMPAC MORTGAGE HOLDINGS, INC.

and

TABERNA PREFERRED FUNDING I, LTD.,

and

TABERNA PREFERRED FUNDING II, LTD.

Dated as of May 8, 2009

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## EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT, dated as of May 8, 2009 (this "**Agreement**"), is entered into by and among IMPAC MORTGAGE HOLDINGS, INC., a Maryland corporation (the "**Company**"), TABERNA PREFERRED FUNDING I, LTD. ("**Taberna I**"), and TABERNA PREFERRED FUNDING II, LTD. ("**Taberna II**," together with Taberna I, collectively, "**Taberna**").

### RECITAL:

A. Reference is made to (i) that certain Junior Subordinated Indenture dated as of May 20, 2005 (the "**May Indenture**") and (ii) that certain Amended and Restated Junior Subordinated Indenture dated as of September 16, 2005 (the "**September Indenture**," together with the May Indenture, the "**Existing Indentures**") by and between the Company and The Bank of New York Mellon Trust Company, National Association ("**BNYM**") (as successor to JPMorgan Chase Bank, National Association) as trustee (the "**Existing Indenture Trustee**").

B. Reference is made to (i) that certain Amended and Restated Trust Agreement dated as of May 20, 2005 (the "**May Trust Agreement**") and (ii) that certain Second Amended and Restated Trust Agreement dated as of September 16, 2005 (the "**September Trust Agreement**," together with the May Trust Agreement, the "**Trust Agreements**"), each by and among the Company, as depositor, BNYM (as successor to JPMorgan Chase Bank, National Association, as property trustee)(the "**Property Trustee**"), BNY Mellon Trust of Delaware (as successor to Chase Bank USA, National Association, as Delaware trustee) (the "**Delaware Trustee**"), and the respective administrative trustees named therein.

C. Impac Capital Trust #1 ("**Trust #1**") is the holder of the Junior Subordinated Note due 2035 in the original principal amount of \$25,780,000 issued by the Company pursuant to the September Indenture (the "**Subordinated Note #1**").

D. Impac Capital Trust #3 ("**Trust #3**") is the holder of the Junior Subordinated Note due 2035 in the original principal amount of \$27,070,000 issued by the Company pursuant to the May Indenture (the "**Subordinated Note #2**," together with Subordinated Note #1, collectively, the "**Existing Subordinated Notes**").

E. Taberna I is the holder of Preferred Securities in the original aggregate principal amount of \$26,250,000 issued by Trust #3 pursuant to the May Trust Agreement, copies of which are attached hereto as Exhibit A-1 (the "**Trust #3 Preferred Securities**").

F. Taberna II is the holder of Preferred Securities in the original aggregate principal amount of \$25,000,000 issued by Trust #1 pursuant to the September Trust Agreement, copies of which are attached hereto as Exhibit A-2 (the "**Trust #1 Preferred Securities**," together with Trust #3 Preferred Securities, collectively, the "**Original Preferred Securities**")

Simultaneously herewith, the Company and BNYM, as trustee (the "**New Indenture Trustee**") have entered into (i) that certain Junior Subordinated Indenture ("**New Indenture I**") pursuant to which the Company proposes to issue a Junior Subordinated Note due 2034 in the original principal amount of Thirty Million Two Hundred Forty-Four Thousand Dollars

(\$30,244,000) and (ii) that certain Junior Subordinated Indenture (“**New Indenture II**,” together with New Indenture I, the “**New Indentures**”) pursuant to which the Company proposes to issue a Junior Subordinated Note due 2034 in the original principal amount of Thirty-One Million Seven Hundred Fifty-Six Thousand Dollars (\$31,756,000). Pursuant to the New Indentures, the Company proposes to issue such Junior Subordinated Notes as follows (collectively, the “**Securities**”):

- (i) Junior Subordinated Note due 2034 in the original principal amount of \$30,244,000 issued by the Company to Taberna II, a copy of which is attached hereto as Exhibit B-1 (“**Note 1**”), pursuant to New Indenture I; and
- (ii) Junior Subordinated Note due 2034 in the original principal amount of \$31,756,000 issued by the Company to Taberna I, a copy of which is attached hereto as Exhibit B-2 (“**Note 2**”), pursuant to New New Indenture II.

G. On the terms and subject to the conditions set forth in this Agreement, the Company and each Taberna entity have agreed to exchange the Original Preferred Securities for the applicable Securities.

NOW, THEREFORE, in consideration of the mutual agreements and subject to the terms and conditions herein set forth, the parties hereto agree as follows:

1. **Definitions.** This Agreement, the New Indentures and the Securities are collectively referred to herein as the “**Operative Documents**.” All other capitalized terms used but not defined in this Agreement shall have the respective meanings ascribed thereto in the New Indentures.

“**Bankruptcy Code**” means the Bankruptcy Reform Act of 1978, 11 U.S.C. §§101 et seq., as amended.

“**Benefit Plan**” means an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, a “plan” as defined in Section 4975 of the Code or any entity whose assets include (for purposes of U.S. Department of Labor Regulations Section 2510.3-101 or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan.”

“**BNYM**” has the meaning set forth in the Recitals.

“**CDO Trustee**” has the meaning set forth in Section 2(b)(i).

“**Code**” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated under it.

“**Closing Date**” has the meaning set forth in Section 2(b).

“**Closing Room**” has the meaning set forth in Section 2(b).

“**Company**” has the meaning set forth in the introductory paragraph hereof.

“**Company Counsel**” has the meaning set forth in Section 3(b).

“**Commission**” has the meaning set forth in Section 4(v).

“**Delaware Trustee**” has the meaning set forth in the Recitals.

“**Environmental Law**” has the meaning set forth in Section 4(kk).

“**Environmental Laws**” shall have the correlative meaning.

“**Equity Interests**” means with respect to any Person (a) if such a Person is a partnership, the partnership interests (general or limited) in a partnership, (b) if such Person is a limited liability company, the membership interests in a limited liability company and (c) if such Person is a corporation, the shares or stock interests (both common stock and preferred stock) in a corporation.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated under it.

“**Exchange**” has the meaning set forth in Section 2(b).

“**Exchange Act**” has the meaning set forth in Section 4(j).

“**Existing Indenture**” has the meaning set forth in the Recitals.

“**Existing Indenture Trustee**” has the meaning set forth in the Recitals.

“**Existing Subordinated Notes**” has the meaning set forth in the Recitals.

“**Financial Statements**” has the meaning set forth in Section 4(w).

“**GAAP**” has the meaning set forth in Section 4(w).

“**Governmental Entities**” has the meaning set forth in Section 4(o).

“**Governmental Licenses**” has the meaning set forth in Section 4(r).

“**Hazardous Materials**” has the meaning set forth in Section 4(kk).

“**Holders**” has, collectively, the meanings set forth in the New Indentures.

“**Impairment**” means any claim, counterclaim, setoff, defense, action, demand, litigation (including administrative proceedings or derivative actions), encumbrance, right (including expungement, avoidance, reduction, contractual or equitable subordination, or otherwise) or defect.

“**Indemnified Party**” has the meaning set forth in Section 8(a). “**Indemnified Parties**” shall have the correlative meaning.

“**Investment Company Act**” has the meaning set forth in Section 4(j).

“**Lien**” has the meaning set forth in Section 4(o).

“**May Indenture**” shall have the meaning set forth in the Recitals.

“**May Trust Agreement**” shall have the meaning set forth in the Recitals.

“**Material Adverse Effect**” means a material adverse effect on the condition (financial or otherwise), earnings, business, liabilities or assets of the Company and its Significant Subsidiaries taken as a whole.

“**Material Adverse Change**” has the meaning set forth in Section 3(e)(ii).

“**New Indenture I**” has the meaning set forth in the Recitals.

“**New Indenture II**” has the meaning set forth in the Recitals.

“**New Indentures**” shall mean, collectively, New Indenture I and New Indenture II.

“**New Indenture Trustee**” has the meaning set forth in the Recitals.

“**Original Preferred Securities**” has the meaning set forth in the Recitals.

“**Person**” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, national banking association, unincorporated association, government or any agency or political subdivision thereof, or any other entity of whatever nature.

“**Properties**” has the meaning set forth in Section 4(kk).

“**Property Trustee**” has the meaning set forth in the Recitals.

“**Regulation D**” has the meaning set forth in Section 4(h).

“**Repayment Event**” has the meaning set forth in Section 4(o).

“**Rule 144A(d)(3)**” has the meaning set forth in Section 4(j).

“**Securities**” has the meaning set forth in the Recitals.

“**Securities Act**” means the Securities Act of 1933, 15 U.S.C. §§77a et seq., as amended, and the rules and regulations promulgated under it.

“**September Indenture**” shall have the meaning set forth in the Recitals.

“**September Trust Agreement**” shall have the meaning set forth in the Recitals.

“**Significant Subsidiary**” means any Person wherein at least ten percent (10%) of the Equity Interests is owned, directly or indirectly, by the Company, including any subsidiary listed on Schedule I attached hereto. “**Significant Subsidiaries**” means, collectively, each and every Significant Subsidiary.

“**Taberna**” has the meaning set forth in the introductory paragraph hereof.

“**Taberna I**” has the meaning set forth in the Recitals.

“**Taberna II**” has the meaning set forth in the Recitals.

“**Taberna Transferred Rights**” means any and all of each Taberna entity’s right, title, and interest in, to and under the applicable Original Preferred Securities, together with the following:

- (i) the applicable Existing Indentures and Trust Agreements;
- (ii) all amounts payable to such Taberna entity under the applicable Original Preferred Securities, the applicable Existing Indentures and/or the applicable Trust Agreements;
- (iii) all claims (including “claims” as defined in Bankruptcy Code §101(5)), suits, causes of action, and any other right of Taberna, whether known or unknown, against the Company or any of its affiliates (including the Trust), agents, representatives, contractors, advisors, or any other entity that in any way is based upon, arises out of or is related to any of the foregoing, including all claims (including contract claims, tort claims, malpractice claims, and claims under any law governing the exchange of, purchase and sale of, or indentures for, securities), suits, causes of action, and any other right of Taberna against any attorney, accountant, financial advisor, or other entity arising under or in connection with the Original Preferred Securities, the Existing Indentures, the Trust Agreements or the transactions related thereto or contemplated thereby;
- (iv) all guarantees and all collateral and security of any kind for or in respect of the foregoing;
- (v) all cash, securities, or other property, and all setoffs and recoupments, to be received, applied, or effected by or for the account of Taberna under the Original Preferred Securities, other than fees, costs and expenses payable to Taberna hereunder and all cash, securities, interest, dividends, and other property that may be exchanged for, or distributed or collected with respect to, any of the foregoing; and
- (vi) all proceeds of the foregoing.

“**Trust #1**” has the meaning set forth in the Recitals.

“**Trust #3**” has the meaning set forth in the Recitals.

“**Trust #1 Preferred Securities**” has the meaning set forth in the Recitals.

“**Trust #3 Preferred Securities**” has the meaning set forth in the Recitals.

“**Trust Agreements**” has the meaning set forth in the Recitals.

2. **Exchange of Original Preferred Securities for Securities.**

(a) The Company agrees to issue the Securities in accordance with the New Indentures and has requested that each Taberna entity accept the applicable Securities in exchange for the applicable Original Preferred Securities, and Taberna hereby accepts such Securities in exchange for the Original Preferred Securities upon the terms and conditions set forth herein.

(b) The closing of the exchange contemplated herein shall occur at the offices of Nixon Peabody, LLP in New York, New York (the “**Closing Room**”), or such other place as the parties hereto and BNYM shall agree, at 11:00 a.m. New York time, on May 8, 2009 or such later date as the parties may agree (such date and time of delivery the “**Closing Date**”). The Company and Taberna hereby agree that the exchange (the “**Exchange**”) will occur in accordance with the following requirements:

(i) Taberna Capital Management, LLC (as collateral manager for Taberna) shall have delivered an issuer order instructing the trustee (the “**CDO Trustee**”) under the Existing Indentures pursuant to which such CDO Trustee serves as trustee for the holder of the Original Preferred Securities to exchange the Original Preferred Securities for the Securities and to deliver the Original Preferred Securities to the Property Trustee for cancellation.

(ii) The Original Preferred Securities and the Securities shall have been delivered to the Closing Room, copies of which Original Preferred Securities and Securities shall have previously been made available for inspection, if so requested.

(iii) The Company shall have directed the New Indenture Trustee to authenticate the Securities and deliver the Securities to the CDO Trustee as follows: (i) Note 1 to Taberna II and (ii) Note 2 to Taberna I.

(iv) New Indenture Trustee shall have authenticated the Securities in accordance with the terms of the New Indentures and delivered them as provided above.

(v) Property Trustee, on behalf of the Trust, shall have obtained the Original Preferred Securities and shall promptly thereafter, as requested by the Company, cancel and reissue them in the name of the Company or cancel them entirely.

(vi) Simultaneously with the occurrence of the events described in subsections (iv) and (v) hereof, (A) each Taberna entity irrevocably transfers, assigns, grants and conveys the related Taberna Transferred Rights to the Company and the Company assumes all rights and obligations of Taberna with respect to the Original Preferred Securities and the Taberna Transferred Rights and (B) the Holders shall be

entitled to all of the rights, title and interest of the Holders of the Securities under the terms of the applicable Securities, the applicable New Indentures and any other related Operative Documents.

(vii) the Company shall have paid to BNYM all of such party's legal fees, costs and other expenses in connection with the Exchange, subject to Section 7 hereof, as well as all other accrued and unpaid fees, costs and expenses under the Existing Indentures, the Trust Agreements, and the New Indentures if any.

(viii) Intentionally Omitted.

3. **Conditions Precedent**. The obligations of the parties under this Agreement are subject to the following conditions precedent:

(a) The representations and warranties contained herein shall be accurate as of the date of delivery of the Securities.

(b) K&L Gates LLP, counsel for the Company (the "**Company Counsel**"), shall have delivered opinions with respect to each New Indenture and the related Operative Documents, dated the Closing Date, addressed to the Holders and its successors and assigns and to the New Indenture Trustee, in substantially the form set out in Annex A hereto and the Company shall have furnished to the Holders of the Securities a certificate signed by the Company's Chief Executive Officer, President, an Executive Vice President, Chief Financial Officer, Treasurer or Assistant Treasurer, dated the Closing Date, addressed to the applicable Holders of the Securities, in substantially the form set out in Annex D hereto. In rendering its opinions, the Company Counsel may rely as to factual matters upon certificates or other documents furnished by officers, directors and trustees of the Company and by government officials; *provided, however*, that copies of any such certificates or documents are delivered to the Holders) and by and upon such other documents as such counsel may, in its reasonable opinion, deem appropriate as a basis for the Company Counsel's opinions. The Company Counsel may specify the jurisdictions in which they are admitted to practice and that they are not admitted to practice in any other jurisdiction and is not an expert in the law of any other jurisdiction.

(c) Each Taberna entity shall have been furnished the opinion of the Company Counsel, dated as of the Closing Date, addressed to the Holders of the applicable Securities and their respective successors and assigns (excluding the Company, its subsidiaries and/or its affiliates) and the New Indenture Trustee, in substantially the form set out in Annex B hereto.

(d) The Holders of the Securities shall have received the opinions of Gardere Wynne Sewell LLP, special counsel for the New Indenture Trustee, dated as of the Closing Date, addressed to the applicable Holders of the Securities in substantially the form set out in Annex C hereto.

(e) The Company shall have furnished to the Holders of the Securities a certificate of the Company, signed by the Chief Executive Officer, President or an Executive Vice President, and Chief Financial Officer, Treasurer or Assistant Treasurer of the Company, dated as of the Closing Date, as to (i) and (ii) below:

(i) the representations and warranties in this Agreement and the New Indentures are true and correct on and as of the Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date; and

(ii) since the date of the Financial Statements, there has been no material adverse change in the condition (financial or other), earnings, business or assets of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions occurring in the ordinary course of business (a "**Material Adverse Change**").

(f) The Company shall pay on or prior to the Closing Date, to the applicable Taberna entities a fee as set forth on Schedule 3.

(g) Prior to the Closing Date, the Company shall have furnished to the Holders of the Securities and their counsel such further information, certificates and documents as the Holders of the Securities or such counsel may reasonably request.

If any of the conditions specified in this Section 3 shall not have been fulfilled when and as provided in this Agreement, or if any of the opinions, certificates and documents mentioned above or elsewhere in this Agreement shall not be reasonably satisfactory in form and substance to the Holders of the Securities or their counsel, this Agreement and any obligations of Taberna hereunder, whether as holders of the Original Preferred Securities or as prospective Holders of the Securities, may be canceled at, or at any time prior to, the Closing Date by Taberna. Notice of such cancellation shall be given to the Company in writing or by telephone and confirmed in writing, or by e-mail or facsimile.

Each certificate signed by any officer of the Company and delivered to the Holders of the Securities or the Holders' counsel in connection with the Operative Documents and the transactions contemplated hereby and thereby shall be deemed to be a representation and warranty of the Company and not by such officer in any individual capacity.

4. **Representations and Warranties of the Company.** The Company represents and warrants to, and agrees with Taberna, as holders of the Original Preferred Securities and with the Holders of the Securities, as follows:

(a) It (i) is duly organized and validly existing under the laws of its jurisdiction of organization or incorporation, (ii) is in good standing under such laws and (iii) has full corporate power and authority to execute, deliver and perform its obligations under this Agreement and the other Operative Documents.

(b) It is an "accredited investor" as defined in Rule 501 under the Securities Act. Without characterizing the Original Preferred Securities or any of the Taberna Transferred Rights as a "security" within the meaning of applicable securities laws, it is not acquiring the Original Preferred Securities or the Taberna Transferred Rights with a view towards the sale or distribution thereof in violation of the Securities Act.

(c) Intentionally omitted.

(d) None of the Securities, the New Indentures, or the Exchange, is or may be (i) void or voidable as an actual or constructive fraudulent transfer or as a preferential transfer or (ii) subject to any Impairment.

(e) It (i) is a sophisticated entity with respect to the Exchange, (ii) has such knowledge and experience, and has made investments of a similar nature, so as to be aware of the risks and uncertainties inherent in the Exchange and (iii) has independently and without reliance upon Taberna, any Holder of the Securities, Taberna Capital Management, LLC, or Trustee, or any of their respective affiliates, and based on such information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement, except that it has relied upon Taberna's express representations, warranties, covenants and agreements in this Agreement. The Company acknowledges that none of Taberna, any Holder of the Securities, Taberna Capital Management, LLC, or Trustee, or any of their respective affiliates has given it any investment advice, credit information or opinion on whether the Exchange is prudent.

(f) It has not engaged any broker, finder or other entity acting under the authority of it or any of its affiliates that is entitled to any broker's commission or other fee in connection with the transaction for which Taberna, any Holder, Trustee or any of their affiliates could be responsible.

(g) No interest in the Taberna Transferred Rights is being acquired by or on behalf of an entity that is, or at any time while the Taberna Transferred Rights are held thereby will be, one or more Benefit Plans.

(h) Neither the Company nor any of its "Affiliates" (as defined in Rule 501(b) of Regulation D ("**Regulation D**") under the Securities Act (as defined below)), nor any person acting on its or their behalf, has, directly or indirectly, made offers or sales of any security, or solicited offers to buy any security, under circumstances that would require the registration of the Securities under the Securities Act.

(i) Neither the Company nor any of its Affiliates, nor any person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities.

(j) The Securities (i) are not and have not been listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or quoted on a U.S. automated inter-dealer quotation system and (ii) are not of an open-end investment company, unit investment trust or face-amount certificate company that are, or are required to be, registered under Section 8 of the Investment Company Act of 1940, as amended (the "**Investment Company Act**"), and the Securities otherwise satisfy the eligibility requirements of Rule 144A(d)(3) promulgated pursuant to the Securities Act ("**Rule 144A(d)(3)**").

(k) Neither the Company nor any of its Affiliates, nor any person acting on its or their behalf, has engaged, or will engage, in any "directed selling efforts" within the meaning of Regulation S under the Securities Act with respect to the Securities.

(l) The Company is not, and immediately following consummation of the transactions contemplated hereby, will not be, an “investment company” or an entity “controlled” by an “investment company,” in each case within the meaning of Section 3(a) of the Investment Company Act.

(m) Each of this Agreement and the New Indentures and the consummation of the transactions contemplated herein and therein have been duly authorized by the Company and, on the Closing Date, will have been duly executed and delivered by the Company, and, assuming due authorization, execution and delivery by Taberna and/or the Trustee, as applicable, will be a legal, valid and binding obligations of the Company enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors’ rights generally and to general principles of equity.

(n) The Securities have been duly authorized by the Company and, on the Closing Date, will have been duly executed and delivered to the Trustee for authentication in accordance with the New Indentures and, when authenticated in the manner provided for in the New Indentures and delivered to the Holders, will constitute legal, valid and binding obligations of the Company entitled to the benefits of the New Indentures, enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors’ rights generally and to general principles of equity.

(o) Except as set forth in Schedule 2, neither the issuance of the Securities and exchange of the Securities for the Original Preferred Securities, nor the execution and delivery of and compliance with the Operative Documents by the Company, nor the consummation of the transactions contemplated herein or therein, (i) will conflict with or constitute a violation or breach of (x) the charter or bylaws or similar organizational documents of the Company or any subsidiary of the Company or (y) any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, governmental authority, agency or instrumentality or court, domestic or foreign, having jurisdiction over the Company or any of its Significant Subsidiaries or their respective properties or assets (collectively, the “**Governmental Entities**”), which would, singly or in the aggregate, have a Material Adverse Effect, (ii) will conflict with or constitute a violation or breach of, or a default or Repayment Event (as defined below) under, or result in the creation or imposition of any pledge, security interest, claim, lien or other encumbrance of any kind (each, a “**Lien**”) upon any property or assets of the Company or any of the Company’s subsidiaries pursuant to any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which (A) the Company or its subsidiaries is a party or by which it or any of them may be bound, or (B) to which any of the property or assets of any of them is subject, or any judgment, order or decree of any court, Governmental Entity or arbitrator, except, in the case of clause (i)(y) or this clause (ii), for such conflicts, breaches, violations, defaults, Repayment Events (as defined below) or Liens which (X) would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by the Operative Documents and (Y) would not, singly or in the aggregate, have a Material Adverse Effect or (iii) will require the consent, approval, authorization or order of any court or Governmental Entity. As used herein, a “**Repayment Event**” means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries prior to its scheduled maturity.

(p) The Company has all requisite corporate power and authority to own, lease and operate its properties and assets and conduct the business it transacts and proposes to transact, and is duly qualified to transact business and is in good standing in each jurisdiction where the nature of its activities requires such qualification, except where the failure of the Company to be so qualified would not, singly or in the aggregate, have a Material Adverse Effect.

(q) The Company has no subsidiaries that are material to its business, financial condition or earnings, other than those Significant Subsidiaries listed in Schedule 1 attached hereto. Each Significant Subsidiary is a corporation, partnership or limited liability company duly or properly incorporated or organized or formed, as the case may be, validly existing and in good standing under the laws of the jurisdiction in which it is chartered or organized or formed, with all requisite corporate power and authority to own, lease and operate its properties and conduct the business it transacts. Each Significant Subsidiary is duly qualified to transact business as a foreign corporation, partnership or limited liability company, as applicable, and is in good standing in each jurisdiction where the nature of its activities requires such qualification, except where the failure to be so qualified would not, singly or in the aggregate, have a Material Adverse Effect.

(r) The Company and each of the Company's Significant Subsidiaries hold all necessary approvals, authorizations, orders, licenses, consents, registrations, qualifications, certificates and permits (collectively, the "**Governmental Licenses**") of and from Governmental Entities necessary to conduct their respective businesses as now being conducted, and neither the Company nor any of its subsidiaries has received any written notice of proceedings relating to the revocation or modification of any such Government License, except where the failure to be so licensed or approved or the receipt of an unfavorable decision, ruling or finding, would not, singly or in the aggregate, have a Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except where the invalidity or the failure of such Governmental Licenses to be in full force and effect, would not, singly or in the aggregate, have a Material Adverse Effect; and the Company and its subsidiaries are in compliance with all applicable laws, rules, regulations, judgments, orders, decrees and consents, except where the failure to be in compliance would not, singly or in the aggregate, have a Material Adverse Effect.

(s) All of the issued and outstanding shares of capital stock of the Company and each of its subsidiaries are validly issued, fully paid and non-assessable; all of the issued and outstanding capital stock of each subsidiary of the Company is owned by the Company, directly or through subsidiaries, free and clear of any Lien, claim or equitable right; and none of the issued and outstanding capital stock of the Company or any subsidiary was issued in violation of any preemptive or similar rights arising by operation of law, under the charter or by-laws of such entity or under any agreement to which the Company or any of its subsidiaries is a party.

(t) Except as set forth in Schedule 2, neither the Company nor any of its subsidiaries is (i) in violation of its respective charter or by-laws or similar organizational documents or (ii) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which the Company or any such subsidiary is a party or by which it or any of them may be bound or to which any of the property or assets of any of them is

subject, except, in the case of clause (ii), where such violation or default would not, singly or in the aggregate, have a Material Adverse Effect.

(u) Except as set forth in the Company's 1934 Act Reports (hereinafter defined), there is no action, suit or proceeding before or by any Governmental Entity, arbitrator or court, domestic or foreign, now pending or, to the knowledge of the Company after reasonable inquiry, threatened against or affecting the Company or any of its subsidiaries, except for such actions, suits or proceedings that, if adversely determined, would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by the Operative Documents or have a Material Adverse Effect; and the aggregate of all pending legal or governmental proceedings to which the Company or any of its subsidiaries is a party or of which any of their respective properties or assets is subject, including ordinary routine litigation incidental to the business, are not expected to result in a Material Adverse Effect.

(v) The accountants of the Company who certified the Financial Statements (defined below) are independent public accountants of the Company and its subsidiaries within the meaning of the Securities Act, and the rules and regulations of the Securities and Exchange Commission (the "**Commission**") thereunder.

(w) The audited consolidated financial statements (including the notes thereto) and schedules of the Company and its consolidated subsidiaries for the fiscal year ended December 31, 2008 (the "**Financial Statements**") provided to Taberna are the most recent available audited and unaudited consolidated financial statements of the Company and its consolidated subsidiaries, respectively, and fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("**GAAP**"), the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the dates and for the periods therein specified. Such consolidated financial statements and schedules have been prepared in accordance with GAAP consistently applied throughout the periods involved (except as otherwise noted therein).

(x) Neither the Company nor any of its subsidiaries has any material liability, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, including any liability for taxes (and there is no past or present fact, situation, circumstance, condition or other basis for any present or future action, suit, proceeding, hearing, charge, complaint, claim or demand against the Company or any of its subsidiaries that could give rise to any such liability), except for (i) liabilities set forth in the Financial Statements and (ii) normal fluctuations in the amount of the liabilities referred to in clause (i) above occurring in the ordinary course of business of the Company and all of its subsidiaries since the date of the most recent balance sheet included in such Financial Statements.

(y) Since the respective dates of the Financial Statements, there has not been (A) any Material Adverse Change or (B) any dividend or distribution of any kind declared, paid or made by the Company on any class of its Equity Interests.

(z) The documents of the Company filed with the Commission in accordance with the Exchange Act, from and including the commencement of the fiscal year covered by the

Company's most recent Annual Report on Form 10-K, at the time they were or hereafter are filed by the Company with the Commission (collectively, the "**1934 Act Reports**"). complied and will comply in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder (the "**1934 Act Regulations**"), and, on the date of this Agreement and on the Closing Date, do not and will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and other than such instruments, agreements, contracts and other documents as are filed as exhibits to the Company's Annual Report on Form 10-K, Quarterly Reports on Form 10-Q or Current Reports on Form 8-K, there are no instruments, agreements, contracts or documents of a character described in Item 601 of Regulation S-K promulgated by the Commission to which the Company or any of its subsidiaries is a party. The Company is in compliance in all material respects with all currently applicable requirements of the Exchange Act that were added by the Sarbanes-Oxley Act of 2002.

(aa) No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent, except those which would not, singly or in the aggregate, have a Material Adverse Effect.

(bb) No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity, other than those that have been made or obtained, is necessary or required for the performance by the Company of its obligations under the Operative Documents, as applicable, or the consummation by the Company of the transactions contemplated by the Operative Documents.

(cc) The Company and each of its subsidiaries has good and marketable title to all of its respective real and personal property, in each case free and clear of all Liens and defects, except for those securing debt in the ordinary course of its business and that would not, singly or in the aggregate, have a Material Adverse Effect; and all of the leases and subleases under which the Company or any of its subsidiaries holds properties are in full force and effect, except where the failure of such leases and subleases to be in full force and effect would not, singly or in the aggregate, have a Material Adverse Effect, and neither the Company nor any of its subsidiaries has any notice of any claim of any sort that has been asserted by anyone adverse to the rights of the Company or any Significant Subsidiary under any such leases or subleases, or affecting or questioning the rights of such entity to the continued possession of the leased or subleased premises under any such lease or sublease, except for such claims that would not, singly or in the aggregate, have a Material Adverse Effect.

(dd) Intentionally Omitted.

(ee) The Company and each of the Significant Subsidiaries have timely and duly filed, taking into account any extensions, all Tax Returns required to be filed by them, and all such Tax Returns are true, correct and complete in all material respects. The Company and each of the Significant Subsidiaries have timely and duly paid in full all Taxes (as defined below) required to be paid by them (whether or not such amounts are shown as due on any Tax Return except for Taxes being contested in good faith). There are no federal, state, or other Tax audits or deficiency assessments proposed or pending with respect to the Company or any of the

Significant Subsidiaries, and no such audits or assessments are threatened. As used herein, the terms “**Tax**” or “**Taxes**” mean (i) all federal, state, local, and foreign taxes, and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax, or penalties applicable thereto, imposed by any Governmental Entity, and (ii) all liabilities in respect of such amounts arising as a result of being a member of any affiliated, consolidated, combined, unitary or similar group, as a successor to another person or by contract. As used herein, the term “**Tax Returns**” means all federal, state, local, and foreign Tax returns, declarations, statements, reports, schedules, forms, and information returns and any amendments thereto filed or required to be filed with any Governmental Entity.

(ff) There are no rulemaking or similar proceedings before the United States Internal Revenue Service or comparable federal, state, local or foreign government bodies which involve or affect the Company or any subsidiary, which, if the subject of an action unfavorable to the Company or any subsidiary, could result in a Material Adverse Effect on the Company and the Significant Subsidiaries, taken as a whole.

(gg) The books, records and accounts of the Company and its Significant Subsidiaries accurately and fairly reflect, in reasonable detail, the transactions in, and dispositions of, the assets of, and the results of operations of, the Company and its Significant Subsidiaries. The Company and each of its Significant Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management’s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management’s general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(hh) The Company and the Significant Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts in all material respects as are customary in the businesses in which they are engaged or propose to engage after giving effect to the transactions contemplated hereby including but not limited to, real or personal property owned or leased against theft, damage, destruction, act of vandalism and all other risks customarily insured against. All policies of insurance and fidelity or surety bonds insuring the Company or any of its Significant Subsidiaries’ respective businesses, assets, employees, officers and directors are in full force and effect. The Company and each of the Significant Subsidiaries are in compliance with the terms of such policies and instruments in all material respects. Neither the Company nor any Significant Subsidiary has reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect. Within the past twelve months, neither the Company nor any Significant Subsidiary has been denied any insurance coverage it has sought or for which it has applied.

(ii) Neither the Company and its Significant Subsidiaries, nor, to the knowledge of the Company, any person acting on behalf of the Company and/or its Significant Subsidiaries including, without limitation, any director, officer, manager, agent or employee of

the Company or its Significant Subsidiaries has, directly or indirectly, while acting on behalf of the Company and/or its Significant Subsidiaries (i) used any corporate, partnership or company funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (ii) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns from corporate, partnership or company funds; (iii) violated any provision of the Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any other unlawful payment.

(jj) The information provided by the Company pursuant to the Operative Documents does not, as of the date hereof, and will not as of the Closing Date, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(kk) Except as would not, individually or in the aggregate, result in a Material Adverse Change, (i) the Company and its subsidiaries have been and are in material compliance with applicable Environmental Laws (as defined below), (ii) none of the Company, any of its subsidiaries or, to the best of the Company's knowledge, (a) any other owners of any of the real properties currently or previously owned, leased or operated by the Company or any of its Significant Subsidiaries (collectively, the "**Properties**") at any time or any other party, has at any time released (as such term is defined in CERCLA (as defined below)) or otherwise disposed of Hazardous Materials (as defined below) on, to, in, under or from the Properties other than in compliance with all applicable Environmental Laws, (iii) neither the Company nor any of its subsidiaries has used nor intends to use the Properties or any subsequently acquired properties, other than in compliance with applicable Environmental Laws, (iv) neither the Company nor any of its subsidiaries has received any written notice of, or have any knowledge of any occurrence or circumstance which, with notice or passage of time or both, would give rise to a claim under or pursuant to any Environmental Law with respect to the Properties, or their respective assets or arising out of the conduct of the Company or its subsidiaries, (v) none of the Properties are included or, to the Company's knowledge, proposed for inclusion on the National Priorities List issued pursuant to CERCLA by the United States Environmental Protection Agency or, to the Company's knowledge, proposed for inclusion on any similar list or inventory issued pursuant to any other Environmental Law or issued by any other Governmental Entity, (vi) none of the Company, any of its subsidiaries or agents or, to the Company's knowledge, any other person or entity for whose conduct any of them is or may be held responsible, has generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, produced or processed any Hazardous Material at any of the Properties, except in compliance with all applicable Environmental Laws, and has not transported or arranged for the transport of any Hazardous Material from the Properties to another property, except in compliance with all applicable Environmental Laws, (vii) no lien has been imposed on the Properties by any Governmental Entity in connection with the presence on or off such Property of any Hazardous Material, and (viii) none of the Company, any of its subsidiaries or, to the Company's knowledge, any other person or entity for whose conduct any of them is or may be held responsible, has entered into or been subject to any consent decree, compliance order, or administrative order with respect to the Properties or any facilities or improvements or any operations or activities thereon.

As used herein, "**Hazardous Materials**" shall include, without limitation, any flammable materials, explosives, radioactive materials, hazardous materials, hazardous substances, hazardous wastes, toxic substances or related materials, asbestos, petroleum, petroleum products and any hazardous material as defined by any federal, state or local environmental law, statute, ordinance, rule or regulation, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675 ("**CERCLA**"), the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101-5127, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901-6992k, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001-11050, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136-136y, the Clean Air Act, 42 U.S.C. §§ 7401-7642, the Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. §§ 1251-1387, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26, and the Occupational Safety and Health Act, 29 U.S.C. §§ 651-678, and any analogous state laws, as any of the above may be amended from time to time and in the regulations promulgated pursuant to each of the foregoing (including environmental statutes and laws not specifically defined herein) (individually, an "**Environmental Law**" and collectively, the "**Environmental Laws**") or by any Governmental Entity.

5. **Representations and Warranties of Taberna.** Each Taberna entity, for itself, represents and warrants to, and agrees with, the Company as follows:

(a) It is a company duly formed, validly existing and in good standing under the laws of the jurisdiction in which it is organized with all requisite power and authority to execute, deliver and perform under Operative Documents to which it is a party, to make the representations and warranties specified herein and therein and to consummate the transactions contemplated in the Operative Documents.

(b) This Agreement and the consummation of the transactions contemplated herein has been duly authorized by it and, on the Closing Date, will have been duly executed and delivered by it and, assuming due authorization, execution and delivery by the Company and Trustee of the Operative Documents to which each is a party, will be a legal, valid and binding obligation of such Taberna entity, enforceable against such Taberna entity in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

(c) No filing with, or authorization, approval, consent, license, order registration, qualification or decree of, any Governmental Entity or any other Person, other than those that have been made or obtained, is necessary or required for the performance by such Taberna entity of its obligations under this Agreement or to consummate the transactions contemplated herein.

(d) It is a "Qualified Holder" as such term is defined in Section 2(a)(51) of the Investment Company Act.

(e) Taberna I is the legal and beneficial owner of the Trust #3 Preferred Securities and the related Taberna Transferred Rights and shall deliver the Trust #3 Preferred Securities free and clear of any Lien created by Taberna I.

(f) Taberna II is the legal and beneficial owner of the Trust #1 Preferred Securities and the related Taberna Transferred Rights and shall deliver the Trust #1 Preferred Securities free and clear of any Lien created by Taberna II.

(g) Intentionally Omitted.

(h) Intentionally Omitted.

(i) There is no action, suit or proceeding before or by any Governmental Entity, arbitrator or court, domestic or foreign, now pending or, to its knowledge, threatened against or affecting it, except for such actions, suits or proceedings that, if adversely determined, would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by the Operative Documents.

(j) The outstanding principal amount of its respective Original Preferred Securities is the face amount as set forth in such Original Preferred Securities.

(k) It is aware that the Securities have not been and will not be registered under the Securities Act and may not be offered or sold within the United States or to "U.S. persons" (as defined in Regulation S under the Securities Act) except in accordance with Rule 903 of Regulation S under the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act.

(l) It is an "accredited investor," as such term is defined in Rule 501(a) of Regulation D under the Securities Act.

(m) Neither it nor any of its Affiliates, nor any person acting on its or its Affiliate's behalf has engaged, or will engage, any form of "general solicitation or general advertising" (within the meaning of Regulation D under the Securities Act) in connection with any offer or sale of the Securities.

(n) It understands and acknowledges that (i) no public market exists for the Securities and that it is unlikely that a public market will ever exist for the Securities, (ii) such Holder is purchasing the Securities for its own account, for investment and not with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act or other applicable securities laws, subject to any requirement of law that the disposition of its property be at all times within its control and subject to its ability to resell such Securities pursuant to an effective registration statement under the Securities Act or pursuant to an exemption therefrom or in a transaction not subject thereto, and it agrees to the legends and transfer restrictions applicable to the Securities contained in the New Indentures, and (iii) it has had the opportunity to ask questions of, and receive answers and request additional information from, the Company and is aware that it may be required to bear the economic risk of an investment in the Securities.

(o) It has not engaged any broker, finder or other entity acting under its authority that is entitled to any broker's commission or other fee in connection with this Agreement and the consummation of transactions contemplated in this Agreement and the New Indentures for which the Company could be responsible.

(p) It (i) is a sophisticated entity with respect to the Exchange, (ii) has such knowledge and experience, and has made investments of a similar nature, so as to be aware of the risks and uncertainties inherent in the Exchange and (iii) has independently and without reliance upon the Company or any of their affiliates, and based on such information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement, except that it has relied upon the Company's express representations, warranties, covenants and agreements in the Operative Documents and the other documents delivered by the Company in connection therewith.

Except as expressly stated in this Agreement, Taberna make no representations or warranties, express or implied, with respect to the Exchange, the Taberna Transferred Rights, the Original Preferred Securities, the Existing Indentures, or any other matter.

6. **Covenants and Agreements of the Company.** The Company agrees with Taberna and the Holders as follows:

(a) The Company has taken all action reasonably necessary or appropriate to cause its representations and warranties contained in Section 4 hereof to be true as of the Closing Date and after giving effect to the Exchange.

(b) The Company will arrange for the qualification of the Securities for sale under the laws of such jurisdictions as the Holders of the Securities may designate and will maintain such qualifications in effect so long as required for the sale of the Securities. The Company will promptly advise the Holders of the Securities of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(c) Intentionally Omitted.

(d) Intentionally Omitted.

(e) The Company will not, and will not permit any of its Affiliates or any person acting on its or their behalf to, directly or indirectly, make offers or sales of any security, or solicit offers to buy any security, under circumstances that would require the registration of the Securities under the Securities Act.

(f) The Company will not, and will not permit any of its Affiliates or any person acting on its or their behalf to, engage in (i) any form of "general solicitation or general advertising" (within the meaning of Regulation D), or (ii) any "directed selling efforts" within the meaning of Regulation S under the Securities Act, in connection with any offer or sale of the Securities.

(g) So long as the Securities are outstanding, (i) the Securities shall not be listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted in a U.S. automated inter-dealer quotation system and (ii) the Company shall not be an open-end investment company, unit investment trust or face-amount certificate company that is, or is required to be, registered under Section 8 of the Investment Company Act, and, the Securities shall otherwise satisfy the eligibility requirements of Rule 144A(d)(3).

(h) The Company shall furnish to (i) the Holders of the Securities, (ii) Taberna Capital Management, LLC and (iii) any beneficial owners of the Securities reasonably identified to the Company, a duly completed and executed certificate in the form attached hereto as Annex D, including the financial statements referenced in such Annex, which certificate and financial statements shall be so furnished by the Company not later than forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company and not later than ninety (90) days after the end of each fiscal year of the Company.

(i) The Company will, during any period in which it is not subject to and in compliance with Section 13 or 15(d) of the Exchange Act, or it is not exempt from such reporting requirements pursuant to and in compliance with Rule 12g3-2(b) under the Exchange Act, provide to the Holders of the Securities, upon the request of such Holder, any information required to be provided by Rule 144A(d)(4) under the Securities Act. If the Company is required to register under the Exchange Act, such reports filed in compliance with Rule 12g3-2(b) shall be sufficient information as required above. This covenant is intended to be for the benefit of the Holders of the Securities.

(j) Except in transactions that qualify under Rule 506 of Regulation D of the Securities Act and/or Regulation S under the Securities Act, the Company will not, until one hundred eighty (180) days following the Closing Date, without the Holders' or their assignees' prior written consent in their sole discretion, offer, sell, contract to sell, grant any option to purchase or otherwise dispose of, directly or indirectly, (i) the Securities or other securities substantially similar to the Securities other than as expressly contemplated by the New Indentures, if at all, or (ii) any other securities convertible into, or exercisable or exchangeable for, the Securities or other securities substantially similar to the Securities, or (iii) any preferred securities, unless the Company provides the Holders or their assignees with an opinion of counsel (such counsel to have experience and sophistication in the matters addressed in such opinion) addressed to the Holders or their assignees stating that any such offer, sale or other disposition will not result in the Securities being integrated in a transaction that would require registration under the Securities Act.

(k) Except for filings required to be made with the Securities and Exchange Commission or as otherwise required by applicable law, rules and regulations, the Company will not identify any of the Indemnified Parties (as defined below) in a press release or any other public statement without the prior written consent of such Indemnified Party.

(l) The Holders of the Securities are granted the right under the New Indentures to request the substitution of new notes for all or a portion of the Securities (the "**Replacement Securities**"). The Replacement Securities shall bear terms identical to the Securities with the sole exception of interest payment dates (and corresponding redemption date

and maturity date), which will be specified by the Holders of the Securities. In no event will the interest payment dates (and corresponding redemption date and maturity date) on the Replacement Securities vary by more than sixty (60) calendar days from the original interest payment dates (and corresponding redemption date and maturity date) under the Securities. The Company agrees to cooperate with all reasonable requests of the Holders of the Securities, as applicable in connection with any of the foregoing, provided that no action requested of the Company in connection with such cooperation shall materially increase the obligations or materially decrease the rights of the Company pursuant to such documents.

7. **Payment of Expenses.** In addition to the obligations agreed to by the Company under Section 2(b)(vii) herein, the Company agrees to pay all costs and expenses incident to the performance of the obligations of the Company under this Agreement, whether or not the transactions contemplated herein are consummated or this Agreement is terminated, including all costs and expenses incident to (i) the authorization, issuance, sale and delivery of the Securities and any taxes payable in connection therewith; (ii) the fees and expenses of counsel, accountants and any other experts or advisors retained by the Company; and (iii) the fees and all reasonable expenses of the New Indenture Trustee and any other trustee or paying agent appointed under the Operative Documents, including the fees and disbursements of counsel for such trustees. The Company also agrees to pay up to a maximum of \$100,000 in fees of Taberna's legal counsel, in connection with the Exchange; provided that any legal fees required to be paid by the Company are provided in writing to the Company and itemized with a description of the services rendered. The fees of the New Indenture Trustee shall not exceed the amounts set forth in that certain Fee Agreement dated as of the date hereof between the Company and The Bank of New York Mellon Trust Company, National Association, executed in connection with this Agreement and the New Indentures.

8. **Indemnification.** (a) The Company agrees to indemnify and hold harmless the Holders, Taberna, Taberna Capital Management, LLC, Taberna Securities, LLC, and their respective affiliates (collectively, the "**Indemnified Parties**") each person, if any, who controls any of the Indemnified Parties within the meaning of the Securities Act or the Exchange Act, and the Indemnified Parties' respective directors, officers, employees and agents against any and all losses, claims, damages or liabilities, joint or several, to which the Indemnified Parties may become subject, under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based on (i) any untrue statement or alleged untrue statement of a material fact contained in any information or documents provided by or on behalf of the Company, (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements contained in any information provided by the Company, in light of the circumstances under which they were made, not misleading, or (iii) the breach or alleged breach of any representation, warranty, or agreement of the Company contained herein, or (iv) the execution and delivery by the Company of the Operative Documents and the consummation of the transactions contemplated herein and therein, and agrees to reimburse each such Indemnified Party, as incurred, for any legal or other expenses reasonably incurred by the Indemnified Parties in connection with investigating or defending any such loss, claim, damage, liability or action. This indemnity agreement will be in addition to any liability that the Company may otherwise have.

(b) Promptly after receipt by an Indemnified Party under this Section 8 of notice of the commencement of any action, such Indemnified Party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, promptly notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve the indemnifying party from liability under paragraph (a) above unless and to the extent that such failure results in the forfeiture by the indemnifying party of material rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any obligations to any Indemnified Party other than the indemnification obligation provided in paragraph (a) above. The Indemnified Parties shall be entitled to appoint counsel to represent the Indemnified Parties in any action for which indemnification is sought. An indemnifying party may participate at its own expense in the defense of any such action; *provided*, that counsel to the indemnifying party shall not (except with the consent of the Indemnified Party) also be counsel to the Indemnified Party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. An indemnifying party will not, without the prior written consent of the Indemnified Parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not the Indemnified Parties are actual or potential parties to such claim, action, suit or proceeding) unless such settlement, compromise or consent includes an unconditional release of each Indemnified Party from all liability arising out of such claim, action, suit or proceeding.

9. **Representations and Indemnities to Survive.** The respective agreements, representations, warranties, indemnities and other statements of the Company and its officers set forth in or made pursuant to this Agreement will remain in full force and effect and will survive the Exchange, subject to applicable statute of limitations. The provisions of Sections 7 and 8 shall survive the termination or cancellation of this Agreement.

10. **Amendments.** This Agreement may not be modified, amended, altered or supplemented, except upon the execution and delivery of a written agreement by each of the parties hereto.

11. **Notices.** All communications hereunder will be in writing and effective only on receipt, and will be mailed, delivered by hand or courier or sent by facsimile and confirmed or by any other reasonable means of communication, including by electronic mail, to the relevant party at its address specified in Exhibit C.

12. **Successors and Assigns.** This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person other than the parties hereto and the affiliates, directors, officers, employees, agents and controlling persons referred to in Section 8 hereof and their successors, assigns, heirs and legal representatives, any right or obligation hereunder. None of the rights or obligations of the Company under this Agreement may be assigned, whether by operation of law or otherwise, without Taberna's prior written consent. The rights and obligations of the Holders under this

Agreement may be assigned by the Holders without the Company's consent; provided that the assignee assumes the obligations of any such Holder under this Agreement.

13. **Applicable Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

14. **Submission to Jurisdiction.** ANY LEGAL ACTION OR PROCEEDING BY OR AGAINST ANY PARTY HERETO OR WITH RESPECT TO OR ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT IN OR REMOVED TO THE COURTS OF THE STATE OF NEW YORK, IN AND FOR THE COUNTY OF NEW YORK, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK (IN EACH CASE SITTING IN THE BOROUGH OF MANHATTAN). BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

15. **Counterparts and Facsimile.** This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. This Agreement may be executed by any one or more of the parties hereto by facsimile.

16. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties to this Agreement and supercedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof.

*[Signature Page Follows]*

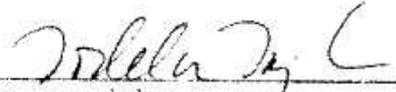
IN WITNESS WHEREOF, this Agreement has been entered into as of the date first written above.

**IMPAC MORTGAGE HOLDINGS, INC.**, a  
Maryland corporation

By: \_\_\_\_\_

Name:

Title:

  
Todd Taylor  
CFO

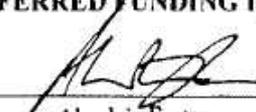
(Signatures continue on the next page)

**Signature Page to Impac Exchange Agreement**

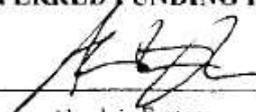
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**TABERNA, AS HOLDER OF THE ORIGINAL PREFERRED SECURITIES AND AS  
HOLDER (AS DEFINED IN THE NEW INDENTURE):**

**TABERNA PREFERRED FUNDING I, LTD.**

By:   
Name: Alasdair Foster  
Title: Director

**TABERNA PREFERRED FUNDING II, LTD.**

By:   
Name: Alasdair Foster  
Title: Director

**EXHIBIT A-1**

Copy of Trust #3 Preferred Securities

## PREFERRED SECURITIES CERTIFICATE

THE PREFERRED SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND SUCH PREFERRED SECURITIES OR ANY INTEREST THEREIN MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF ANY PREFERRED SECURITIES IS HEREBY NOTIFIED THAT THE SELLER OF THE PREFERRED SECURITIES MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A UNDER THE SECURITIES ACT.

THE HOLDER OF THE PREFERRED SECURITIES REPRESENTED BY THIS CERTIFICATE AGREES FOR THE BENEFIT OF THE TRUST AND THE DEPOSITOR THAT (A) SUCH PREFERRED SECURITIES MAY BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED ONLY (I) TO THE TRUST, OR (II) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED PURCHASER" (AS DEFINED IN SECTION 2(a)(51) OF THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED), AND (B) THE HOLDER WILL NOTIFY ANY PURCHASER OF ANY PREFERRED SECURITIES FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

THE PREFERRED SECURITIES WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN BLOCKS HAVING AN AGGREGATE LIQUIDATION AMOUNT OF NOT LESS THAN \$100,000. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY ATTEMPTED TRANSFER OF PREFERRED SECURITIES, OR ANY INTEREST THEREIN, IN A BLOCK HAVING AN AGGREGATE LIQUIDATION AMOUNT OF LESS THAN \$100,000 AND MULTIPLES OF \$1,000 IN EXCESS THEREOF SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH PREFERRED SECURITIES FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PRINCIPAL OF OR INTEREST ON SUCH PREFERRED SECURITIES, OR ANY INTEREST THEREIN, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH PREFERRED SECURITIES.

THE HOLDER OF THIS SECURITY, OR ANY INTEREST THEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF ALSO AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH A "PLAN"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS PREFERRED SECURITY OR ANY INTEREST THEREIN. ANY PURCHASER OR HOLDER OF THE PREFERRED SECURITIES OR ANY INTEREST

THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF SECTION 3(3) OF ERISA, OR A PLAN TO WHICH SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF AN EMPLOYEE BENEFIT PLAN OR PLAN, OR ANY OTHER PERSON OR ENTITY USING THE ASSETS OF ANY EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE.

THIS OBLIGATION IS NOT A DEPOSIT AND IS NOT INSURED BY THE UNITED STATES OR ANY AGENCY OR FUND OF THE UNITED STATES, INCLUDING THE FEDERAL DEPOSIT INSURANCE CORPORATION (THE "FDIC").

**COPY**

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Certificate Number  
P - 2

Aggregate Liquidation Amount  
Preferred Securities  
\$26,250,000

---

Certificate Evidencing Preferred Securities

of

IMPAC CAPITAL TRUST #3

Floating Rate Preferred Securities  
(liquidation amount \$1,000 per Preferred Security)

Impac Capital Trust #3, a statutory trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that HARE & CO\* (the "Holder") is the registered owner of Twenty Six Thousand Two Hundred Fifty (26,250) Preferred Securities of the Trust representing an undivided preferred beneficial interest in the assets of the Trust and designated the Impac Capital Trust #3 Floating Rate Preferred Securities (liquidation amount \$1,000 per Preferred Security) (the "Preferred Securities"). Subject to the terms of the Trust Agreement (as defined below), the Preferred Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon tender of this certificate duly endorsed and in proper form for transfer as provided in Section 5.7 of the Trust Agreement (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities are set forth in, and this certificate and the Preferred Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Trust Agreement of the Trust, dated as of May 20, 2005, as the same may be amended from time to time (the "Trust Agreement"), among Impac Mortgage Holdings, Inc., as Depositor, JPMorgan Chase Bank, National Association, as Property Trustee, Chase Bank USA, National Association, as Delaware Trustee, the Administrative Trustees named therein and the Holders, from time to time, of Trust Securities. The Trust will furnish a copy of the Trust Agreement to the Holder without charge upon written request to the Property Trustee at its Corporate Trust Office.

Upon receipt of this certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereunder.

This Preferred Securities Certificate shall be governed by and construed in accordance with the laws of the State of Delaware.

All capitalized terms used but not defined in this Preferred Securities Certificate are used with the meanings specified in the Trust Agreement, including the Schedules and Exhibits thereto.

IN WITNESS WHEREOF, one of the Administrative Trustees of the Trust has executed on behalf of the Trust this certificate this 20<sup>th</sup> day of May, 2005.

IMPAC CAPITAL TRUST #3

By:   
Name: Richard J. Johnson  
Administrative Trustee

**COPY**

*Certificate evidencing Preferred Securities of  
Impac Capital Trust #3*

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This is one of the Preferred Securities referred to in the within-mentioned Trust Agreement.

Dated: MARCH 19, 2007

THE BANK OF NEW YORK TRUST COMPANY, N.A.  
as Successor Agent  
by: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Name: Maria D. Calzado  
Title: Vice President

**COPY**

*Certificate evidencing Preferred Securities of  
Impac Capital Trust #3*

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[REVERSE OF SECURITY]

The Trust promises to pay Distributions from May 20, 2005, or from the most recent Distribution Date to which Distributions have been paid or duly provided for, quarterly (subject to deferral as set forth herein) in arrears on March 30, June 30, September 30 and December 30 of each year, commencing on June 30, 2005, at a fixed rate equal to 8.01% through the Interest Payment Date in June 2010 and thereafter at a variable rate equal to LIBOR plus 3.75% per annum of the Liquidation Amount of the Preferred Securities represented by this Preferred Securities Certificate, together with any Additional Interest Amounts, in respect to such period.

Distributions on the Trust Securities shall be made by the Paying Agent from the Payment Account and shall be payable on each Distribution Date only to the extent that the Trust has funds then on hand and available in the Payment Account for the payment of such Distributions.

In the event (and to the extent) that the Depositor exercises its right under the Indenture to defer the payment of interest on the Notes, Distributions on the Preferred Securities shall be deferred.

Under the Indenture, so long as no Note Event of Default has occurred and is continuing, the Depositor shall have the right, at any time after March 31, 2006 and from time to time during the term of the Notes, to defer the payment of interest on the Notes for a period of up to four (4) consecutive quarterly interest payment periods (each such extended interest payment period, an "Extension Period"), during which Extension Period interest shall be due and payable (except any Additional Tax Sums that may be due and payable). No interest on the Notes shall be due and payable during an Extension Period, except at the end thereof, but each installment of interest that would otherwise have been due and payable during such Extension Period shall bear Additional Interest (to the extent payment of such interest would be legally enforceable) at a fixed rate equal to 8.01% per annum through the interest payment date in June 2010 and thereafter at a variable rate equal to LIBOR plus 3.75% per annum compounded quarterly, from the dates on which amounts would have otherwise been due and payable until paid or until funds for the payment thereof have been made available for payment. If Distributions are deferred, the deferred Distributions (including Additional Interest Amounts) shall be paid on the date that the related Extension Period terminates to Holders (as defined in the Trust Agreement) of the Trust Securities as they appear on the books and records of the Trust on the record date immediately preceding such termination date.

Distributions on the Securities must be paid on the dates payable (after giving effect to any Extension Period) to the extent that the Trust has funds available for the payment of such Distributions in the Payment Account of the Trust. The Trust's funds available for Distribution to the Holders of the Preferred Securities will be limited to payments received from the Depositor.

During any such Extension Period, the Depositor shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Depositor's capital stock or (ii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any debt securities of the

Depositor that rank *pari passu* in all respects with or junior in interest to the Notes (other than (a) repurchases, redemptions or other acquisitions of shares of capital stock of the Depositor in connection with (1) any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, (2) a dividend reinvestment or stockholder stock purchase plan or (3) the issuance of capital stock of the Depositor (or securities convertible into or exercisable for such capital stock) as consideration in an acquisition transaction entered into prior to the applicable Extension Period, (b) as a result of an exchange or conversion of any class or series of the Depositor's capital stock (or any capital stock of a Subsidiary (as defined in the Indenture) of the Depositor) for any class or series of the Depositor's capital stock or of any class or series of the Depositor's indebtedness for any class or series of the Depositor's capital stock, (c) the purchase of fractional interests in shares of the Depositor's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, (d) any declaration of a dividend in connection with any Rights Plan (as defined in the Indenture), the issuance of rights, stock or other property under any Rights Plan, or the redemption or repurchase of rights pursuant thereto or (e) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks *pari passu* with or junior to such stock).

On each Note Redemption Date, on the stated maturity (or any date of principal repayment upon early maturity) of the Notes and on each other date on (or in respect of) which any principal on the Notes is repaid, the Trust will be required to redeem a Like Amount of Trust Securities at the Redemption Price. Under the Indenture, the Notes may be redeemed by the Depositor on any Interest Payment Date, at the Depositor's option, on or after June 30, 2010 in whole or in part from time to time at the Optional Note Redemption Price of the principal amount thereof or the redeemed portion thereof, as applicable, together, in the case of any such redemption, with accrued interest, including any Additional Interest, to but excluding the date fixed for redemption; *provided*, that the Depositor shall have received the prior approval of any Applicable Insurance Regulatory Authority then required. The Notes may also be redeemed by the Depositor, at its option, at any time, in whole but not in part, upon the occurrence of an Investment Company Event or a Tax Event at the Special Note Redemption Price; *provided*, that the Depositor shall have received the prior approval of any Applicable Insurance Regulatory Authority then required; and *provided, further*, that such Investment Company Event or a Tax Event is continuing on the Redemption Date.

The Trust Securities redeemed on each Redemption Date shall be redeemed at the Redemption Price with the proceeds from the contemporaneous redemption or payment at maturity of Notes. Redemptions of the Trust Securities (or portion thereof) shall be made and the Redemption Price shall be payable on each Redemption Date only to the extent that the Trust has funds then on hand and available in the Payment Account for the payment of such Redemption Price.

Payments of Distributions (including any Additional Interest Amounts), the Redemption Price, Liquidation Amount or any other amounts in respect of the Preferred Securities shall be made by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been

received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register. If any Preferred Securities are held by a Depository, such Distributions shall be made to the Depository in immediately available funds.

The indebtedness evidenced by the Notes is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Debt (as defined in the Indenture), and this Security is issued subject to the provisions of the Indenture with respect thereto.

**COPY**

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**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned assigns and transfers this Preferred Securities Certificate to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

**COPY**

agent to transfer this Preferred Securities Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this Preferred Securities Certificate)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

**IRREVOCABLE STOCK/BOND POWER**

FOR VALUE RECEIVED, the undersigned does (do) hereby sell assign and transfer to:

SOCIAL SECURITY OR TAXPAYER IDENTIFICATION

*If stock complete this portion* { \_\_\_\_\_ shares of the \_\_\_\_\_ stock of \_\_\_\_\_  
represented by Certificate (s) No(s) \_\_\_\_\_ inclusive  
standing in the name of the undersigned on the books of said Company

*If Bonds complete this portion* { \_\_\_\_\_ bonds of \_\_\_\_\_  
in the principal amount of \$ \_\_\_\_\_ No. (s) \_\_\_\_\_ inclusive  
standing in the name of the undersigned on the books of said Company

**COPY**

The undersigned does (do) hereby irrevocably constitute and appoint \_\_\_\_\_  
attorney to transfer the said stock or bond(s), as the case may be, on the  
books of said Company, with full power of substitution in the premises.

Dated: \_\_\_\_\_

**IMPORTANT READ CAREFULLY**

The signature(s) to this Power must correspond with the name(s) as written upon the face of the stock certificate(s) or bond(s), as the case may be in every particular without alteration or enlargement or any change whatever and must be guaranteed by a commercial bank or a trust company having its principal office or correspondent in the City of New York or by a firm having membership in the New York or Midwest Stock Exchange.

HARE & CO

(REGISTERED FINANCIAL BROKERAGE FIRM)

SIGNATURE GUARANTEED

(Member of the New York, Chicago and American Stock Exchanges)

(Member of the New York, Chicago and American Stock Exchanges)

**EXHIBIT A-2**

Copy of Trust #1 Preferred Securities

### PREFERRED SECURITIES CERTIFICATE

THE PREFERRED SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "*SECURITIES ACT*"), AND SUCH PREFERRED SECURITIES OR ANY INTEREST THEREIN MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF ANY PREFERRED SECURITIES IS HEREBY NOTIFIED THAT THE SELLER OF THE PREFERRED SECURITIES MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A UNDER THE SECURITIES ACT.

THE HOLDER OF THE PREFERRED SECURITIES REPRESENTED BY THIS CERTIFICATE AGREES FOR THE BENEFIT OF THE TRUST AND THE DEPOSITOR THAT (A) SUCH PREFERRED SECURITIES MAY BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED ONLY (I) TO THE TRUST, OR (II) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED PURCHASER" (AS DEFINED IN SECTION 2(a)(51) OF THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED), AND (B) THE HOLDER WILL NOTIFY ANY PURCHASER OF ANY PREFERRED SECURITIES FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

THE PREFERRED SECURITIES WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN BLOCKS HAVING AN AGGREGATE LIQUIDATION AMOUNT OF NOT LESS THAN \$100,000. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY ATTEMPTED TRANSFER OF PREFERRED SECURITIES, OR ANY INTEREST THEREIN, IN A BLOCK HAVING AN AGGREGATE LIQUIDATION AMOUNT OF LESS THAN \$100,000 AND MULTIPLES OF \$1,000 IN EXCESS THEREOF SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH PREFERRED SECURITIES FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PRINCIPAL OF OR INTEREST ON SUCH PREFERRED SECURITIES, OR ANY INTEREST THEREIN, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH PREFERRED SECURITIES.

THE HOLDER OF THIS SECURITY, OR ANY INTEREST THEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF ALSO AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH A "PLAN"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS PREFERRED SECURITY OR ANY INTEREST THEREIN. ANY PURCHASER OR HOLDER OF THE PREFERRED SECURITIES OR ANY INTEREST

THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF SECTION 3(3) OF ERISA, OR A PLAN TO WHICH SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF AN EMPLOYEE BENEFIT PLAN OR PLAN, OR ANY OTHER PERSON OR ENTITY USING THE ASSETS OF ANY EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE.

**COPY**

Certificate Number

P- 4

Aggregate Liquidation Amount

Preferred Securities

\$25,000,000

CUSIP NO.

Certificate Evidencing Preferred Securities

of

IMPAC CAPITAL TRUST #1

Floating Rate Preferred Securities  
(liquidation amount \$1,000 per Preferred Security)

Impac Capital Trust #1, a statutory trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that <sup>HARBOR CAPITAL</sup> ~~IMPAC CAPITAL TRUST #1~~ (the "Holder") is the registered owner of Twenty Five Thousand (25,000) Preferred Securities of the Trust representing an undivided preferred beneficial interest in the assets of the Trust and designated the Impac Capital Trust #1 Floating Rate Preferred Securities, (liquidation amount \$1,000 per Preferred Security) (the "Preferred Securities"). Subject to the terms of the Trust Agreement (as defined below), the Preferred Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer as provided in Section 5.7 of the Trust Agreement (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities are set forth in, and this certificate and the Preferred Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Second Amended and Restated Trust Agreement of the Trust, dated as of September 16, 2005, as the same may be amended from time to time (the "Trust Agreement"), among Impac Mortgage Holdings, Inc., as Depositor, JPMorgan Chase Bank, National Association, as Property Trustee, Chase Bank USA, National Association, as Delaware Trustee, the Administrative Trustees named therein and the Holders, from time to time, of the Trust Securities. The Trust will furnish a copy of the Trust Agreement to the Holder without charge upon written request to the Property Trustee at its Corporate Trust Office.

Upon receipt of this certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereunder.

This Preferred Securities Certificate shall be governed by and construed in accordance with the laws of the State of Delaware.

All capitalized terms used but not defined in this Preferred Securities Certificate are used with the meanings specified in the Trust Agreement, including the Schedules and Exhibits thereto.

**COPY**

IN WITNESS WHEREOF, one of the Administrative Trustees of the Trust has executed on behalf of the Trust this certificate this 16<sup>th</sup> day of September 2005.

IMPAC CAPITAL TRUST #1

By:   
Name: Richard J. Johnson  
*Administrative Trustee*

**COPY**



[REVERSE OF SECURITY]

The Trust promises to pay Distributions from April 1, 2005, or from the most recent date on and to which Distributions have been paid or duly provided for, quarterly (subject to deferral as set forth herein) in arrears on January 30, April 30, July 30 and October 30 of each year, at a fixed rate equal to 8.01% per annum through the Distribution Date on April 30, 2010 and thereafter at a variable rate equal to LIBOR plus 3.75% per annum of the Liquidation Amount of the Preferred Securities represented by this Preferred Securities Certificate, together with any Additional Interest Amounts, in respect to such period.

Distributions on the Trust Securities shall be made by the Paying Agent from the Payment Account and shall be payable on each Distribution Date only to the extent that the Trust has funds then on hand and available in the Payment Account for the payment of such Distributions.

In the event (and to the extent) that the Depositor exercises its right under the Indenture to defer the payment of interest on the Notes, Distributions on the Preferred Securities shall be deferred.

Under the Indenture, so long as no Note Event of Default has occurred and is continuing, the Depositor shall have the right, at any time after April 30, 2006 and from time to time during the term of the Notes, to defer the payment of interest on the Notes for a period of up to four (4) consecutive quarterly Interest Payment Periods (each such extended Interest Payment Period, an "Extension Period"), during which Extension Period no interest shall be due and payable (except any Additional Tax Sums that may be due and payable). No interest on the Notes shall be due and payable during an Extension Period, except at the end thereof, but each installment of interest that would otherwise have been due and payable during such Extension Period shall bear Additional Interest (to the extent payment of such interest would be legally enforceable) at a fixed rate equal to 8.01% per annum through the Interest Payment Date in April 2010 and thereafter at a variable rate equal to LIBOR plus 3.75% per annum compounded quarterly, from the dates on which amounts would have otherwise been due and payable until paid or until funds for the payment thereof have been made available for payment. If Distributions are deferred, the deferred Distributions (including Additional Interest Amounts) shall be paid on the date that the related Extension Period terminates to Holders (as defined in the Trust Agreement) of the Trust Securities as they appear on the books and records of the Trust on the record date immediately preceding such termination date.

Distributions on the Securities must be paid on the dates payable (after giving effect to any Extension Period) to the extent that the Trust has funds available for the payment of such Distributions in the Payment Account of the Trust. The Trust's funds available for Distribution to the Holders of the Preferred Securities will be limited to payments received from the Depositor.

During any such Extension Period, the Depositor shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Depositor's capital stock or (ii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any debt securities of the

Depositor that rank *pari passu* in all respects with or junior in interest to the Notes (other than (a) repurchases, redemptions or other acquisitions of shares of capital stock of the Depositor in connection with (1) any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, (2) a dividend reinvestment or stockholder stock purchase plan or (3) the issuance of capital stock of the Depositor (or securities convertible into or exercisable for such capital stock) as consideration in an acquisition transaction entered into prior to the applicable Extension Period, (b) as a result of an exchange or conversion of any class or series of the Depositor's capital stock (or any capital stock of a Subsidiary (as defined in the Indenture) of the Depositor) for any class or series of the Depositor's capital stock or of any class or series of the Depositor's indebtedness for any class or series of the Depositor's capital stock, (c) the purchase of fractional interests in shares of the Depositor's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, (d) any declaration of a dividend in connection with any Rights Plan (as defined in the Indenture), the issuance of rights, stock or other property under any Rights Plan, or the redemption or repurchase of rights pursuant thereto or (e) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks *pari passu* with or junior to such stock).

On each Note Redemption Date, on the stated maturity (or any date of principal repayment upon early maturity) of the Notes and on each other date on (or in respect of) which any principal on the Notes is repaid, the Trust will be required to redeem a Like Amount of Trust Securities at the Redemption Price. Under the Indenture, the notes may be redeemed by the Depositor on any Interest Payment Date, at the Depositor's option, on or after April 30, 2010 in whole or in part from time to time at the Optional Note Redemption Price of the principal amount thereof or the redeemed portion thereof, as applicable, together, in the case of any such redemption, with accrued interest, including any Additional Interest, to but excluding the date fixed for redemption; *provided*, that the Depositor shall have received the prior approval of any Applicable Insurance Regulatory Authority then required. The Notes may also be redeemed by the Depositor, at its option, at any time, in whole but not in part, upon the occurrence of an Investment Company Event or a Tax Event at the Special Note Redemption Price; *provided*, that the Depositor shall have received the prior approval of any Applicable Insurance Regulatory Authority then required; and *provided, further*, that such Investment Company Event or a Tax Event is continuing on the Redemption Date.

The Trust Securities redeemed on each Redemption Date shall be redeemed at the Redemption Price with the proceeds from the contemporaneous redemption or payment at maturity of Notes. Redemptions of the Trust Securities (or portion thereof) shall be made and the Redemption Price shall be payable on each Redemption Date only to the extent that the Trust has funds then on hand and available in the Payment Account for the payment of such Redemption Price.

Payments of Distributions (including any Additional Interest Amounts), the Redemption Price, Liquidation Amount or any other amounts in respect of the Preferred Securities shall be made by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been

received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register. If any Preferred Securities are held by a Depositary, such Distributions shall be made to the Depositary in immediately available funds.

The indebtedness evidenced by the Notes is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Debt (as defined in the Indenture), and this Security is issued subject to the provisions of the Indenture with respect thereto.

**COPY**

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned assigns and transfers this Preferred Securities Certificate to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

**COPY**  
agent to transfer this Preferred Securities Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this Preferred Securities Certificate)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

**IRREVOCABLE STOCK/BOND POWER**

FOR VALUE RECEIVED, the undersigned does (do) hereby sell assign and transfer to

SOCIAL SECURITY OR TAXPAYER IDENTIFICATION

If stock  
complete  
this  
portion

\_\_\_\_\_ shares of the \_\_\_\_\_ stock of \_\_\_\_\_  
represented by Certificate (s) No(s) \_\_\_\_\_ inclusive  
standing in the name of the undersigned on the books of said Company

If Bonds  
complete  
this  
portion

\_\_\_\_\_ bonds of \_\_\_\_\_  
in the principal amount of \$ **COPY** No. (s) \_\_\_\_\_ inclusive  
standing in the name of the undersigned on the books of said Company

The undersigned does (do) hereby irrevocably constitute and appoint \_\_\_\_\_  
attorney to transfer the said stock or bond(s), as the case may be, on the  
books of said Company, with full power of substitution in the premises.

Dated: \_\_\_\_\_

**IMPORTANT READ CAREFULLY**

The signature(s) to this Power must correspond with the name(s) as written upon the face of the stock certificates, or bonds(s), as the case may be in every particular without alteration or enlargement or any change whatever and must be guaranteed by a commercial bank or a trust company having its principal office or correspondent in the City of New York or by a firm having membership in the New York or Midwest Stock Exchange.

HARE & CO

100 WALL STREET, NEW YORK 10038

SIGNATURE GUARANTEED

100 WALL STREET, NEW YORK 10038

100 WALL STREET, NEW YORK 10038

**EXHIBIT B-1**

Copy of Note 1

THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND SUCH SECURITIES, AND ANY INTEREST THEREIN, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF ANY SECURITIES IS HEREBY NOTIFIED THAT THE SELLER OF THE SECURITIES MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A UNDER THE SECURITIES ACT.

THE HOLDER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITIES MAY BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED ONLY (I) TO THE COMPANY OR (II) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED PURCHASER" (AS DEFINED IN SECTION 2(a)(51) OF THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED), AND (B) THE HOLDER WILL NOTIFY ANY PURCHASER OF ANY SECURITIES FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

THE SECURITIES WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN BLOCKS HAVING AN AGGREGATE PRINCIPAL AMOUNT OF NOT LESS THAN \$100,000. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY ATTEMPTED TRANSFER OF SECURITIES, OR ANY INTEREST THEREIN, IN A BLOCK HAVING AN AGGREGATE PRINCIPAL AMOUNT OF LESS THAN \$100,000 AND MULTIPLES OF \$1,000 IN EXCESS THEREOF SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH SECURITIES FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PRINCIPAL OF OR INTEREST ON SUCH SECURITIES, OR ANY INTEREST THEREIN, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH SECURITIES.

THE HOLDER OF THIS SECURITY, OR ANY INTEREST THEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF ALSO AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH A "PLAN"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS SECURITY OR ANY INTEREST THEREIN. ANY PURCHASER OR HOLDER OF

THE SECURITIES OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF SECTION 3(3) OF ERISA, OR A PLAN TO WHICH SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF AN EMPLOYEE BENEFIT PLAN OR PLAN, OR ANY OTHER PERSON OR ENTITY USING THE ASSETS OF ANY EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE."

**COPY**

IMPAC MORTGAGE HOLDINGS, INC.

Junior Subordinated Note due 2034

No. 1

\$30,244,000

Impac Mortgage Holdings, Inc., a corporation organized and existing under the laws of Maryland (hereinafter called the "Company," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to Hare & Co. or registered assigns, the principal sum of Thirty Million Two Hundred Forty-Four Thousand Dollars (\$30,244,000) on March 30, 2034. The Company further promises to pay interest on said principal sum from May 8, 2009, quarterly in arrears on July 30, October 30, January 30 and April 30 of each year, commencing July 30, 2009, or if any such day is not a Business Day, on the next succeeding Business Day (and no interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date until such next succeeding Business Day), except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case, with the same force and effect as if made on the Interest Payment Date, at a fixed rate equal to the applicable Fixed Rate per annum in effect through the Interest Period ending on March 29, 2018 (the "Fixed Rate Period") and thereafter at a variable rate equal to the Floating Rate, until the principal hereof is paid or duly provided for or made available for payment; *provided, further*, that any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at a fixed rate equal to the applicable Fixed Rate during the Fixed Rate Period and thereafter at the applicable Floating Rate (to the extent that the payment of such interest shall be legally enforceable), compounded quarterly, from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand.

During the Fixed Rate Period, the amount of interest shall be computed on the basis of a 360-day year of twelve 30-day months and the amount payable for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any Interest Period will be computed on the basis of a 360 day year and the actual number of days elapsed in the relevant Interest Period. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to

Holders of Securities not less than ten (10) days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

Payment of principal of, premium, if any, and interest on this Security shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of this Security shall be made at the Place of Payment upon surrender of such Securities to the Paying Agent, and payments of interest shall be made, subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register.

**COPY**

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Debt, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his or her behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each Holder hereof, by his or her acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Debt, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

#### [FORM OF REVERSE OF SECURITY]

This Security is one of a duly authorized issue of securities of the Company (the "Securities") issued under the Junior Subordinated Indenture, dated as of May 8, 2009 (the "Indenture"), between the Company and The Bank of New York Mellon Trust Company, National Association, a national banking association, as Trustee (in such capacity, the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Senior Debt and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered.

All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

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The Company may, on any Interest Payment Date, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee) on or after March 30, 2010 and subject to the terms and conditions of Article XI of the Indenture, redeem this Security in whole at any time or in part from time to time at a Redemption Price equal to one hundred percent (100%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date.

In addition, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee), redeem this Security, in whole but not in part, subject to the terms and conditions of Article XI of the Indenture at a Redemption Price equal to one hundred seven and one half percent (107.5%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof shall be issued in the name of the Holder hereof upon the cancellation hereof. If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any Security.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Securities, on behalf of the Holders of all Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium, if any, and interest, including any Additional Interest (to the extent legally enforceable), on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is restricted to transfers to "Qualified Purchasers" (as such term is defined in the Investment Company Act of 1940, as amended), and is registrable in the Securities

Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar and duly executed by, the Holder hereof or such Holder's attorney duly authorized in writing, and thereupon one or more new Securities, of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form without coupons in minimum denominations of \$100,000 and any integral multiple of \$1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities are exchangeable for a like aggregate principal amount of Securities and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

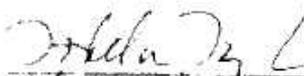
The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Company and, by its acceptance of this Security or a beneficial interest herein, the Holder of, and any Person that acquires a beneficial interest in, this Security agree that, for United States federal, state and local tax purposes, it is intended that this Security constitute indebtedness.

**This Security shall be construed and enforced in accordance with and governed by the laws of the State of New York, without reference to its conflict of laws provisions (other than Section 5-1401 of the General Obligations Law).**

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed  
on this 8 day of May, 2009.

IMPAC MORTGAGE HOLDINGS, INC.

By:   
Name: Todd R. Taylor  
Title: CFO

**COPY**

This is one of the within mentioned Securities referred to in the within mentioned Indenture.

Dated: May 20, 2009

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, NATIONAL  
ASSOCIATION, not in its individual capacity,  
but solely as Trustee

By: 

Authorized signatory

**COPY**

**EXHIBIT B-2**

Copy of Note 2

• 1

THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND SUCH SECURITIES, AND ANY INTEREST THEREIN, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF ANY SECURITIES IS HEREBY NOTIFIED THAT THE SELLER OF THE SECURITIES MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A UNDER THE SECURITIES ACT.

THE HOLDER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITIES MAY BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED ONLY (I) TO THE COMPANY OR (II) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED PURCHASER" (AS DEFINED IN SECTION 2(a)(51) OF THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED), AND (B) THE HOLDER WILL NOTIFY ANY PURCHASER OF ANY SECURITIES FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

THE SECURITIES WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN BLOCKS HAVING AN AGGREGATE PRINCIPAL AMOUNT OF NOT LESS THAN \$100,000. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY ATTEMPTED TRANSFER OF SECURITIES, OR ANY INTEREST THEREIN, IN A BLOCK HAVING AN AGGREGATE PRINCIPAL AMOUNT OF LESS THAN \$100,000 AND MULTIPLES OF \$1,000 IN EXCESS THEREOF SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH SECURITIES FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PRINCIPAL OF OR INTEREST ON SUCH SECURITIES, OR ANY INTEREST THEREIN, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH SECURITIES.

THE HOLDER OF THIS SECURITY, OR ANY INTEREST THEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF ALSO AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH A "PLAN"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS SECURITY OR ANY INTEREST THEREIN. ANY PURCHASER OR HOLDER OF

THE SECURITIES OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF SECTION 3(3) OF ERISA, OR A PLAN TO WHICH SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF AN EMPLOYEE BENEFIT PLAN OR PLAN, OR ANY OTHER PERSON OR ENTITY USING THE ASSETS OF ANY EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE."

**COPY**

**IMPAC MORTGAGE HOLDINGS, INC.**

**Junior Subordinated Note due 2034**

No. 2

\$31,756,000

Impac Mortgage Holdings, Inc., a corporation organized and existing under the laws of Maryland (hereinafter called the "Company," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to Hare & Co. or registered assigns, the principal sum of Thirty-One Million Seven Hundred Fifty-Six Thousand Dollars (\$31,756,000) on March 30, 2034. The Company further promises to pay interest on said principal sum from May 8, 2009, quarterly in arrears on June 30, September 30 and December 30, and March 30 of each year, commencing June 30, 2009, or if any such day is not a Business Day, on the next succeeding Business Day (and no interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date until such next succeeding Business Day), except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case, with the same force and effect as if made on the Interest Payment Date, at a fixed rate equal to the applicable Fixed Rate per annum in effect through the Interest Period ending on March 29, 2018 (the "Fixed Rate Period") and thereafter at a variable rate equal to the Floating Rate, until the principal hereof is paid or duly provided for or made available for payment; *provided further*, that any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at a fixed rate equal to the applicable Fixed Rate during the Fixed Rate Period and thereafter at the applicable Floating Rate (to the extent that the payment of such interest shall be legally enforceable), compounded quarterly, from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand.

During the Fixed Rate Period, the amount of interest shall be computed on the basis of a 360-day year of twelve 30-day months and the amount payable for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any Interest Period will be computed on the basis of a 360 day year and the actual number of days elapsed in the relevant Interest Period. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to

Holders of Securities not less than ten (10) days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

Payment of principal of, premium, if any, and interest on this Security shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of this Security shall be made at the Place of Payment upon surrender of such Securities to the Paying Agent, and payments of interest shall be made, subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Debt, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee, in his or her behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each Holder hereof, by his or her acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Debt, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

**[FORM OF REVERSE OF SECURITY]**

This Security is one of a duly authorized issue of securities of the Company (the "*Securities*") issued under the Junior Subordinated Indenture, dated as of May 8, 2009 (the "*Indenture*"), between the Company and The Bank of New York Mellon Trust Company, National Association, a national banking association, as Trustee (in such capacity, the "*Trustee*," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Senior Debt and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered.

All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

The Company may, on any Interest Payment Date, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee) on or after March 30, 2010 and subject to the terms and conditions of Article XI of the Indenture, redeem this Security in whole at any time or in part from time to time at a Redemption Price equal to one hundred percent (100%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date.

In addition, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee), redeem this Security, in whole but not in part, subject to the terms and conditions of Article XI of the Indenture at a Redemption Price equal to one hundred seven and one half percent (107.5%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof. If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any Security.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Securities, on behalf of the Holders of all Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium, if any, and interest, including any Additional Interest (to the extent legally enforceable), on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is restricted to transfers to "Qualified Purchasers" (as such term is defined in the Investment Company Act of 1940, as amended), and is registrable in the Securities

Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar and duly executed by, the Holder hereof or such Holder's attorney duly authorized in writing, and thereupon one or more new Securities, of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form without coupons in minimum denominations of \$100,000 and any integral multiple of \$1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities are exchangeable for a like aggregate principal amount of Securities and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Company and, by its acceptance of this Security or a beneficial interest herein, the Holder of, and any Person that acquires a beneficial interest in, this Security agree that, for United States federal, state and local tax purposes, it is intended that this Security constitute indebtedness.

**This Security shall be construed and enforced in accordance with and governed by the laws of the State of New York, without reference to its conflict of laws provisions (other than Section 5-1401 of the General Obligations Law).**

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed  
on this 4 day of May, 2009.

IMPAC MORTGAGE HOLDINGS, INC.

By: Todd A. Taylor  
Name: Todd A. Taylor  
Title: CEO

**COPY**

This is one of the within mentioned Securities referred to in the within mentioned Indenture.

Dated: May 8, 2009

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, NATIONAL  
ASSOCIATION**, not in its individual capacity,  
but solely as Trustee

By: 

Authorized signatory

**COPY**

## EXHIBIT C

### Notice Information

#### Taberna:

c/o Taberna Capital Management, LLC  
450 Park Avenue, 11th Floor  
New York, NY 10022  
Attention: Mr. Raphael Licht  
Facsimile: (212) 243-9039  
e-mail: rlicht@raitft.com

#### Impac Mortgage Holdings, Inc.:

19500 Jamboree Road  
Irvine, CA 92612  
Attention: Ronald M. Morrison  
Facsimile: (949) 475-3069  
e-mail: ron.morrison@impacompanies.com

## **SCHEDULE 1**

### **List of Significant Subsidiaries**

Impac Funding Corporation

Impac Funding Corporation owns 100% of the common stock of Impac Secured Assets Corporation, a California corporation, and Impac Commercial Capital Corporation, a California corporation.

Impac Warehouse Lending Group, Inc.

IMH Assets Corp.

## Schedule 2

The Company is seeking a consent and waiver with respect to the actions set forth below, which actions may be deemed defaults under the terms of the Amended and Restated Declaration of Trust of Impac Capital Trust #4 ("Trust #4") dated October 18, 2005 and the Indenture dated as of October 18, 2005 between the Company and Wilmington Trust Company, a Delaware banking corporation, as trustee.

- On December 30, 2008 the Company purchased 8,000 capital securities of Trust #4.
- On January 27, 2009 Impac Capital Trust #2 (Trust #2) purchased 25,000 preferred securities (consisting of all of the outstanding preferred securities of Trust #2) issued pursuant to the Amended and Restated Trust Agreement of Impac Capital Trust #2 dated April 22, 2005 and exchanged such preferred securities and the common securities of Trust #2 for \$25,774,000 in principal balance of debt securities issued pursuant to the Junior Subordinated Indenture dated as of April 22, 2005 between the Company and the trustee, which preferred securities, common securities and debt securities were all canceled.
- The Company made partial payments of interest for the period, which includes interest payment dates within such period, December 30, 2008 and January 30, 2009 on the outstanding debt securities issued pursuant to Indenture #1 and Indenture #3.
- The execution and consummation of this Exchange Agreement and Operative Documents, which includes the acquisition through exchange of the Original Preferred Securities.

**Schedule 3**

**[Fees to Taberna Entities pursuant to Section 3(f)]**

## ANNEX A

Pursuant to Section 3(b) of the Agreement, K&L Gates LLP, counsel for the Company, shall deliver an opinion with respect to each New Indenture to the effect that:

(i) the Company (A) is validly existing as a corporation in good standing under the laws of the State of Maryland; (B) has full power and authority to own or lease its properties and to conduct its business as such business is currently conducted in all material respects; and (C) has power and authority to (x) execute and deliver, and to perform its obligations under, the Operative Documents to which it is a party and (y) issue and perform its obligations under the Securities and the New Indentures;

(ii) reserved;

(iii) each Significant Subsidiary is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation; and each Significant Subsidiary has full power and authority to own or lease its properties and to conduct its business as such business is currently conducted in all material respects;

(iv) none of (a) the issue and sale of the Securities, (b) the Exchange, (c) the execution and delivery of and compliance with the Operative Documents by the Company or the consummation of the transactions contemplated thereby will constitute a breach or violation of the charter or by-laws or similar organizational documents of the Company or any subsidiary of the Company;

(v) the Securities and the New Indentures have been duly authorized, executed and delivered by the Company and, assuming the New Indentures have been duly authorized, executed and delivered by the Trustee, constitute the valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms, except that the enforcement thereof is subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and to general principles of equity and the discretion of the court before which any proceeding to enforce the Operative Documents may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law;

(vi) the Securities have been duly authorized and executed by the Company and delivered to the Trustee for authentication in accordance with the New Indentures and, when authenticated in accordance with the provisions of the New Indentures, will constitute the valid and legally binding obligations of the Company entitled to the benefits of the New Indentures and enforceable against the Company in accordance with their terms, except that the enforcement thereof is subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and to general principles of equity and the discretion of the court before which any proceeding

to enforce the Operative Documents may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law;

(vii) assuming the truth and accuracy of Taberna in this Agreement it is not necessary in connection with the offer, sale and delivery of the Securities to register the same under the Securities Act of 1933, as amended, under the circumstances contemplated in the Agreement, or to require qualification of the New Indentures under the Trust Indenture Act of 1939, as amended;

(viii) the Exchange Agreement has been duly authorized, executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that the enforcement thereof is subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and to general principles of equity and the discretion of the court before which any proceeding to enforce the Operative Documents may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law;

(ix) to our knowledge, neither the Company nor any of its "Affiliates" (as defined in Rule 501(b) of Regulation D under the Securities Act ("Regulation D")) has directly or indirectly, made offers or sales of any security, or solicited offers to buy any security, under circumstances that would require the registration of the Securities being issued pursuant to this transaction under the Securities Act, engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities, or engaged, nor will engage, in any "directed selling efforts" within the meaning of Regulation S under the Securities Act with respect to the Securities;

(x) to our knowledge, neither the Company nor any Significant Subsidiary of the Company is in breach or violation of, or default under, with or without notice or lapse of time or both, its articles of incorporation or charter, by-laws or other governing documents; the execution, delivery and performance of the Operative Documents and the consummation of the transactions contemplated by the Agreement and the Operative Documents do not and will not (A) to the best of our knowledge result in the creation or imposition of any material lien, claim, charge, encumbrance or restriction upon any property or assets of the Company or any Significant Subsidiary, or (B) conflict with, constitute a breach or violation of, or constitute a default under, with or without notice or lapse of time or both, any of the terms, provisions or conditions of (x) the articles of incorporation or charter, by-laws or other governing documents of the Company, of any Significant Subsidiary or affiliate of the Company, or (y) to the best of our knowledge, any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease, franchise, license or any other agreement or instrument to which the Company, or any Significant Subsidiary or affiliate of the Company is a party or by which any of them or any of their respective properties may be bound or (z) any order, decree, judgment, franchise, license, permit, rule or regulation of any court, arbitrator, government, or governmental agency or instrumentality, domestic or foreign, known to

us having jurisdiction over the Company, or any Significant Subsidiary or affiliate of the Company or any of their respective properties which, in the case of each of (A) or (B) above, is material to the Company and its subsidiaries on a consolidated basis;

(xi) except for filings, registrations or qualifications that may be required by applicable securities laws, no authorization, approval, consent or order of, or filing, registration or qualification with, any person (including, without limitation, any court, governmental body or authority) is required in connection with the consummation of the transactions contemplated in the Operative Documents; and

(xii) to our knowledge, (A) no action, suit or proceeding at law or in equity is pending or threatened to which the Company or any Significant Subsidiary or affiliate of the Company is or may be a party, and (B) no action, suit or proceeding is pending or threatened against or affecting the Company or any Significant Subsidiary or affiliate of the Company or any of their properties, before or by any court or governmental official, commission, board or other administrative agency, authority or body, or any arbitrator, wherein an unfavorable decision, ruling or finding could reasonably be expected to have a Material Adverse Effect on the consummation of the transactions contemplated by the Operative Documents or the performance by the Company of its obligations under the Operative Documents, including, but not limited to, the issuance and delivery of the Securities and/or the exchange of the Original Preferred Securities for the Securities as contemplated therein or the condition (financial or otherwise), earnings, affairs, business, or results of operations of the Company and its Significant Subsidiaries on a consolidated basis.

## **ANNEX B**

Pursuant to Section 3(c) of the Agreement, K&L Gates LLP shall deliver an opinion to the effect that for U.S. federal income tax purposes, the Securities will constitute indebtedness of the Company.

In rendering such opinion, such counsel may (A) state that its opinion is limited to the federal laws of the United States and (B) rely as to matters of fact, to the extent deemed proper, on certificates of responsible officers of the Company and public officials.

Pursuant to Section 3(d) of the Agreement, Gardere Wynne Sewell LLP, special counsel for the Trustee, shall deliver an opinion with respect to each New Indenture to the effect that:

(i) The Bank of New York Mellon Trust Company, National Association (the "Bank") is a national banking association with trust powers, duly and validly existing under the laws of the United States of America, with corporate power and authority to execute, deliver and perform its obligations under the New Indenture and to authenticate and deliver the Securities, and is duly eligible and qualified to act as Trustee under the New Indentures pursuant to Section 6.1 thereof.

(ii) The New Indenture have been duly authorized, executed and delivered by the Bank and constitutes the valid and binding obligation of the Bank, enforceable against it in accordance with its terms except (A) as may be limited by bankruptcy, fraudulent conveyance, fraudulent transfer, insolvency, reorganization, liquidation, receivership, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, and by general equitable principles, regardless of whether considered in a proceeding in equity or at law and (B) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

(iii) Neither the execution or delivery by the Bank of the New Indenture, the authentication and delivery of the Securities pursuant to the terms of the New Indenture, nor the performance by the Bank of its obligations under the New Indenture (A) requires the consent or approval of, the giving of notice to or the registration or filing with, any governmental authority or agency under any existing law of the United States of America governing the banking or trust powers of the Bank or (B) violates or conflicts with the Articles of Association or By-laws of the Bank or any law or regulation of the State of New York or the United States of America governing the banking or trust powers of the Bank.

(iv) The Securities have been authenticated and delivered by a duly authorized officer of the Bank.

In rendering such opinion, such counsel may (A) state that its opinion is limited to the laws of the State of New York and the laws of the United States of America, (B) rely as to matters of fact, to the extent deemed proper, on certificates of responsible officers of the Bank, the Company and public officials, and (C) make customary assumptions and exceptions as to enforceability and other matters.

**Officer's Financial Certificate**

The undersigned, the Chief Financial Officer, hereby certifies, pursuant to Section 6(h) of the Exchange Agreement, dated as of May 8, 2009, among the Impac Mortgage Holdings, Inc. (the "Company") and Taberna Preferred Funding I, Ltd. and Taberna Preferred Funding II, Ltd., that, as of [date], [20\_\_], the Company, if applicable, and its subsidiaries had the following ratios and balances:

As of [Quarterly/Annual Financial Date], 20\_\_

Senior secured indebtedness for borrowed money ("Debt")	\$
Senior unsecured Debt	\$
Subordinated Debt	\$
Total Debt	\$
Ratio of (x) senior secured and unsecured Debt to (y) total Debt	_____ %

**[FOR FISCAL YEAR END:** Attached hereto are the audited consolidated financial statements (including the balance sheet, income statement and statement of cash flows, and notes thereto, together with the report of the independent accountants thereon) of the Company and its consolidated subsidiaries for the three years ended [date], 20\_\_ and all required Financial Statements (as defined in the Agreement) for the year ended [date], 20\_\_]

**[FOR FISCAL QUARTER END:** Attached hereto are the unaudited consolidated and consolidating financial statements (including the balance sheet and income statement) of the Company and its consolidated subsidiaries and all required Financial Statements (as defined in the Agreement) for the year ended [date], 20\_\_] for the fiscal quarter ended [date], 20\_\_]

The financial statements fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("GAAP"), the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the date, and for the [\_\_ quarter interim] [annual] period ended [date], 20\_\_, and such financial statements have been prepared in accordance with GAAP consistently applied throughout the period involved (except as otherwise noted therein).

I, the undersigned, the Chief Financial Officer, hereby certifies that I have reviewed the terms of the New Indenture and I have made, or have caused to be made by persons under my supervision, a detailed review of (i) the covenants of the Company set forth therein, and (ii) the transactions and conditions of the Company and its subsidiaries during the accounting period ended as of [\_\_\_\_\_] (the "Accounting Period"), which Accounting Period is covered by the financial statements attached hereto. The examinations described in the preceding sentence did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes a Default or an Event of Default (each as defined in the New Indenture) during or at the end of the Accounting Period or as of the date of this certificate[, except as set forth below:].

[Insert any exceptions by listing, in detail, the nature of the condition or event causing such noncompliance, the period during which such condition or event has existed and the action(s) the Company has taken, is taking, or proposes to take with respect to each such condition or event.]

IN WITNESS WHEREOF, the undersigned has executed this Officer's Financial Certificate as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**IMPAC MORTGAGE HOLDINGS, INC.**

**[company address]**

1

**JUNIOR SUBORDINATED INDENTURE**

between

IMPAC MORTGAGE HOLDINGS, INC.

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION,

as Trustee

Dated as of May 8, 2009

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SCHEDULES

Schedule A	Determination of LIBOR
Exhibit A	Form of Officer's Financial Certificate

JUNIOR SUBORDINATED INDENTURE, dated as of May 8, 2009, between IMPAC MORTGAGE HOLDINGS, INC., a Maryland corporation (the “Company”), and THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, as Trustee (in such capacity, the “Trustee”).

#### RECITALS OF THE COMPANY

WHEREAS, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of one or more unsecured junior subordinated notes (the “Securities”), and to provide the terms and conditions upon which the Securities are to be authenticated, issued and delivered; and

WHEREAS, all things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, this Indenture Witnesseth:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

#### ARTICLE I

##### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

###### SECTION 1.1. *Definitions.*

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article I have the meanings assigned to them in this Article I;

(b) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;

(c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;

(d) unless the context otherwise requires, any reference to an “Article” or a “Section” refers to an Article or a Section, as the case may be, of this Indenture;

(e) the words “hereby”, “herein”, “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(f) a reference to the singular includes the plural and vice versa; and

(g) the masculine, feminine or neuter genders used herein shall include the masculine, feminine and neuter genders.

“*Act*” when used with respect to any Holder, has the meaning specified in Section 1.4.

“*Additional Interest*” means the interest, if any, that shall accrue on any amounts payable on the Securities, the payment of which has not been made on the applicable Interest Payment Date and which shall accrue at the rate per annum specified or determined as specified in such Security, in each case to the extent legally enforceable.

“*Affiliate*” of any specified Person means any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such specified Person.

“*Applicable Depositary Procedures*” means, with respect to any transfer or transaction involving a Global Security or beneficial interest therein, the rules and procedures of the Depositary for such Security, in each case to the extent applicable to such transaction and as in effect from time to time.

“*Authenticating Agent*” means any Person authorized by the Trustee pursuant to Section 6.11 to act on behalf of the Trustee to authenticate the Securities.

“*Board of Directors*” means the board of directors of the Company or any duly authorized committee of that board.

“*Board Resolution*” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.

“*Business Day*” means any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions in the City of New York are authorized or required by law or executive order to remain closed or (iii) a day on which the Corporate Trust Office of the Trustee is closed for business.

“*Calculation Agent*” has the meaning specified in Section 10.4.

“*Commission*” has the meaning specified in Section 7.3.

“*Company*” means the Person named as the “*Company*” in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “*Company*” shall mean such successor Person.

“*Company Request*” and “*Company Order*” mean, respectively, the written request or order signed in the name of the Company by its Chairman of the Board of Directors, its Vice Chairman of the Board of Directors, its Chief Executive Officer, President or a Vice President, and by its Chief Financial Officer, its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

“*Control*” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“*Corporate Trust Office*” means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of this Indenture is located at 601 Travis Street, 16<sup>th</sup> Floor, Houston, Texas 77019 Attn: Global Corporate Trust – Impac Mortgage Holdings, Inc. Initially, all notices and correspondence shall be addressed to Mudassir Mohamed, telephone (713) 483-6029.

“*Debt*” means, with respect to any Person, whether recourse is to all or a portion of the assets of such Person, whether currently existing or hereafter incurred and whether or not contingent and without duplication, (i) every obligation of such Person for money borrowed; (ii) every obligation of such Person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses; (iii) every reimbursement obligation of such Person with respect to letters of credit, bankers’ acceptances or similar facilities issued for the account of such Person; (iv) every obligation of such Person issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or other accrued liabilities arising in the ordinary course of business); (v) every capital lease obligation of such Person; (vi) all indebtedness of such Person, whether incurred on or prior to the date of this Indenture or thereafter incurred, for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity forward contracts, options and swaps and similar arrangements; (vii) every obligation of the type referred to in clauses (i) through (vi) of another Person and all dividends of another Person the payment of which, in either case, such Person has guaranteed or is responsible or liable for, directly or indirectly, as obligor or otherwise; and (viii) any renewals, extensions, refundings, amendments or modifications of any obligation of the type referred to in clauses (i) through (vii).

“*Defaulted Interest*” has the meaning specified in Section 3.1.

“*Depository*” means an organization registered as a clearing agency under the Exchange Act that is designated as Depository by the Company or any successor thereto.

“*Depository Participant*” means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Depository effects book-entry transfers and pledges of securities deposited with the Depository.

“*Dollar*” or “\$” means the currency of the United States of America that, as at the time of payment, is legal tender for the payment of public and private debts.

“*EDGAR*” has the meaning specified in Section 7.3(c).

“*Equity Interests*” means with respect to any Person (a) if such Person is a partnership, the partnership interests (general or limited) in such partnership, (b) if such Person is a limited liability company, the membership interests in such limited liability company and (c) if such

Person is such corporation, the shares or stock interests (both common stock and preferred stock) in a corporation.

“*Event of Default*” has the meaning specified in Section 5.1.

“*Exchange Act*” means the Securities Exchange Act of 1934 or any statute successor thereto, in each case as amended from time to time.

“*Exchange Agreement*” means that certain Exchange Agreement executed simultaneously with this Indenture by and among the Company and the parties named therein

“*Expiration Date*” has the meaning specified in Section 1.4.

“*Fixed Rate Period*” shall mean the period commencing on May 8, 2009 and ending on March 29, 2018.

“*Fixed Rate*” means a fixed rate equal to (a) for the Interest Period ending on June 29, 2009, and for each Interest Period thereafter through and including the Interest Period ending on March 29, 2014, two percent (2.00%) per annum, (b) for the Interest Period commencing on March 30 2014 and for each Interest Period thereafter through and including the Interest Period ending on March 29, 2015, three percent (3.00%) per annum, (c) from the Interest Period commencing on March 30, 2015 and for each Interest Period thereafter through and including the Interest Period ending on March 29, 2016, four percent (4.00%) per annum, (d) from the Interest Period commencing on March 30, 2016 and for each Interest Period thereafter through and including the Interest Period ending on March 29, 2017, five percent (5.00%) per annum, (e) from the Interest Period commencing on March 30, 2017 and for each Interest Period commencing on March 30, 2018 thereafter through and including the Interest Period ending on April 29, 2018, six percent (6.00%) per annum.

“*Floating Rate*” means for each Interest Period from and after March 30, 2018, through and including the Stated Maturity Date, a rate equal to LIBOR for the applicable Interest Period plus three and three quarters of one percent (3.75%) per annum.

“*GAAP*” means United States generally accepted accounting principles, consistently applied, from time to time in effect.

“*Global Security*” means a Security that evidences all or part of the Securities, the ownership and transfers of which shall be made through book entries by a Depository.

“*Government Obligation*” means (a) any security that is (i) a direct obligation of the United States of America of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (b) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any Government Obligation that is specified in clause (a) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any

specific payment of principal of or interest on any Government Obligation that is so specified and held, provided, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

“*Holder*” or “*Holders*” means a Person or collectively all Persons in whose name a Security is registered in the Securities Register.

“*Indenture*” means this instrument as originally executed or as it may from time to time be amended or supplemented by one or more amendments or indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

“*Interest Payment Date*” means July 30, October 30, January 30 and April 30 of each year, commencing on July 30, 2009, during the term of this Indenture.

“*Interest Period*” means the period commencing on, and including, an Interest Payment Date and continuing through and including the day prior to the next succeeding Interest Payment Date.

“*Interest Rate*” means with respect to any Interest Period, either the Fixed Rate or Floating Rate in effect during such Interest Rate.

“*Investment Company Act*” means the Investment Company Act of 1940 or any successor statute thereto, in each case as amended from time to time.

“*Investment Company Event*” means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of the occurrence of a change in law or regulation (including any announced prospective change) or a written change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is more than an insubstantial risk that the Company is or, within ninety (90) days of the date of such opinion will be, considered an “investment company” that is required to be registered under the Investment Company Act, which change or prospective change becomes effective or would become effective, as the case may be, on or after the date of the issuance of the Securities.

“*LIBOR*” has the meaning specified in Schedule A.

“*LIBOR Business Day*” has the meaning specified in Schedule A.

“*LIBOR Determination Date*” has the meaning specified in Schedule A.

“*Maturity*,” when used with respect to any Security, means the date on which the principal of such Security or any installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

“*Notice of Default*” means a written notice of the kind specified in Section 5.1(c).

“*Officers’ Certificate*” means a certificate signed by the Chairman of the Board, a Vice Chairman of the Board, the Chief Executive Officer, the President or a Vice President, and by the Chief Financial Officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company and delivered to the Trustee.

“*Opinion of Counsel*” means a written opinion of counsel, who may be counsel for or an employee of the Company or any Affiliate of the Company.

“*Optional Redemption Price*” has the meaning set forth in Section 11.1.

“*Original Issue Date*” means the date of original issuance of each Security.

“*Other Taxes*” has the meaning set forth in Section 3.11(c).

“*Outstanding*” means, when used in reference to any Securities, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent in trust for the Holders of such Securities; provided, that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities that have been paid or in substitution for or in lieu of which other Securities have been authenticated and delivered pursuant to the provisions of this Indenture, unless proof satisfactory to the Trustee is presented that any such Securities are held by Holders in whose hands such Securities are valid, binding and legal obligations of the Company;

*provided*, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company, if any, or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding unless the Company shall hold all Outstanding Securities, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

“*Paying Agent*” means the Trustee or any Person authorized by the Trustee (other than the Company or any Affiliate of the Company) to pay the principal of or any premium or interest on, or other amounts in respect of, any Securities on behalf of the Company.

“*Person*” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, company, limited liability company, trust, unincorporated association, government or any agency or political subdivision thereof, or any other entity of whatever nature.

“*Place of Payment*” means, with respect to the Securities, the Corporate Trust Office of the Trustee.

“*Predecessor Security*” of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security. For the purposes of this definition, any security authenticated and delivered under Section 3.6 in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

“*Proceeding*” has the meaning specified in Section 12.2 (b).

“*Redemption Date*” means, when used with respect to any Security to be redeemed, the date fixed for such redemption by or pursuant to this Indenture.

“*Redemption Price*” means, when used with respect to any Security to be redeemed, in whole or in part, the Special Redemption Price or the Optional Redemption Price, as applicable, at which such Security or portion thereof is to be redeemed as fixed by or pursuant to this Indenture.

“*Reference Banks*” has the meaning specified in Schedule A.

“*Regular Record Date*” for the interest payable on any Interest Payment Date with respect to the Securities means the date that is fifteen (15) days preceding such Interest Payment Date (whether or not a Business Day).

“*Responsible Officer*” means, when used with respect to the Trustee, the officer in the Global Corporate Trust department of the Trustee having direct responsibility for the administration of this Indenture.

“*Rights Plan*” means a plan of the Company providing for the issuance by the Company to all holders of its Equity Interests of rights entitling the holders thereof to subscribe for or purchase Equity Interests any class or series of Equity Interests in the Company which rights (i) are deemed to be transferred with such Equity Interests and (ii) are also issued in respect of future issuances of such Equity Interests, in each case until the occurrence of a specified event or events.

“*Securities*” or “*Security*” means any debt securities or debt security, as the case may be, authenticated and delivered under this Indenture.

“*Securities Act*” means the Securities Act of 1933 or any successor statute thereto, in each case as amended from time to time.

“*Securities Register*” and “*Securities Registrar*” have the respective meanings specified in Section 3.5.

“*Senior Debt*” means the principal of and any premium and interest on (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company, whether or not such claim for post-petition interest is allowed in such proceeding) all Debt of the Company, whether incurred on or prior to the date of this Indenture or thereafter incurred, unless it is provided in the instrument creating or evidencing the same or pursuant to which the same is outstanding, that such obligations are not superior in right of payment to the Securities issued under this Indenture provided, that Senior Debt shall not be deemed to include any (i) debt or (ii) other debt securities (and guarantees, if any, in respect of such debt securities) issued to any trust (or a trustee of any such trust), partnership or other entity affiliated with the Company that is a financing vehicle of the Company (a “financing entity”) in connection with the issuance by such financing entity of equity securities or other securities, in each case of (i) or (ii) pursuant to an instrument that ranks *pari passu* with or junior in right of payment to this Indenture.

“*Series B Preferred Stock*” has the meaning set forth in Section 10.6(b).

“*Series C Preferred Stock*” has the meaning set forth in Section 10.6(b).

“*Special Event*” means the occurrence of an Investment Company Event or a Tax Event pursuant to Section 3.1.

“*Special Record Date*” for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.1.

“*Special Redemption Price*” has the meaning set forth in Section 11.2.

“*Stated Maturity*” means March 30, 2034.

“*Subordinated Debt*” means any Debt that is subordinated in right of payment and security to the Securities.

“*Subsidiary*” of a Person means (a) any corporation more than fifty percent (50%) of the outstanding voting stock or other voting interest of which shall at the time be owned, directly or indirectly, by such Person and/or by one or more of its Subsidiaries or (b) any partnership, limited liability company, association, joint venture or similar business organization more than 50% of the ownership interests having ordinary voting power of which shall at the time be owned or Controlled, directly or indirectly, by such Person and/or by one or more of its Subsidiaries. For purposes of this definition, “voting stock” means stock that ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency. Unless otherwise expressly provided, all references herein to a “Subsidiary” shall mean a Subsidiary of the Company.

“*Taberna*” means, initially, Taberna Capital Management, LLC, having and address at 450 Park Avenue, New York, New York 10022, Attn: Rafael Licht (or such other address and notice party so designated by Taberna Capital Management, LLC, and, after written notice from

the Holders delivered to the Trustee and the Company by Holders owning a majority in aggregate principal amount of Outstanding Securities, such successor representative of the Holders so designated in such notice; provided, there shall only be one such Holder's representative at any one time).

"*Tax Event*" means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of (a) any amendment to or change (including any announced prospective change) in the laws or any regulations thereunder of the United States or any political subdivision or taxing authority thereof or therein or (b) any judicial decision or any official administrative pronouncement (including any private letter ruling, technical advice memorandum or field service advice) or regulatory procedure, including any notice or announcement of intent to adopt any such pronouncement or procedure (an "*Administrative Action*"), regardless of whether such judicial decision or Administrative Action is issued to or in connection with a proceeding involving the Company and whether or not subject to review or appeal, which amendment, change, judicial decision or Administrative Action is enacted, promulgated or announced, in each case, on or after the date of issuance of the Securities, there is more than an insubstantial risk that interest payable by the Company on the Securities is not, or within ninety (90) days of the date of such opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes.

"*Trustee*" means the Person named as the "*Trustee*" in the first paragraph of this instrument, solely in its capacity as such and not in its individual capacity, until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and, thereafter, "*Trustee*" shall mean or include each Person who is then a Trustee hereunder.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939, as amended and as in effect on the date as of this Indenture.

SECTION 1.2. *Compliance Certificate and Opinions.*

(a) Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officers' Certificate stating that all conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, have been complied with.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificate provided pursuant to Section 10.3) shall include:

(i) a statement by each individual signing such certificate or opinion that such individual has read such covenant or condition and the definitions herein relating thereto;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions of such individual contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether, in the opinion of such individual, such condition or covenant has been complied with.

SECTION 1.3. *Forms of Documents Delivered to Trustee.*

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to matters upon which his or her certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to such matters are erroneous.

(c) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

(d) Whenever, subsequent to the receipt by the Trustee of any Board Resolution, Officers' Certificate, Opinion of Counsel or other document or instrument, a clerical, typographical or other inadvertent or unintentional error or omission shall be discovered therein, a new document or instrument may be substituted therefor in corrected form with the same force and effect as if originally received in the corrected form and, irrespective of the date or dates of the actual execution and/or delivery thereof, such substitute document or instrument shall be deemed to have been executed and/or delivered as of the date or dates required with respect to the document or instrument for which it is substituted. Without limiting the generality of the foregoing, any Securities issued under the authority of such defective document or instrument shall nevertheless be the valid obligations of the Company entitled to the benefits of this Indenture equally and ratably with all other Outstanding Securities.

SECTION 1.4. *Acts of Holders.*

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given to or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent thereof duly appointed in writing; and, except as herein otherwise

expressly provided, such action shall become effective when such instrument or instruments (including any appointment of an agent) is or are delivered to the Trustee, and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.4.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him or her the execution thereof. Where such execution is by a Person acting in other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority. The fact and date of the execution by any Person of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine.

(c) The ownership of the Securities shall be proved by the Securities Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

(f) Except as set forth in paragraph (g) of this Section 1.4, the Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of the Securities. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; provided, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date (as defined in Section 1.4(h)) by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed

action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities in the manner set forth in Section 1.6.

(g) The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration or rescission or annulment thereof referred to in Section 5.2, (iii) any request to institute proceedings referred to in Section 5.7(b) or (iv) any direction referred to in Section 5.12. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; provided, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of the Securities in the manner set forth in Section 1.6.

(h) With respect to any record date set pursuant to paragraph (f) or (g) of this Section 1.4, the party hereto that sets such record date may designate any day as the "Expiration Date" and from time to time may change the Expiration Date to any earlier or later day; provided, that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of the Securities in the manner set forth in Section 1.6, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section 1.4, the party hereto that set such record date shall be deemed to have initially designated the ninetieth (90<sup>th</sup>) day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the one hundred eightieth (180<sup>th</sup>) day after the applicable record date.

*SECTION 1.5. Notices, Etc. to Trustee and Company.*

(a) Any request, demand, authorization, direction, notice, consent, waiver, Act of Holders, or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(i) the Trustee by any Holder, or the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with and received by the Trustee at its Corporate Trust Office, or

(ii) the Company by the Trustee, or any Holder shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, to the Company addressed to it at 19500 Jamboree Road, Irvine, CA 92612 or at any other address previously furnished in writing to the Trustee by the Company.

(b) The Trustee may, but is not required to, rely upon and comply with instructions and directions sent by email or facsimile, (or any other reasonable means of communication) by persons believed by the Trustee in good faith to be authorized to provide such instructions or direction; provided, however, that the Trustee may require such additional evidence, confirmation or certification from any such party or parties as the Trustee, in its reasonable discretion, deems necessary or advisable before acting or refraining from acting upon any such instruction or direction.

(c) The Trustee agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured email, facsimile transmission or other similar unsecured electronic methods; *provided*, however, that any Person providing such instructions or directions shall provide to the Trustee an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If such Person elects to give the Trustee email or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. Each Person providing instructions or directions to the Trustee hereunder agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting, in good faith, on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 1.6. *Notice to Holders; Waiver.*

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first class, postage prepaid, to each Holder affected by such event to the address of such Holder as it appears in the Securities Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. If, by reason of the suspension of or irregularities in regular mail service or for any other reason, it shall be impossible or impracticable to mail notice of any event to Holders when said notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 1.7. *Effect of Headings and Table of Contents.*

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction of this Indenture.

SECTION 1.8. *Successors and Assigns.*

This Indenture shall be binding upon and shall inure to the benefit of any successor to the Company and the Trustee, including any successor by operation of law. Except in connection with a transaction involving the Company that is permitted under Article VIII and pursuant to which the assignee agrees in writing to perform the Company's obligations hereunder, the Company shall not assign its obligations hereunder.

SECTION 1.9. *Separability Clause.*

If any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

SECTION 1.10. *Benefits of Indenture.*

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors and assigns, the holders of Senior Debt and the Holders of the Securities and any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 1.11. *Governing Law.*

**This Indenture and the rights and obligations of each of the Holders, the Company and the Trustee shall be construed and enforced in accordance with and governed by the laws of the State of New York without reference to its conflict of laws provisions (other than Section 5-1401 of the General Obligations Law).**

SECTION 1.12. *Submission to Jurisdiction.*

ANY LEGAL ACTION OR PROCEEDING BY OR AGAINST ANY PARTY HERETO OR WITH RESPECT TO OR ARISING OUT OF THIS INDENTURE MAY BE BROUGHT IN OR REMOVED TO THE COURTS OF THE STATE OF NEW YORK, IN AND FOR THE COUNTY OF NEW YORK, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK (IN EACH CASE SITTING IN THE BOROUGH OF MANHATTAN). BY EXECUTION AND DELIVERY OF THIS INDENTURE, EACH PARTY ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS INDENTURE.

SECTION 1.13. *Non-Business Days.*

If any Interest Payment Date, Redemption Date or Stated Maturity of any Security shall not be a Business Day, then (notwithstanding any other provision of this Indenture or the Securities) payment of interest, premium, if any, or principal or other amounts in respect of such Security shall not be made on such date, but shall be made on the next succeeding Business Day

(and no interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, until such next succeeding Business Day) except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the Interest Payment Date or Redemption Date or at the Stated Maturity.

## ARTICLE II SECURITY FORMS

### SECTION 2.1. *Form of Security.*

Any Security issued hereunder shall be in substantially the following form:

### **IMPAC MORTGAGE HOLDINGS, INC.**

#### **Junior Subordinated Note due 2034**

No. \_\_\_\_\_

\$30,244,000

Impac Mortgage Holdings, Inc., a corporation organized and existing under the laws of Maryland (hereinafter called the "*Company*," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to Hare & Co. or registered assigns, the principal sum of Thirty Million Two Hundred Forty-Four Thousand Dollars (\$30,244,000) on March 30, 2034. [*If the Security is a Global Security, then insert – or such other principal amount represented hereby as may be set forth in the records of the Securities Registrar hereinafter referred to in accordance with the Indenture.*] The Company further promises to pay interest on said principal sum from May 8, 2009, quarterly in arrears on July 30, October 30, January 30 and April 30 of each year, commencing July 30, 2009, or if any such day is not a Business Day, on the next succeeding Business Day (and no interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date until such next succeeding Business Day), except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case, with the same force and effect as if made on the Interest Payment Date, at a fixed rate equal to the applicable Fixed Rate per annum in effect through the Interest Period ending on March 29, 2018 (the "*Fixed Rate Period*") and thereafter at a variable rate equal to the Floating Rate, until the principal hereof is paid or duly provided for or made available for payment; *provided, further*, that any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at a fixed rate equal to the applicable Fixed Rate during the Fixed Rate Period and thereafter at the applicable Floating Rate (to the extent that the payment of such interest shall be legally enforceable), compounded quarterly, from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand.

During the Fixed Rate Period, the amount of interest shall be computed on the basis of a 360-day year of twelve 30-day months and the amount payable for any partial period shall be

computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any Interest Period will be computed on the basis of a 360 day year and the actual number of days elapsed in the relevant Interest Period. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities not less than ten (10) days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

Payment of principal of, premium, if any, and interest on this Security shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of this Security shall be made at the Place of Payment upon surrender of such Securities to the Paying Agent, and payments of interest shall be made, subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Debt, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his or her behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each Holder hereof, by his or her acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Debt, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

**[FORM OF REVERSE OF SECURITY]**

This Security is one of a duly authorized issue of securities of the Company (the "*Securities*") issued under the Junior Subordinated Indenture, dated as of May 8, 2009 (the

"*Indenture*"), between the Company and The Bank of New York Mellon Trust Company, National Association, a national banking association, as Trustee (in such capacity, the "*Trustee*," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Senior Debt and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered.

All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

The Company may, on any Interest Payment Date, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee) on or after March 30, 2010 and subject to the terms and conditions of Article XI of the Indenture, redeem this Security in whole at any time or in part from time to time at a Redemption Price equal to one hundred percent (100%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date.

In addition, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee), redeem this Security, in whole but not in part, subject to the terms and conditions of Article XI of the Indenture at a Redemption Price equal to one hundred seven and one half percent (107.5%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof. If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any Security.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Securities, on behalf of the Holders of all Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in

exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium, if any, and interest, including any Additional Interest (to the extent legally enforceable), on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is restricted to transfers to "Qualified Purchasers" (as such term is defined in the Investment Company Act of 1940, as amended), and is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar and duly executed by, the Holder hereof or such Holder's attorney duly authorized in writing, and thereupon one or more new Securities, of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form without coupons in minimum denominations of \$100,000 and any integral multiple of \$1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities are exchangeable for a like aggregate principal amount of Securities and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Company and, by its acceptance of this Security or a beneficial interest herein, the Holder of, and any Person that acquires a beneficial interest in, this Security agree that, for United States federal, state and local tax purposes, it is intended that this Security constitute indebtedness.

**This Security shall be construed and enforced in accordance with and governed by the laws of the State of New York, without reference to its conflict of laws provisions (other than Section 5-1401 of the General Obligations Law).**

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed on this 8 day of May, 2009.

IMPAC MORTGAGE HOLDINGS, INC.

By: \_\_\_\_\_  
Name:  
Title:

SECTION 2.2. *Restricted Legend.*

(a) Any Security issued hereunder shall bear a legend in substantially the following form:

**“IF THIS SECURITY IS A GLOBAL SECURITY INSERT:** THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (“DTC”) OR A NOMINEE OF DTC. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND SUCH SECURITIES, AND ANY INTEREST THEREIN, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF ANY SECURITIES IS HEREBY NOTIFIED THAT THE SELLER OF THE SECURITIES MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A UNDER THE SECURITIES ACT.

THE HOLDER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITIES MAY BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED ONLY (I) TO THE COMPANY OR (II) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED PURCHASER" (AS DEFINED IN SECTION 2(a)(51) OF THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED), AND (B) THE HOLDER WILL NOTIFY ANY PURCHASER OF ANY SECURITIES FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

THE SECURITIES WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN BLOCKS HAVING AN AGGREGATE PRINCIPAL AMOUNT OF NOT LESS THAN \$100,000. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY ATTEMPTED TRANSFER OF SECURITIES, OR ANY INTEREST THEREIN, IN A BLOCK HAVING AN AGGREGATE PRINCIPAL AMOUNT OF LESS THAN \$100,000 AND MULTIPLES OF \$1,000 IN EXCESS THEREOF SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH SECURITIES FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PRINCIPAL OF OR INTEREST ON SUCH SECURITIES, OR ANY INTEREST THEREIN, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH SECURITIES.

THE HOLDER OF THIS SECURITY, OR ANY INTEREST THEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF ALSO AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH A "PLAN"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS SECURITY OR ANY INTEREST THEREIN. ANY PURCHASER OR HOLDER OF THE SECURITIES OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF SECTION 3(3) OF ERISA, OR A PLAN TO WHICH SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF AN EMPLOYEE BENEFIT PLAN OR PLAN, OR ANY OTHER PERSON OR ENTITY USING THE ASSETS OF ANY EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE."

(b) The above legends shall not be removed from any Security unless there is delivered to the Company satisfactory evidence, which may include an Opinion of Counsel, as may be reasonably required to ensure that any future transfers thereof may be made without restriction under or violation of the provisions of the Securities Act and other applicable law.

Upon provision of such satisfactory evidence, the Company shall execute and deliver to the Trustee, and the Trustee shall deliver, upon receipt of a Company Order directing it to do so, a Security that does not bear the legend.

SECTION 2.3. *Form of Trustee's Certificate of Authentication.*

The Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Securities referred to in the within-mentioned Indenture.

Dated:

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, NATIONAL ASSOCIATION, *not in  
its individual capacity, but solely as Trustee*

By: \_\_\_\_\_  
*Authorized signatory*

SECTION 2.4. *Temporary Securities.*

(a) Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

(b) If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for the definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for that purpose without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of any authorized denominations having the same Original Issue Date and Stated Maturity and having the same terms as such temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

SECTION 2.5. *Definitive Securities.*

The Securities issued on the Original Issue Date shall be in definitive form. The definitive Securities shall be printed, lithographed or engraved, or produced by any combination of these methods, if required by any securities exchange on which the Securities may be listed, on a steel engraved border or steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as

determined by the officers executing such Securities, as evidenced by their execution of such Securities.

### ARTICLE III

#### THE SECURITIES

##### SECTION 3.1. *Payment of Principal and Interest.*

(a) The unpaid principal amount of the Securities shall bear interest at the applicable Fixed Rate through the Interest Payment Date in March, 2018 and thereafter at the applicable Floating Rate until paid or duly provided for, such interest to accrue from May 8, 2009 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, and any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at the Fixed Rate through the Fixed Rate Period, and thereafter at the Floating Rate, compounded quarterly from the dates such amounts are due until they are paid or funds for the payment thereof are made available for payment.

(b) Interest and Additional Interest on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, except that interest and any Additional Interest payable on the Stated Maturity (or any date of principal repayment upon early maturity) of the principal of a Security or on a Redemption Date shall be paid to the Person to whom principal is paid. The initial payment of interest on any Security that is issued between a Regular Record Date and the related Interest Payment Date shall be payable as provided in such Security.

(c) Any interest on any Security that is due and payable, but is not timely paid or duly provided for, on any Interest Payment Date for the Securities (herein called "*Defaulted Interest*") shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in paragraph (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on a special record date for the payment of such Defaulted Interest (a "*Special Record Date*"), which shall be fixed in the following manner. At least thirty (30) days prior to the date of the proposed payment, the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest, which shall be not more than fifteen (15) days and not less than ten (10) days prior to the date of the proposed payment and not less

than ten (10) days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class, postage prepaid, to each Holder of a Security at the address of such Holder as it appears in the Securities Register not less than ten (10) days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered on such Special Record Date; or

(ii) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Securities may be listed, traded or quoted, and, upon such notice as may be required by such exchange or automated quotation system (or by the Trustee if the Securities are not listed), if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such payment shall be deemed practicable by the Trustee.

(d) Payments of interest on the Securities shall include interest accrued to but excluding the respective Interest Payment Dates. During the Fixed Rate Period, the amount of interest payable for any Interest Period for the Securities shall be computed and paid on the basis of a 360-day year of twelve 30-day months and the amount payable for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any Interest Period will be computed on the basis of a 360 day year and the actual number of days elapsed in the relevant Interest Period.

(e) Payment of principal of, or premium, if any, and interest on the Securities shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of such Securities shall be made at the Place of Payment upon surrender of such Securities to the Paying Agent and payments of interest shall be made subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register.

(f) Subject to the foregoing provisions of this Section 3.1, each Security delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Security.

SECTION 3.2. *Denominations.*

The Securities shall be in registered form without coupons and shall be issuable in minimum denominations of \$100,000 and any integral multiple of \$1,000 in excess thereof.

SECTION 3.3. *Execution, Authentication, Delivery and Dating.*

(a) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver the Securities in an aggregate principal amount (including all then Outstanding Securities) not in excess of Thirty Million Two Hundred Forty-Four Thousand Dollars (\$30,244,000) executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and shall be fully protected in relying upon:

(i) a copy of any Board Resolution relating thereto; and

(ii) an Opinion of Counsel stating that: (1) such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute, and the Indenture constitutes, valid and legally binding obligations of the Company, each enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles; (2) the Securities have been duly authorized and executed by the Company and have been delivered to the Trustee for authentication in accordance with this Indenture; (3) the Securities are not required to be registered under the Securities Act; and (4) the Indenture is not required to be qualified under the Trust Indenture Act.

(b) The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its President or one of its Vice Presidents. The signature of any of these officers on the Securities may be manual or facsimile. Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

(c) No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by the manual signature of one of its authorized signatories, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 3.8, for all purposes of this

Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

- (d) Each Security shall be dated the date of its authentication.

*SECTION 3.4. Global Securities.*

(a) Upon the election of the Holder after the Original Issue Date, which election need not be in writing, the Securities owned by such Holder shall be issued in the form of one or more Global Securities registered in the name of the Depositary or its nominee. Each Global Security issued under this Indenture shall be registered in the name of the Depositary designated by the Company for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for registered Securities, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (i) such Depositary advises the Trustee and the Company in writing that such Depositary is no longer willing or able to properly discharge its responsibilities as Depositary with respect to such Global Security, and no qualified successor is appointed by the Company within ninety (90) days of receipt by the Company of such notice, (ii) such Depositary ceases to be a clearing agency registered under the Exchange Act and no successor is appointed by the Company within ninety (90) days after obtaining knowledge of such event, (iii) the Company executes and delivers to the Trustee a Company Order stating that the Company elects to terminate the book-entry system through the Depositary or (iv) an Event of Default shall have occurred and be continuing. Upon the occurrence of any event specified in clause (i), (ii), (iii) or (iv) above, the Trustee shall notify the Depositary and instruct the Depositary to notify all owners of beneficial interests in such Global Security of the occurrence of such event and of the availability of Securities to such owners of beneficial interests requesting the same. The Trustee may conclusively rely, and be protected in relying, upon the written identification of the owners of beneficial interests furnished by the Depositary, and shall not be liable for any delay resulting from a delay by the Depositary. Upon the issuance of such Securities and the registration in the Securities Register of such Securities in the names of the Holders of the beneficial interests therein, the Trustees shall recognize such holders of beneficial interests as Holders.

(c) If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, then either (i) such Global Security shall be so surrendered for exchange or cancellation as provided in this Article III or (ii) the principal amount thereof shall be reduced or increased by an amount equal to (x) the portion thereof to be so exchanged or canceled, or (y) the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Securities Registrar, whereupon the Trustee, in accordance with the Applicable Depositary Procedures, shall instruct the Depositary or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security by the Depositary,

accompanied by registration instructions, the Company shall execute and the Trustee shall authenticate and deliver any Securities issuable in exchange for such Global Security (or any portion thereof) in accordance with the instructions of the Depository. The Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

(d) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depository for such Global Security or a nominee thereof.

(e) The Depository or its nominee, as the registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under this Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Depository Procedures. Accordingly, any such owner's beneficial interest in a Global Security shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depository or its nominee or its Depository Participants. The Securities Registrar and the Trustee shall be entitled to deal with the Depository for all purposes of this Indenture relating to a Global Security (including the payment of principal and interest thereon and the giving of instructions or directions by owners of beneficial interests therein and the giving of notices) as the sole Holder of the Security and shall have no obligations to the owners of beneficial interests therein. Neither the Trustee nor the Securities Registrar shall have any liability in respect of any transfers effected by the Depository.

(f) The rights of owners of beneficial interests in a Global Security shall be exercised only through the Depository and shall be limited to those established by law and agreements between such owners and the Depository and/or its Depository Participants.

(g) No holder of any beneficial interest in any Global Security held on its behalf by a Depository shall have any rights under this Indenture with respect to such Global Security, and such Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. None of the Company, the Trustee nor any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or maintaining, supervising or reviewing any records relating to such beneficial ownership interests. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by a Depository or impair, as between a Depository and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depository (or its nominee) as Holder of any Security.

#### SECTION 3.5. *Registration, Transfer and Exchange Generally.*

(a) The Trustee shall cause to be kept at the Corporate Trust Office a register (the "*Securities Register*") in which the registrar and transfer agent with respect to the Securities (the "*Securities Registrar*"), subject to such reasonable regulations as it may prescribe, shall provide

for the registration of Securities and of transfers and exchanges of Securities. The Trustee shall at all times also be the Securities Registrar. The provisions of Article VI shall apply to the Trustee in its role as Securities Registrar.

(b) Subject to compliance with Section 2.2(b), upon surrender for registration of transfer of any Security at the offices or agencies of the Company designated for that purpose the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations of like tenor and aggregate principal amount.

(c) At the option of the Holder, Securities may be exchanged for other Securities of any authorized denominations, of like tenor and aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

(d) All Securities issued upon any transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such transfer or exchange.

(e) Every Security presented or surrendered for transfer or exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar, duly executed by the Holder thereof or such Holder's attorney duly authorized in writing.

(f) No service charge shall be made to a Holder for any transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities.

(g) Neither the Company nor the Trustee shall be required pursuant to the provisions of this Section 3.5 (g): (i) to issue, register the transfer of or exchange any Security during a period beginning at the opening of business fifteen (15) days before the day of selection for redemption of Securities pursuant to Article XI and ending at the close of business on the day of mailing of the notice of redemption or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except, in the case of any such Security to be redeemed in part, any portion thereof not to be redeemed.

(h) The Company shall designate an office or offices or agency or agencies where Securities may be surrendered for registration or transfer or exchange. The Company initially designates the Corporate Trust Office as its office and agency for such purposes. The Company shall give prompt written notice to the Trustee and to the Holders of any change in the location of any such office or agency.

(i) The Securities may only be transferred to the Company or a "Qualified Purchaser" as such term is defined in Section 2(a)(51) of the Investment Company Act.

(j) Neither the Trustee nor the Securities Registrar shall be responsible for ascertaining whether any transfer hereunder complies with the registration provisions of or any exemptions from the Securities Act, applicable state securities laws or the applicable laws of any other jurisdiction, ERISA, the United States Internal Revenue Code of 1986, as amended, or the Investment Company Act; provided, that if a certificate is specifically required by the express terms of this Section 3.5 to be delivered to the Trustee or the Securities Registrar by a Holder or transferee of a Security, the Trustee and the Securities Registrar shall be under a duty to receive and examine the same to determine whether or not the certificate substantially conforms on its face to the requirements of this Indenture and shall promptly notify the party delivering the same if such certificate does not comply with such terms.

*SECTION 3.6. Mutilated, Destroyed, Lost and Stolen Securities.*

(a) If any mutilated Security is surrendered to the Trustee together with such security or indemnity as may be required by the Trustee to save the Company and the Trustee harmless, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and aggregate principal amount and bearing a number not contemporaneously outstanding.

(b) If there shall be delivered to the Trustee (i) evidence to its satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by it to save each of the Company and the Trustee harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a *bona fide* purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and aggregate principal amount as such destroyed, lost or stolen Security, and bearing a number not contemporaneously outstanding.

(c) If any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

(d) Upon the issuance of any new Security under this Section 3.6, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(e) Every new Security issued pursuant to this Section 3.6 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

(f) The provisions of this Section 3.6 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 3.7. *Persons Deemed Owners.*

The Company, the Trustee and any agent of the Company or the Trustee shall treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any interest on such Security and for all other purposes whatsoever, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 3.8. *Cancellation.*

All Securities surrendered for payment, redemption, transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Securities surrendered directly to the Trustee for any such purpose shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section 3.8, except as expressly permitted by this Indenture. All canceled Securities shall be retained or disposed of by the Trustee in accordance with its customary practices and the Trustee shall deliver to the Company a certificate of such disposition.

SECTION 3.9. *Reserved.*

SECTION 3.10. *Reserved.*

SECTION 3.11. *Agreed Tax Treatment.*

(a) Each Security issued hereunder shall provide that the Company and, by its acceptance or acquisition of a Security or a beneficial interest therein, the Holder of, and any Person that acquires a direct or indirect beneficial interest in, such Security, intend and agree to treat such Security as indebtedness of the Company for United States Federal, state and local tax purposes. The provisions of this Indenture shall be interpreted to further this intention and agreement of the parties.

(b) Any and all payments by or for the account of the Holders, or in respect of the Securities, shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding net income taxes and franchise taxes imposed on (or measured by) net income imposed on any Holder, or any other recipient of any payment to be made by or on account of any obligation of the Company hereunder as a result of a present or former connection between such Person and the jurisdiction imposing such tax levy, impost or withholding or any political subdivision or taxing authority thereof or therein, other than any such connection arising solely from such Holder having executed, delivered or performed its obligations or received a payment under, or enforced, the Securities (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities in respect of payments hereunder or under the Securities being hereinafter referred to as "*Taxes*"). If any Holder shall be required by law to deduct or withhold any Taxes from or in respect of any sum payable hereunder or under any Security, (i) the sum payable by the Company shall be increased as may be necessary so that after the

Company and such Holder, as the case may be, have made all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 3.11) such Holder receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the Company shall make all such deductions or withholdings, and (iii) the Company shall pay the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with applicable law.

(c) In addition, the Company shall pay to the relevant taxing authority in accordance with applicable law, and indemnify and hold the Holders harmless from, any present or future stamp, documentary, excise, property or similar taxes, charges or levies that arise from any payment made hereunder or under the Securities or from the execution, delivery or registration of, performance under, or otherwise with respect to, this Indenture or the Securities (hereinafter referred to as "*Other Taxes*").

(d) The Company shall indemnify each Holder for and hold each Holder harmless against the full amount of Taxes and Other Taxes, and for the full amount of Taxes and Other Taxes of any kind imposed by any jurisdiction on amounts payable under this Section 3.11, imposed on or paid by any such Holder and any liability (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto. This indemnification shall be made within thirty (30) days from the date any such Holder makes written demand therefor.

(e) Within thirty (30) days after the date of any payment of Taxes, the Company shall furnish to any such Holder the original or a certified copy of a receipt evidencing such payment.

#### SECTION 3.12. *CUSIP Numbers.*

The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption and other similar or related materials as a convenience to Holders; *provided*, that any such notice or other materials may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption or other materials and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers.

#### SECTION 3.13 *Shareholders Communications Act*

(a) With respect to securities under and as defined in the Shareholders Communications Act of 1985 (the "SCA") issued in the United States, the SCA requires the Trustee to disclose to the issuers, upon their request, the name, address and securities position of its customers who are (i) the "beneficial owners" (as defined in the SCA) of the issuer's securities, if the beneficial owner does not object to such disclosure, or (ii) acting as a "respondent bank" (as defined in the SCA) with respect to the securities. (Under the SCA, "respondent banks" do not have the option of objecting to such disclosure upon the issuers' request.) The SCA defines a "beneficial owner" as any person who has, or shares, the power to vote a security (pursuant to an agreement or otherwise), or who directs the voting of a security.

The SCA defines a "respondent bank" as any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with a bank, such as Trustee. Under the SCA, each Holder is either the "beneficial owner" or a "respondent bank."

(b) For Purposes of this Indenture, until Trustee receives a contrary written instruction from a Holder, Trustee shall assume that such Holder is the beneficial owner of the Securities.

(c) For purposes of this Indenture, until Trustee receives a contrary instruction from a Holder, Trustee shall release the name, address and securities position to the Issuer, if the Issuer requests such information pursuant to the SCA for the specific purpose of direct communications between such Issuer and such Holder. With respect to securities issued outside of the United States, if applicable, information shall be released to issuers only if required by law or regulation of the particular country in which the securities are located.

#### ARTICLE IV

##### SATISFACTION AND DISCHARGE

###### SECTION 4.1. *Satisfaction and Discharge of Indenture.*

This Indenture shall, upon Company Request, cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for and as otherwise provided in this Section 4.1) and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) either

(i) all Securities theretofore authenticated and delivered (other than (A) Securities that have been mutilated, destroyed, lost or stolen and that have been replaced or paid as provided in Section 3.6 and (B) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided in Section 10.2) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee for cancellation

- (A) have become due and payable, or
- (B) will become due and payable at their Stated Maturity within one year of the date of deposit, or
- (C) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of subclause (ii)(A), (B) or (C) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose (x) an amount in the currency or currencies in which the Securities are payable, (y) Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount or (z) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest (including any Additional Interest) to the date of such deposit (in the case of Securities that have become due and payable) or to the Stated Maturity (or any date of principal repayment upon early maturity) or Redemption Date, as the case may be;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.6, the obligations of the Company to any Authenticating Agent under Section 6.11 and, if money shall have been deposited with the Trustee pursuant to subclause (a)(ii) of this Section 4.1, the obligations of the Trustee under Section 4.2 and Section 10.2(e) shall survive.

#### SECTION 4.2. *Application of Trust Money.*

Subject to the provisions of Section 10.2(d), all money deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by the Trustee, in accordance with the provisions of the Securities and this Indenture, to the payment in accordance with Section 3.1, either directly or through any Paying Agent as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest (including any Additional Interest) for the payment of which such money or obligations have been deposited with or received by the Trustee. Moneys held by the Trustee under this Section 4.2 shall not be subject to the claims of holders of Senior Debt under Article XII.

## ARTICLE V

### REMEDIES

#### SECTION 5.1. *Events of Default.*

“*Event of Default*” means, wherever used herein with respect to the Securities, any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any interest upon any Security, including any Additional Interest in respect thereof, when it becomes due and payable, and continuance of such default for a period of thirty (30) days;

(b) default in the payment of the principal of or any premium on any Security at its Maturity;

(c) except as otherwise set forth in this Section 5.1, default in the performance, or breach, of any representation, covenant or warranty of the Company in this Indenture or the Exchange Agreement and continuance of such default or breach for a period of thirty (30) days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least twenty five percent (25%) in aggregate principal amount of the Outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder;

(d) the entry by a court having jurisdiction in the premises of a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of sixty (60) consecutive days;

(e) the institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by the Company to the institution of bankruptcy or insolvency proceedings against it, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt or insolvent, or the taking of corporate action by the Company in furtherance of any such action;

(f) default in the performance or breach of any covenant or warranty of the Company set forth in Sections 10.5 and 10.6 and continuance of such default or breach for a period of fifteen (15) days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least twenty five percent (25%) in aggregate principal amount of the Outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(g) default under that certain Junior Subordinated Indenture ("*Indenture II*") and other agreements related thereto, dated concurrently herewith, by and among the Company and the Trustee, whereby the Company has agreed to issue a Junior Subordinated Note due 2034 in the original principal amount of Thirty-One Million Seven Hundred Fifty-Six Thousand Dollars (\$31,756,000) under the terms and conditions set forth in Indenture II.

*SECTION 5.2. Acceleration of Maturity; Rescission and Annulment.*

(a) If an Event of Default occurs and is continuing, then and in every such case the Trustee or the Holders of not less than twenty five percent (25%) in aggregate principal amount of the Outstanding Securities may declare the principal amount of all the Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration the principal amount of and the accrued interest (including any Additional Interest) on all the Securities shall become immediately due and payable.

(b) At any time after such a declaration of acceleration with respect to Securities has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in this Article V, the Holders of a majority in aggregate principal amount of the Outstanding Securities, by written notice to the Trustee, may rescind and annul such declaration and its consequences if:

(i) the Company has paid or deposited with the Trustee a sum sufficient to pay:

(A) all overdue installments of interest on all Securities,

(B) any accrued Additional Interest on all Securities,

(C) the principal of and any premium on any Securities that have become due otherwise than by such declaration of acceleration and interest (including any Additional Interest) thereon at the rate borne by the Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(ii) all Events of Default with respect to Securities, other than the non-payment of the principal of Securities that has become due solely by such acceleration, have been cured or waived as provided in Section 5.13;

No such rescission shall affect any subsequent default or impair any right consequent thereon.

*SECTION 5.3. Collection of Indebtedness and Suits for Enforcement by Trustee.*

(a) The Company covenants that if:

(i) default is made in the payment of any installment of interest (including any Additional Interest) on any Security when such interest becomes due and payable and such default continues for a period of thirty (30) days, or

(ii) default is made in the payment of the principal of and any premium on any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium and interest (including any Additional Interest) and, in addition thereto, all amounts owing the Trustee under Section 6.6.

(b) If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

(c) If an Event of Default with respect to Securities occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

*SECTION 5.4. Trustee May File Proofs of Claim.*

In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or similar judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized hereunder in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to first pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6.

*SECTION 5.5.Trustee May Enforce Claim Without Possession of Securities.*

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, subject to Article XII and after provision for the payment of all the amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

*SECTION 5.6.Application of Money Collected.*

Any money or property collected or to be applied by the Trustee with respect to the Securities pursuant to this Article V shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money or property on account of principal or any premium or interest (including any Additional Interest), upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee, any predecessor Trustee and other Persons under Section 6.6;

SECOND: To the payment of all Senior Debt of the Company if and to the extent required by Article XII;

THIRD: Subject to Article XII, to the payment of the amounts then due and unpaid upon the Securities for principal and any premium and interest (including any Additional Interest) in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and any premium and interest (including any Additional Interest), respectively; and

FOURTH: The balance, if any, to the Person or Persons entitled thereto.

*SECTION 5.7.Limitation on Suits.*

Subject to Section 5.8, no Holder of any Securities shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a custodian, receiver, assignee, trustee, liquidator, sequestrator (or other similar official) or for any other remedy hereunder, unless:

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities;

(b) the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding for sixty (60) days; and

(e) no direction inconsistent with such written request has been given to the Trustee during such sixty (60)-day period by the Holders of a majority in aggregate principal amount of the Outstanding Securities;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Securities, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

*SECTION 5.8. Unconditional Right of Holders to Receive Principal, Premium, if any, and Interest.*

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium on such Security at its Maturity and payment of interest (including any Additional Interest) on such Security when due and payable and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

*SECTION 5.9. Restoration of Rights and Remedies.*

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or such Holder then and in every such case the Company, the Trustee and such Holders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and such Holder shall continue as though no such proceeding had been instituted.

*SECTION 5.10. Rights and Remedies Cumulative.*

Except as otherwise provided in Section 3.6(f), no right or remedy herein conferred upon or reserved to the Trustee or the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

*SECTION 5.11. Delay or Omission Not Waiver.*

No delay or omission of the Trustee or any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or

constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article V or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or the Holders as the case may be.

SECTION 5.12. *Control by Holders.*

The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; *provided*, that:

- (a) such direction shall not be in conflict with any rule of law or with this Indenture,
- (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction, and
- (c) subject to the provisions of Section 6.2, the Trustee shall have the right to decline to follow such direction if a Responsible Officer or Officers of the Trustee shall, in good faith, reasonably determine that the proceeding so directed would be unjustly prejudicial to the Holders not joining in any such direction or would involve the Trustee in personal liability.

SECTION 5.13. *Waiver of Past Defaults.*

(a) The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities may waive any past Event of Default hereunder and its consequences except an Event of Default:

- (i) in the payment of the principal of or any premium or interest (including any Additional Interest) on any Outstanding Security (unless such Event of Default has been cured and the Company has paid to or deposited with the Trustee a sum sufficient to pay all installments of interest (including any Additional Interest) due and past due and all principal of and any premium on all Securities due otherwise than by acceleration), or
  - (ii) in respect of a covenant or provision hereof that under Article IX cannot be modified or amended without the consent of each Holder of any Outstanding Security.
- (b) Any such waiver shall be deemed to be on behalf of the Holders of all the Outstanding Securities.
- (c) Upon any such waiver, such Event of Default shall cease to exist and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

SECTION 5.14. *Undertaking for Costs.*

All parties to this Indenture agree, and each Holder of any Security by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.14 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than ten percent (10%) in aggregate principal amount of the Outstanding Securities, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or any premium on the Security after the Stated Maturity or any interest (including any Additional Interest) on any Security after it is due and payable.

SECTION 5.15. *Waiver of Usury, Stay or Extension Laws.*

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

## ARTICLE VI

### THE TRUSTEE

SECTION 6.1. *Corporate Trustee Required.*

There shall at all times be a Trustee hereunder with respect to the Securities. The Trustee shall be a corporation or national banking association organized and doing business under the laws of the United States or of any state thereof, authorized to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal or state authority and having an office within the United States. If such entity publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then, for the purposes of this Section 6.1, the combined capital and surplus of such entity shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.1, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VI.

SECTION 6.2. *Certain Duties and Responsibilities.*

Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; *provided*, that in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they substantially conform on their face to the requirements of this Indenture.

(b) If an Event of Default known to the Trustee has occurred and is continuing, the Trustee shall, prior to the receipt of directions, if any, from the Holders of at least a majority in aggregate principal amount of the Outstanding Securities, exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.2. To the extent that, at law or in equity, the Trustee has duties and liabilities relating to the Holders, the Trustee shall not be liable to any Holder for the Trustee's good faith reliance on the provisions of this Indenture. The provisions of this Indenture, to the extent that they restrict the duties and liabilities of the Trustee otherwise existing at law or in equity, are agreed by the Company and the Holders to replace such other duties and liabilities of the Trustee.

(d) No provisions of this Indenture shall be construed to relieve the Trustee from liability with respect to matters that are within the authority of the Trustee under this Indenture for its own negligent action, negligent failure to act or willful misconduct, except that:

(i) the Trustee shall not be liable for any error or judgment made in good faith by an authorized officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of at least a majority in aggregate principal amount of the Outstanding Securities; and

(iii) the Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company and money held

by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law.

*SECTION 6.3. Notice of Defaults.*

Within ninety (90) days after the occurrence of any default actually known to the Trustee, the Trustee shall give the Holders notice of such default unless such default shall have been cured or waived; *provided*, that except in the case of a default in the payment of the principal of or any premium or interest on any Securities, the Trustee shall be fully protected in withholding the notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that withholding the notice is in the interest of holders of Securities; and *provided, further*, that in the case of any default of the character specified in Section 5.1(c), no such notice to Holders shall be given until at least thirty (30) days after the occurrence thereof. For the purpose of this Section 6.3, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

*SECTION 6.4. Certain Rights of Trustee.*

Subject to the provisions of Section 6.2:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting in good faith and in accordance with the terms hereof upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) if (i) in performing its duties under this Indenture the Trustee is required to decide between alternative courses of action, (ii) in construing any of the provisions of this Indenture the Trustee finds ambiguous or inconsistent with any other provisions contained herein or (iii) the Trustee is unsure of the application of any provision of this Indenture, then, except as to any matter as to which the Holders are entitled to decide under the terms of this Indenture, the Trustee shall deliver a notice to the Company requesting the Company's written instruction as to the course of action to be taken and the Trustee shall take such action, or refrain from taking such action, as the Trustee shall be instructed in writing to take, or to refrain from taking, by the Company; *provided*, that if the Trustee does not receive such instructions from the Company within ten (10) Business Days after it has delivered such notice or such reasonably shorter period of time set forth in such notice the Trustee may, but shall be under no duty to, take such action, or refrain from taking such action, as the Trustee shall deem advisable and in the best interests of the Holders, in which event the Trustee shall have no liability except for its own negligence, bad faith or willful misconduct;

(c) any request or direction of the Company shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(d) the Trustee may consult with counsel (which counsel may be counsel to the Trustee, the Company or any of its Affiliates, and may include any of its employees) and the

advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction, including reasonable advances as may be requested by the Trustee;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, indenture, note or other paper or document, but the Trustee in its discretion may make such inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent, attorney, custodian or nominee appointed with due care by it hereunder;

(h) whenever in the administration of this Indenture the Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action with respect to enforcing any remedy or right hereunder, the Trustee (i) may request instructions from the Holders (which instructions may only be given by the Holders of the same aggregate principal amount of Outstanding Securities as would be entitled to direct the Trustee under this Indenture in respect of such remedy, right or action), (ii) may refrain from enforcing such remedy or right or taking such action until such instructions are received and (iii) shall be protected in acting in accordance with such instructions;

(i) except as otherwise expressly provided by this Indenture, the Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Indenture;

(j) without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with any bankruptcy, insolvency or other proceeding referred to in clauses (d) or (e) of the definition of Event of Default, such expenses (including legal fees and expenses of its agents and counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy laws or law relating to creditors rights generally;

(k) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the

absence of bad faith on its part, conclusively rely upon an Officers' Certificate addressing such matter, which, upon receipt of such request, shall be promptly delivered by the Company;

(l) the Trustee shall not be charged with knowledge of any Event of Default unless either (i) a Responsible Officer of the Trustee shall have actual knowledge or (ii) the Trustee shall have received written notice thereof from the Company or a Holder; and

(m) in the event that the Trustee is also acting as Paying Agent, Authenticating Agent or Securities Registrar hereunder, the rights and protections afforded to the Trustee pursuant to this Article VI shall also be afforded such Paying Agent, Authenticating Agent, or Securities Registrar.

*SECTION 6.5. May Hold Securities.*

The Trustee, any Authenticating Agent, any Paying Agent, any Securities Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Securities Registrar or such other agent.

*SECTION 6.6. Compensation; Reimbursement; Indemnity*

(a) The Company agrees:

(i) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder in such amounts as the Company and the Trustee shall agree from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, bad faith or willful misconduct; and

(iii) to the fullest extent permitted by applicable law, to indemnify the Trustee and its Affiliates, and their officers, directors, shareholders, agents, representatives and employees for, and to hold them harmless against, any loss, damage, liability, tax (other than income, franchise or other taxes imposed on amounts paid pursuant to (i) or (ii) hereof), penalty, expense or claim of any kind or nature whatsoever incurred without negligence, bad faith or willful misconduct on its part arising out of or in connection with the acceptance or administration of this trust or the performance of the Trustee's duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

(b) To secure the Company's payment obligations in this Section 6.6, the Company hereby grants and pledges to the Trustee and the Trustee shall have a lien prior to the Securities

on all money or property held or collected by the Trustee, other than money or property held in trust to pay principal and interest on particular Securities. Such lien shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee.

(c) The obligations of the Company under this Section 6.6 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal of the Trustee.

(d) In no event shall the Trustee be liable for any indirect, special, punitive or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(e) In no event shall the Trustee be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Indenture.

*SECTION 6.7. Resignation and Removal; Appointment of Successor.*

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article VI shall become effective until the acceptance of appointment by the successor Trustee under Section 6.8.

(b) The Trustee may resign at any time by giving written notice thereof to the Company.

(c) The Trustee may be removed by the Act of the Holders of at least a majority in aggregate principal amount of the Outstanding Securities, delivered to the Trustee and the Company.

(d) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any reason, the Holders of the Outstanding Securities shall promptly appoint a successor Trustee, and such successor Trustee and the retiring Trustee shall comply with the applicable requirements of Section 6.8. If no successor Trustee shall have been so appointed by the Holders and accepted appointment within sixty (60) days after the giving of a notice of resignation by the Trustee or the removal of the Trustee in the manner required by Section 6.8, any Holder who has been a bona fide Holder of a Security for at least six months (or, if the Securities have been Outstanding for less than six (6) months, the entire period of such lesser time) may, on behalf of such Holder and all others similarly situated, and any resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee.

*SECTION 6.8. Acceptance of Appointment by Successor.*

(a) In case of the appointment hereunder of a successor Trustee, each successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of

the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all rights, powers and trusts referred to in paragraph (a) of this Section 6.8.

(c) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article VI.

*SECTION 6.9. Merger, Conversion, Consolidation or Succession to Business.*

Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided*, that such Person shall be otherwise qualified and eligible under this Article VI. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation or as otherwise provided above in this Section 6.9 to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated, and in case any Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor Trustee or in the name of such successor Trustee, and in all cases the certificate of authentication shall have the full force which it is provided anywhere in the Securities or in this Indenture that the certificate of the Trustee shall have.

*SECTION 6.10. Not Responsible for Recitals or Issuance of Securities.*

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Securities or the proceeds thereof.

SECTION 6.11. *Appointment of Authenticating Agent.*

(a) The Trustee may appoint an Authenticating Agent or Agents with respect to the Securities, which shall be authorized to act on behalf of the Trustee to authenticate Securities issued upon original issue and upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.6, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, or of any State or Territory thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or state authority. If such Authenticating Agent publishes reports of condition at least annually pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 6.11 the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.11, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 6.11.

(b) Any Person into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of an Authenticating Agent shall be the successor Authenticating Agent hereunder, provided such Person shall be otherwise eligible under this Section 6.11, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

(c) An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.11, the Trustee may appoint a successor Authenticating Agent eligible under the provisions of this Section 6.11, which shall be acceptable to the Company, and shall give notice of such appointment to all Holders. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent.

(d) The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.11 in such amounts as the Company and the Authenticating Agent shall agree from time to time.

(e) If an appointment of an Authenticating Agent is made pursuant to this Section 6.11, the Securities may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

This is one of the Securities referred to in the within mentioned Indenture.

Dated:

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, NATIONAL ASSOCIATION, not in  
its individual capacity, but solely as Trustee

By: \_\_\_\_\_  
Authenticating Agent

By: \_\_\_\_\_  
Authorized Signatory

## ARTICLE VII

### HOLDER'S LISTS AND REPORTS BY COMPANY

#### SECTION 7.1. *Company to Furnish Trustee Names and Addresses of Holders.*

The Company will furnish or cause to be furnished to the Trustee:

(a) Upon any change in Holder, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a date not more than fifteen (15) days prior to the delivery thereof, and

(b) at such other times as the Trustee may request in writing, within thirty (30) days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than fifteen (15) days prior to the time such list is furnished.

in each case to the extent such information is in the possession or control of the Company and has not otherwise been received by the Trustee in its capacity as Securities Registrar.

#### SECTION 7.2. *Preservation of Information, Communications to Holders.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Securities Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, shall be as provided in the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of information as to the names and addresses of the Holders made pursuant to the Trust Indenture Act.

*SECTION 7.3. Reports by Company.*

(a) The Company shall furnish to the Holders and to prospective purchasers of Securities, upon their request, the information required to be furnished pursuant to Rule 144A(d)(4) under the Securities Act. The delivery requirement set forth in the preceding sentence may be satisfied by compliance with Section 7.3(b) hereof.

(b) The Company shall furnish to each of (i) the Trustee, (ii) the Holders and to subsequent holders of Securities, (iii) Taberna Capital Management, LLC, 450 Park Avenue, New York, New York 10022, Attn: Raphael Licht (or such other address as designated by Taberna Capital Management, LLC) and (iv) any beneficial owner of the Securities reasonably identified to the Company (which identification may be made either by such beneficial owner or by Taberna Capital Management, LLC), a duly completed and executed certificate substantially and substantively in the form attached hereto as Exhibit A, including the financial statements referenced in such Exhibit, which certificate and financial statements shall be so furnished by the Company not later than forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company and not later than ninety (90) days after the end of each fiscal year of the Company.

(c) If the Company intends to file its annual and quarterly information with the Securities and Exchange Commission (the "*Commission*") in electronic form pursuant to Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval ("*EDGAR*") system, the Company shall notify the Trustee in the manner prescribed herein of each such annual and quarterly filing. The Trustee is hereby authorized and directed to access the EDGAR system for purposes of retrieving the financial information so filed. Compliance with the foregoing shall constitute delivery by the Company of its financial statements to the Trustee in compliance with the provisions of Section 314(a) of the Trust Indenture Act, if applicable. The Trustee shall have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of reports, information and documents to the Trustee pursuant to this Section 7.3(c) shall be solely for purposes of compliance with this Section 7.3(c) and, if applicable, with Section 314(a) of the Trust Indenture Act. The Trustee's receipt of such reports, information and documents shall not constitute notice to it of the content thereof or any matter determinable from the content thereof, including the Company's compliance with any of its covenants hereunder, as to which the Trustee is entitled to rely upon Officers' Certificates.

## ARTICLE VIII

### CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

#### SECTION 8.1. *Company May Consolidate, Etc., Only on Certain Terms.*

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and no Person shall consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(a) if the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the entity formed by such consolidation or into which the Company is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of the Company substantially as an entirety shall be an entity organized and existing under the laws of the United States of America or any State or Territory thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest (including any Additional Interest) on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event of Default, and no event that, after notice or lapse of time, or both, would constitute an Event of Default, shall have happened and be continuing; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, any such supplemental indenture comply with this Article VIII and that all conditions precedent herein provided for relating to such transaction have been complied with; and the Trustee may rely upon such Officers' Certificate and Opinion of Counsel as conclusive evidence that such transaction complies with this Section 8.1.

#### SECTION 8.2. *Successor Company Substituted.*

(a) Upon any consolidation or merger by the Company with or into any other Person, or any conveyance, transfer or lease by the Company of its properties and assets substantially as an entirety to any Person in accordance with Section 8.1 and the execution and delivery to the Trustee of the supplemental indenture described in Section 8.1(a), the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and in the event of any such conveyance or transfer, following the execution and delivery of such supplemental indenture, the Company shall be discharged from all obligations and covenants under the Indenture and the Securities.

(b) Such successor Person may cause to be executed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities that such successor Person thereafter shall cause to be executed and delivered to the Trustee on its behalf. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture.

(c) In case of any such consolidation, merger, sale, conveyance or lease, such changes in phraseology and form may be made in the Securities thereafter to be issued as may be appropriate to reflect such occurrence.

## ARTICLE IX

### SUPPLEMENTAL INDENTURES

#### SECTION 9.1. *Supplemental Indentures without Consent of Holders.*

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form reasonably satisfactory to the Trustee, for any of the following purposes:

- (a) Intentionally omitted;
- (b) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make or amend any other provisions with respect to matters or questions arising under this Indenture, which shall not be inconsistent with the other provisions of this Indenture, *provided*, that such action pursuant to this clause (b) shall not adversely affect in any material respect the interests of any Holders; or
- (c) to comply with the rules and regulations of any securities exchange or automated quotation system on which any of the Securities may be listed, traded or quoted; or
- (d) to add to the covenants, restrictions or obligations of the Company or to add to the Events of Default, *provided*, that such action pursuant to this clause (c) shall not adversely affect in any material respect the interests of any Holders; or
- (e) to modify, eliminate or add to any provisions of the Indenture or the Securities to such extent as shall be necessary to ensure that the Securities are treated as indebtedness of the Company for United States Federal income tax purposes, *provided*, that such action pursuant to this clause (e) shall not adversely affect in any material respect the interests of any Holders.



SECTION 9.2. *Supplemental Indentures with Consent of Holders.*

(a) With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities under this Indenture; *provided*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security,

(i) change the Stated Maturity of the principal or any premium of any Security or change the date of payment of any installment of interest (including any Additional Interest) on any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof or change the place of payment where, or the coin or currency in which, any Security or interest thereon is payable, or restrict or impair the right to institute suit for the enforcement of any such payment on or after such date, or

(ii) reduce the percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with any provision of this Indenture or of defaults hereunder and their consequences provided for in this Indenture, or

(iii) modify any of the provisions of this Section 9.2, Section 5.13 or Section 10.7, except to increase any percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any reason, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security.

(b) It shall not be necessary for any Act of Holders under this Section 9.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 9.3. *Execution of Supplemental Indentures.*

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article IX or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in conclusively relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent herein provided for relating to such action have been complied with. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, indemnities or immunities under this Indenture or otherwise. Copies of the final form of each supplemental indenture shall be delivered by the Trustee at the expense of the Company to each Holder, promptly after the execution thereof.

SECTION 9.4. *Effect of Supplemental Indentures.*

Upon the execution of any supplemental indenture under this Article IX, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

SECTION 9.5. *Reference in Securities to Supplemental Indentures.*

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article IX may, and shall if required by the Company, bear a notation in form approved by the Company as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

**ARTICLE X**

**COVENANTS**

SECTION 10.1. *Payment of Principal, Premium, if any, and Interest.*

The Company covenants and agrees for the benefit of the Holders of the Securities that it will duly and punctually pay the principal of and any premium and interest (including any Additional Interest) on the Securities in accordance with the terms of the Securities and this Indenture.

SECTION 10.2. *Money for Security Payments to be Held in Trust.*

(a) Intentionally Omitted.

(b) Whenever the Company shall have one or more Paying Agents, it will, prior to 10:00 a.m., New York City time, on each due date of the principal of or any premium or interest (including any Additional Interest) on any Securities, deposit with such Paying Agent a sum sufficient to pay such amount, such sum to be held as provided in the Trust Indenture Act and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its failure so to act.

(c) The Company will cause each Paying Agent for the Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 10.2, that such Paying Agent will (i) comply with the provisions of this Indenture and the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities) in the making of any payment in respect of the Securities, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities.

(d) The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

(e) Any money deposited with the Trustee or any Paying Agent for the payment of the principal of and any premium or interest (including any Additional Interest) on any Security and remaining unclaimed for two years after such principal and any premium or interest has become due and payable shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be paid on Company Request to the Company, or (if then held by the Company) shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 10.3. *Statement as to Compliance.*

The Company shall deliver to the Trustee, with a copy to Taberna, within one hundred and twenty (120) days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate covering the preceding calendar year, stating whether or not to the knowledge of the signers thereof the Company is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder), and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge. The delivery requirements of this Section 10.3 may be satisfied by compliance with Section 8.16(a) of the Trust Agreement.

SECTION 10.4. *Calculation Agent.*

(a) The parties hereby agrees that for so long as any of the Securities remain Outstanding, there will at all times be an agent appointed to calculate LIBOR in respect of each Interest Payment Date in accordance with the terms of Schedule A (the "*Calculation Agent*"). The Holders have initially appointed Trustee as Calculation Agent for purposes of determining LIBOR for each Interest Payment Date. The Calculation Agent may be removed by the Holders of a majority in aggregate principal amount of the Securities.

(b) The Calculation Agent shall be required to agree that, as soon as possible after 11:00 a.m. (London time) on each LIBOR Determination Date (as defined in Schedule A), but in no event later than 11:00 a.m. (London time) on the Business Day immediately following each LIBOR Determination Date, the Calculation Agent will calculate the interest rate (the Interest Payment shall be rounded to the nearest cent, with half a cent being rounded upwards) for the related Interest Payment Date, and will communicate such rate and amount to the Company, the Holders, the Trustee, and the Paying Agent. The Calculation Agent will also specify to the Company and the Holders the quotations upon which the foregoing rates and amounts are based and, in any event, the Calculation Agent shall notify the Company and the Holders before 5:00 p.m. (London time) on each LIBOR Determination Date that either: (i) it has determined or is in the process of determining the foregoing rates and amounts or (ii) it has not determined and is not in the process of determining the foregoing rates and amounts, together with its reasons therefor. The Calculation Agent's determination of the foregoing rates and amounts for any Interest Payment Date will (in the absence of manifest error) be final and binding upon all parties. For the sole purpose of calculating the interest rate for the Securities, "Business Day" shall be defined as any day on which dealings in deposits in Dollars are transacted in the London interbank market.

SECTION 10.5. *Inspection of Books and Records; Management and Board Observation Rights.*

(a) Upon written notice from the Holders of a majority in aggregate principal amount of the Outstanding Securities at least five (5) Business Days in advance, the Company shall permit the Holders of a majority in aggregate principal amount of the Outstanding Securities to examine the books and records of account of the Company and its subsidiaries (and to make copies thereof and extracts therefrom) and to discuss the affairs, finances and accounts of such Persons with, and to be advised as to the same by such management representatives of the Company and its subsidiaries as the Holders of a majority in aggregate principal amount of the Outstanding Securities may reasonably request, either in person at the Company's offices or telephonically, all at such reasonable times and intervals during normal business hours as the Holders of a majority in aggregate principal amount of the Outstanding Securities may reasonably request, at the expense of the Company.

(b) The Holders and their Affiliates will keep confidential any non-public information of the Company made available to the Holders of a majority in aggregate principal amount of the Outstanding Securities or their Affiliates; provided, such confidential information shall not include any information that (1) is or becomes generally available to the public (other than through breach of this paragraph by the Holders of a majority in aggregate principal amount of the Outstanding Securities or their Affiliates), (2) was within the possession of the Holders of a majority in aggregate principal amount of the Outstanding Securities prior to its being furnished to the Holders of a majority in aggregate principal amount of the Outstanding Securities by or on behalf of the Company, provided that the source of such information was not known by the Holders of a majority in aggregate principal amount of the Outstanding Securities to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the Company with respect to such information or (3) becomes available to the Holders of a majority in aggregate principal amount of the Outstanding Securities on a non-confidential basis from a source other than the Company or any of its representatives, provided

that such source is not known by the Holders of a majority in aggregate principal amount of the Outstanding Securities to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the Company with respect to such information; and provided further, that such confidential information may be disclosed if the Holders of a majority in aggregate principal amount of the Outstanding Securities or their Affiliates are required to disclose such information pursuant to law, judicial or administrative process, or regulatory demand or request of any body having jurisdiction over the Holders. In the event that the Holders of a majority in aggregate principal amount of the Outstanding Securities or any of their Affiliates are requested or are required by law to disclose any such confidential information, the Holders of a majority in aggregate principal amount of the Outstanding Securities shall provide the Company with prompt written notice of any such request or requirement.

SECTION 10.6. *Additional Covenants.*

(a) For the period commencing on the date of this Agreement and continuing through March 30, 2010, or in any event if an Event of Default has occurred and is continuing, the Company covenants and agrees with each Holder of Securities that it shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of the Company's capital stock (for the avoidance of doubt, the term "capital stock" includes both common stock and preferred stock of the Company), (ii) vote in favor of or permit or otherwise allow any of its subsidiaries to declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to or otherwise retire, any shares of such subsidiaries preferred stock (for the avoidance of doubt, whether such preferred stock is perpetual or otherwise) except for dividends or distributions (x) to the Company or its subsidiaries and (y) by subsidiaries of the Company in which there are third party investors to the Company and such third party investors, or (iii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank pari passu in all respects with or junior in interest to the Securities (other than (A) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase plan or in connection with the issuance of stockholder stock of the Company (or securities convertible into or exercisable for such units of stockholder stock) as consideration in an acquisition transaction entered into prior to the date of this Agreement or, if later than March 30, 2010, prior to an Event of Default, (B) as a result of an exchange or conversion of any class or series of the Company's capital stock (or any capital stock of a Subsidiary of the Company) for any class or series of the Company's capital stock or of any class or series of the Company's indebtedness for any class or series of the Company's capital stock, (C) the purchase of fractional interests in the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, (D) any declaration of a dividend in connection with any Rights Plan or the redemption or repurchase of rights pursuant thereto, or (E) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks pari passu with or junior to such stock).

(b) Notwithstanding the foregoing, the restrictions set forth in Section 10.6(a) shall not apply to (i) payments of interest only (including deferred interest payments of approximately \$525,800 accruing through June 30, 2009) on, and any repayments, repurchases or redemptions of those certain Fixed/Floating Rate Junior Subordinated Debt Securities due 2035, issued pursuant to that certain Junior Subordinated Indenture between Impac Mortgage Holdings, Inc., as issuer, and Wilmington Trust Company, as trustee, dated as of October 15, 2005 and the related securities issued pursuant to the Amended and Restated Declaration of Trust of Impact Capital Trust #4 dated as of October 15, 2005, (ii) a redemption of the Company's 9.375% Series B Cumulative Redeemable Preferred Stock, \$0.01 par value per share (the "*Series B Preferred Stock*") and its 9.125% Series C Cumulative Redeemable Preferred Stock, \$0.01 par value per share (the "*Series C Preferred Stock*"), or the repurchase of all of such Series B Preferred Stock or Series C Preferred Stock (for an aggregate purchase price of up to \$1,861,000) pursuant to the terms of a cash tender offer for all such outstanding stock (which tender offer may include the payment of accumulated but unpaid dividends upon such Series B Preferred Stock and Series C Preferred Stock in an aggregate amount of up to \$7,444,000).

(c) Intentionally Omitted.

SECTION 10.7. *Waiver of Covenants.*

The Company may omit in any particular instance to comply with any covenant or condition contained in Sections 10.5 or 10.6 if, before or after the time for such compliance, the Holders of at least a majority in aggregate principal amount of the Outstanding Securities shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company in respect of any such covenant or condition shall remain in full force and effect.

SECTION 10.8. *Treatment of Securities.*

The Company will treat the Securities as indebtedness, and the amounts, other than payments of principal, payable in respect of the principal amount of such Securities as interest, for all U.S. federal income tax purposes. All payments in respect of the Securities will be made free and clear of U.S. withholding tax to any beneficial owner thereof that has provided an Internal Revenue Service Form W-9 or W-8BEN (or any substitute or successor form) establishing its U.S. or non-U.S. status for U.S. federal income tax purposes, or any other applicable form establishing a complete exemption from U.S. withholding tax.

SECTION 10.9. *Fees Costs and Expenses.*

The Company shall pay on demand all costs and fees, including all reasonable attorneys' fees and disbursements, of the Holders of the Securities and Taberna Capital Management, LLC, as provided in the Exchange Agreement. The Company shall also pay the fees and expenses of the Trustee as provided in that separate fee agreement between the Company and the Trustee and as otherwise required pursuant to Section 6.6. hereof.

## ARTICLE XI

### REDEMPTION OF SECURITIES

#### SECTION 11.1. *Optional Redemption.*

The Company may, at its option, on any Interest Payment Date, on or after March 30, 2010, redeem the Securities in whole at any time or in part from time to time, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof (or of the redeemed portion thereof, as applicable), together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date (the "*Optional Redemption Price*").

#### SECTION 11.2. *Special Event Redemption.*

Prior to March 30, 2010, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, redeem the Securities, in whole but not in part, at a Redemption Price equal to one hundred seven and one half percent (107.5%) of the principal amount thereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date (the "*Special Redemption Price*").

#### SECTION 11.3. *Election to Redeem; Notice to Trustee.*

The election of the Company to redeem any Securities, in whole or in part, shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company, the Company shall, not less than forty-five (45) days and not more than seventy-five (75) days prior to the Redemption Date (unless a shorter notice period shall be satisfactory to the Trustee), notify the Trustee in writing of such date and of the principal amount of the Securities to be redeemed and provide the additional information required to be included in the notice or notices contemplated by [Section 11.5](#). In the case of any redemption of Securities, in whole or in part, (a) prior to the expiration of any restriction on such redemption provided in this Indenture or the Securities or (b) pursuant to an election of the Company which is subject to a condition specified in this Indenture or the Securities, the Company shall furnish the Trustee with an Officers' Certificate and an Opinion of Counsel evidencing compliance with such restriction or condition.

#### SECTION 11.4. *Selection of Securities to be Redeemed.*

(a) If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected and redeemed on a pro rata basis not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, *provided*, that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

(b) The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the

principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security that has been or is to be redeemed.

(c) The provisions of paragraphs (a) and (b) of this Section 11.4 shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

SECTION 11.5. *Notice of Redemption.*

(a) Notice of redemption shall be given not later than the thirtieth (30<sup>th</sup>) day, and not earlier than the sixtieth (60<sup>th</sup>) day, prior to the Redemption Date to each Holder of Securities to be redeemed, in whole or in part, (unless a shorter notice shall be satisfactory to the Holders of the Securities and the Trustee).

(b) With respect to Securities to be redeemed, in whole or in part, each notice of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price or, if the Redemption Price cannot be calculated prior to the time the notice is required to be sent, the estimate of the Redemption Price, as calculated by the Company, together with a statement that it is an estimate and that the actual Redemption Price will be calculated on the fifth Business Day prior to the Redemption Date (and if an estimate is provided, a further notice shall be sent of the actual Redemption Price on the date that such Redemption Price is calculated);

(iii) if less than all Outstanding Securities are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the amount of and particular Securities to be redeemed;

(iv) that on the Redemption Date, the Redemption Price will become due and payable upon each such Security or portion thereof, and that any interest (including any Additional Interest) on such Security or such portion, as the case may be, shall cease to accrue on and after said date; and

(v) the place or places where such Securities are to be surrendered for payment of the Redemption Price.

(c) Notice of redemption of Securities to be redeemed, in whole or in part, at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and shall be irrevocable. The notice if mailed in the manner provided above shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail

or any defect in the notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

**SECTION 11.6.**      *Deposit of Redemption Price.*

Prior to 10:00 a.m., New York City time, on the Redemption Date specified in the notice of redemption given as provided in Section 11.5, the Company will deposit with the Trustee or with one or more Paying Agents an amount of money sufficient to pay the Redemption Price of, and any accrued interest (including any Additional Interest) on, all the Securities (or portions thereof) that are to be redeemed on that date.

**SECTION 11.7.**      *Payment of Securities Called for Redemption.*

(a) If any notice of redemption has been given as provided in Section 11.5, the Securities or portion of Securities with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date. On presentation and surrender of such Securities at a Place of Payment specified in such notice, the Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date.

(b) Upon presentation of any Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the Security so presented and having the same Original Issue Date, Stated Maturity and terms.

(c) If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal of and any premium on such Security shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

**ARTICLE XII**

**SUBORDINATION OF SECURITIES**

**SECTION 12.1.**      *Securities Subordinate to Senior Debt.*

The Company covenants and agrees, and each Holder of a Security, by its acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article XII, the payment of the principal of and any premium and interest (including any Additional Interest) on each and all of the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Debt.

SECTION 12.2. *No Payment When Senior Debt in Default; Payment Over of Proceeds Upon Dissolution, Etc.*

(a) In the event and during the continuation of any default by the Company in the payment of any principal of or any premium or interest on any Senior Debt (following any grace period, if applicable) when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration of acceleration or otherwise, then, upon written notice of such default to the Company by the holders of such Senior Debt or any trustee therefor, unless and until such default shall have been cured or waived or shall have ceased to exist, no direct or indirect payment (in cash, property, securities, by set-off or otherwise) shall be made or agreed to be made on account of the principal of or any premium or interest (including any Additional Interest) on any of the Securities, or in respect of any redemption, repayment, retirement, purchase or other acquisition of any of the Securities.

(b) In the event of a bankruptcy, insolvency or other proceeding described in clause (d) or (e) of the definition of Event of Default (each such event, if any, herein sometimes referred to as a "*Proceeding*"), all Senior Debt (including any interest thereon accruing after the commencement of any such proceedings) shall first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to any Holder of any of the Securities on account thereof. Any payment or distribution, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment), which would otherwise (but for these subordination provisions) be payable or deliverable in respect of the Securities shall be paid or delivered directly to the holders of Senior Debt in accordance with the priorities then existing among such holders until all Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) shall have been paid in full.

(c) In the event of any Proceeding, after payment in full of all sums owing with respect to Senior Debt, the Holders of the Securities, together with the holders of any obligations of the Company ranking on a parity with the Securities, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid principal of and any premium and interest (including any Additional Interest) on the Securities and such other obligations before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any Equity Interests or any obligations of the Company ranking junior to the Securities and such other obligations. If, notwithstanding the foregoing, any payment or distribution of any character on any security, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment) shall be received by the Trustee or any Holder in contravention of any of the terms hereof and before all Senior Debt shall have been paid in full, such payment or distribution or security shall be received in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior

Debt at the time outstanding in accordance with the priorities then existing among such holders for application to the payment of all Senior Debt remaining unpaid, to the extent necessary to pay all such Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) in full. In the event of the failure of the Trustee or any Holder to endorse or assign any such payment, distribution or security, each holder of Senior Debt is hereby irrevocably authorized to endorse or assign the same.

(d) The Trustee and the Holders, at the expense of the Company, shall take such reasonable action (including the delivery of this Indenture to an agent for any holders of Senior Debt or consent to the filing of a financing statement with respect hereto) as may, in the opinion of counsel designated by the holders of a majority in aggregate principal amount of the Senior Debt at the time outstanding, be necessary or appropriate to assure the effectiveness of the subordination effected by these provisions.

(e) The provisions of this Section 12.2 shall not impair any rights, interests, remedies or powers of any secured creditor of the Company in respect of any security interest the creation of which is not prohibited by the provisions of this Indenture.

(f) The securing of any obligations of the Company, otherwise ranking on a parity with the Securities or ranking junior to the Securities, shall not be deemed to prevent such obligations from constituting, respectively, obligations ranking on a parity with the Securities or ranking junior to the Securities.

SECTION 12.3. *Payment Permitted If No Default.*

Nothing contained in this Article XII or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company, at any time, except during the pendency of the conditions described in paragraph (a) of Section 12.2 or of any Proceeding referred to in Section 12.2, from making payments at any time of principal of and any premium or interest (including any Additional Interest) on the Securities or (b) the application by the Trustee of any moneys deposited with it hereunder to the payment of or on account of the principal of and any premium or interest (including any Additional Interest) on the Securities or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge (in accordance with Section 12.8) that such payment would have been prohibited by the provisions of this Article XII, except as provided in Section 12.8.

SECTION 12.4. *Subrogation to Rights of Holders of Senior Debt.*

Subject to the payment in full of all amounts due or to become due on all Senior Debt, or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Debt, the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this Article XII (equally and ratably with the holders of all indebtedness of the Company that by its express terms is subordinated to Senior Debt of the Company to substantially the same extent as the Securities are subordinated to the Senior Debt and is entitled to like rights of subrogation by reason of any payments or distributions made to holders of such Senior Debt) to the rights of the holders of such Senior Debt to receive payments and distributions of cash,

property and securities applicable to the Senior Debt until the principal of and any premium and interest (including any Additional Interest) on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article XII, and no payments made pursuant to the provisions of this Article XII to the holders of Senior Debt by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Debt, and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Debt.

SECTION 12.5. *Provisions Solely to Define Relative Rights.*

The provisions of this Article XII are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Senior Debt on the other hand. Nothing contained in this Article XII or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as between the Company and the Holders of the Securities, the obligations of the Company, which are absolute and unconditional, to pay to the Holders of the Securities the principal of and any premium and interest (including any Additional Interest) on the Securities as and when the same shall become due and payable in accordance with their terms, (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than their rights in relation to the holders of Senior Debt or (c) prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, including filing and voting claims in any Proceeding, subject to the rights, if any, under this Article XII of the holders of Senior Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

SECTION 12.6. *Trustee to Effectuate Subordination.*

Each Holder of a Security by his or her acceptance thereof authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination provided in this Article XII and appoints the Trustee his or her attorney-in-fact for any and all such purposes.

SECTION 12.7. *No Waiver of Subordination Provisions.*

(a) No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or be otherwise charged with.

(b) Without in any way limiting the generality of paragraph (a) of this Section 12.7, the holders of Senior Debt may, at any time and from to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to such Holders of the Securities and without impairing or releasing the subordination provided in this Article XII or

the obligations hereunder of such Holders of the Securities to the holders of Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Debt, or otherwise amend or supplement in any manner Senior Debt or any instrument evidencing the same or any agreement under which Senior Debt is outstanding, (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Debt, (iii) release any Person liable in any manner for the payment of Senior Debt and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

SECTION 12.8. *Notice to Trustee.*

(a) The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article XII or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder of Senior Debt or from any trustee, agent or representative therefor; *provided*, that if the Trustee shall not have received the notice provided for in this Section 12.8 at least two Business Days prior to the date upon which by the terms hereof any monies may become payable for any purpose (including, the payment of the principal of and any premium on or interest (including any Additional Interest) on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

(b) The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself or herself to be a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact therefor) to establish that such notice has been given by a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article XII, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XII, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 12.9. *Reliance on Judicial Order or Certificate of Liquidating Agent.*

Upon any payment or distribution of assets of the Company referred to in this Article XII, the Trustee and the Holders of the Securities shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such Proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the

Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XII.

SECTION 12.10. *Trustee Not Fiduciary for Holders of Senior Debt.*

The Trustee, in its capacity as trustee under this Indenture, shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article XII or otherwise.

SECTION 12.11. *Rights of Trustee as Holder of Senior Debt; Preservation of Trustee's Rights.*

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XII with respect to any Senior Debt that may at any time be held by it, to the same extent as any other holder of Senior Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

SECTION 12.12. *Article Applicable to Paying Agents.*

If at any time any Paying Agent other than the Trustee shall have been appointed and shall be then acting hereunder, the term "Trustee" as used in this Article XII shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article XII in addition to or in place of the Trustee. For avoidance of doubt, neither the Company nor any affiliate of the Company shall be permitted to serve as a Paying Agent hereunder.

\* \* \* \*

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

**IMPAC MORTGAGE HOLDINGS, INC.**, a  
Maryland corporation

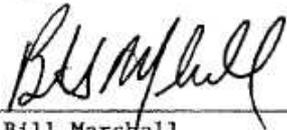
By:   
Name: Todd Taylor  
Title: CFO

(Signatures continue on the next page)

**Signature Page to Junior Subordinated Indenture (Indenture 1)**

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**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, NATIONAL  
ASSOCIATION**, not in its individual capacity but  
solely as Trustee

By:   
Name: Bill Marshall  
Title: Vice President

**Signature Page to Junior Subordinated Indenture (Indenture 1)**

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## Schedule A

### DETERMINATION OF LIBOR

With respect to the Securities, the London interbank offered rate ("*LIBOR*") shall be determined by the Calculation Agent in accordance with the following provisions (in each case rounded to the nearest .000001%):

(1) On the second LIBOR Business Day (as defined below) prior to an Interest Payment Date (each such day, a "*LIBOR Determination Date*"), LIBOR for any given security shall for the following Interest Period equal the rate, as obtained by the Calculation Agent from Bloomberg Financial Markets Commodities News, for three-month Eurodollar deposits that appears on Dow Jones Telerate Page 3750 (as defined in the International Swaps and Derivatives Association, Inc. 1991 Interest Rate and Currency Exchange Definitions), or such other page as may replace such Page 3750, as of 11:00 a.m. (London time) on such LIBOR Determination Date.

(2) If, on any LIBOR Determination Date, such rate does not appear on Dow Jones Telerate Page 3750 or such other page as may replace such Page 3750, the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks (as defined below) to leading banks in the London interbank market for three-month Eurodollar deposits in an amount determined by the Calculation Agent by reference to requests for quotations as of approximately 11:00 a.m. (London time) on the LIBOR Determination Date made by the Calculation Agent to the Reference Banks. If, on any LIBOR Determination Date, at least two of the Reference Banks provide such quotations, LIBOR shall equal such arithmetic mean of such quotations. If, on any LIBOR Determination Date, only one or none of the Reference Banks provide such quotations, LIBOR shall be deemed to be the arithmetic mean of the offered quotations that leading banks in the City of New York selected by the Calculation Agent are quoting on the relevant LIBOR Determination Date for three-month Eurodollar deposits in an amount determined by the Calculation Agent by reference to the principal London offices of leading banks in the London interbank market; *provided* that, if the Calculation Agent is required but is unable to determine a rate in accordance with at least one of the procedures provided above, LIBOR shall be LIBOR as determined on the previous LIBOR Determination Date.

(3) As used herein: "*Reference Banks*" means four major banks in the London interbank market selected by the Calculation Agent; and "*LIBOR Business Day*" means a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London.

**Exhibit A**

**Form of Officer's Financial Certificate**

The undersigned, the [Chairman/Vice Chairman/Chief Executive Officer/President/ Vice President/Chief Financial Officer/Treasurer/Assistant Treasurer], hereby certifies, pursuant to Section 7.3(b) of the Junior Subordinated Indenture, dated as of May 8, 2009, among Impac Mortgage Holdings, Inc. (the "Company") and The Bank of New York Mellon Trust Company, National Association, as trustee, that, as of [date], [20\_\_], the Company, if applicable, and its subsidiaries had the following ratios and balances:

As of [Quarterly/Annual Financial Date], 20\_\_

Senior secured indebtedness for borrowed money ("Debt")	\$ _____
Senior unsecured Debt	\$ _____
Subordinated Debt	\$ _____
Total Debt	\$ _____
Ratio of (x) senior secured and unsecured Debt to (y) total Debt	_____ %

\* A table describing the quarterly report calculation procedures is provided on page \_\_\_\_

[FOR FISCAL YEAR END: Attached hereto are the audited consolidated financial statements (including the balance sheet, income statement and statement of cash flows, and notes thereto, together with the report of the independent accountants thereon) of the Company and its consolidated subsidiaries for the three years ended [date], 20\_\_ and all required Financial Statements (as defined in the Purchase Agreement) for the year ended [date], 20\_\_]

[FOR FISCAL QUARTER END: Attached hereto are the unaudited consolidated and consolidating financial statements (including the balance sheet and income statement) of the Company and its consolidated subsidiaries and all required Financial Statements (as defined in the Purchase Agreement) for the year ended [date], 20\_\_ for the fiscal quarter ended [date], 20\_\_.]

The financial statements fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("GAAP"), the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the date, and for the [\_\_ quarter interim] [annual] period ended [date], 20\_\_, and such financial statements have been prepared in accordance with GAAP consistently applied throughout the period involved (except as otherwise noted therein).

There has been no monetary default with respect to any indebtedness owed by the Company and/or its subsidiaries (other than those defaults cured within 30 days of the occurrence of the same) [, except as set forth below:].

[Insert any exceptions by listing, in detail, the nature of the condition or event causing such noncompliance, the period during which such condition or event has existed and the action(s) the Company has taken, is taking, or proposes to take with respect to each such condition or event.]

[I, the undersigned, the [Chairman/Vice Chairman/Chief Executive Officer/President/Vice President/Chief Financial Officer/Treasurer/Assistant Treasurer], hereby certify that I have reviewed the terms of the Indenture and I have made, or have caused to be made under my supervision, a detailed review of (i) the covenants of the Company set forth therein, in particular, Section [ ] (the "Financial Covenants") and (ii) the transactions and conditions of the Company and its subsidiaries during the accounting period ended as of [ ] (the "Accounting Period"), which Accounting Period is covered by the financial statements attached hereto. The examinations described in the preceding sentence did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes a Default or an Event of Default (each as defined in the Indenture) during or at the end of the Accounting Period or as of the date of this certificate[, except as set forth below:].

[Insert any exceptions by listing, in detail, the nature of the condition or event causing such noncompliance, the period during which such condition or event has existed and the action(s) the Company has taken, is taking, or proposes to take with respect to each such condition or event.]

Page \_\_\_ attached hereto sets forth the financial data and computations evidencing the Company's compliance with the Financial Covenants, all of which data and computations are true, complete and correct.]

IN WITNESS WHEREOF, the undersigned has executed this Officer's Financial Certificate as of this \_\_\_ day of \_\_\_\_\_, 20\_\_.

[COMPANY]

By: \_\_\_\_\_

Name: \_\_\_\_\_

[Company]

[Address]

[Address]

[Telephone Number]

**JUNIOR SUBORDINATED INDENTURE**

between

IMPAC MORTGAGE HOLDINGS, INC.

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION,

as Trustee

Dated as of May 8, 2009

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SCHEDULES

Schedule A	Determination of LIBOR
Exhibit A	Form of Officer's Financial Certificate

JUNIOR SUBORDINATED INDENTURE, dated as of May 8, 2009, between IMPAC MORTGAGE HOLDINGS, INC., a Maryland corporation (the “*Company*”), and THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, as Trustee (in such capacity, the “*Trustee*”).

#### RECITALS OF THE COMPANY

WHEREAS, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of one or more unsecured junior subordinated notes (the “*Securities*”), and to provide the terms and conditions upon which the Securities are to be authenticated, issued and delivered; and

WHEREAS, all things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, this Indenture Witnesseth:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

#### ARTICLE I

##### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

###### SECTION 1.1. *Definitions.*

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article I have the meanings assigned to them in this Article I;

(b) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;

(c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;

(d) unless the context otherwise requires, any reference to an “Article” or a “Section” refers to an Article or a Section, as the case may be, of this Indenture;

(e) the words “hereby”, “herein”, “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(f) a reference to the singular includes the plural and vice versa; and

(g) the masculine, feminine or neuter genders used herein shall include the masculine, feminine and neuter genders.

“*Act*” when used with respect to any Holder, has the meaning specified in Section 1.4.

“*Additional Interest*” means the interest, if any, that shall accrue on any amounts payable on the Securities, the payment of which has not been made on the applicable Interest Payment Date and which shall accrue at the rate per annum specified or determined as specified in such Security, in each case to the extent legally enforceable.

“*Affiliate*” of any specified Person means any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such specified Person.

“*Applicable Depositary Procedures*” means, with respect to any transfer or transaction involving a Global Security or beneficial interest therein, the rules and procedures of the Depositary for such Security, in each case to the extent applicable to such transaction and as in effect from time to time.

“*Authenticating Agent*” means any Person authorized by the Trustee pursuant to Section 6.11 to act on behalf of the Trustee to authenticate the Securities.

“*Board of Directors*” means the board of directors of the Company or any duly authorized committee of that board.

“*Board Resolution*” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.

“*Business Day*” means any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions in the City of New York are authorized or required by law or executive order to remain closed or (iii) a day on which the Corporate Trust Office of the Trustee is closed for business.

“*Calculation Agent*” has the meaning specified in Section 10.4.

“*Commission*” has the meaning specified in Section 7.3.

“*Company*” means the Person named as the “*Company*” in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “*Company*” shall mean such successor Person.

“*Company Request*” and “*Company Order*” mean, respectively, the written request or order signed in the name of the Company by its Chairman of the Board of Directors, its Vice Chairman of the Board of Directors, its Chief Executive Officer, President or a Vice President, and by its Chief Financial Officer, its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

“Control” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Corporate Trust Office” means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of this Indenture is located at 601 Travis Street, 16<sup>th</sup> Floor, Houston, Texas 77019 Attn: Global Corporate Trust – Impac Mortgage Holdings, Inc. Initially, all notices and correspondence shall be addressed to Mudassir Mohamed, telephone (713) 483-6029.

“Debt” means, with respect to any Person, whether recourse is to all or a portion of the assets of such Person, whether currently existing or hereafter incurred and whether or not contingent and without duplication, (i) every obligation of such Person for money borrowed; (ii) every obligation of such Person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses; (iii) every reimbursement obligation of such Person with respect to letters of credit, bankers’ acceptances or similar facilities issued for the account of such Person; (iv) every obligation of such Person issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or other accrued liabilities arising in the ordinary course of business); (v) every capital lease obligation of such Person; (vi) all indebtedness of such Person, whether incurred on or prior to the date of this Indenture or thereafter incurred, for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity forward contracts, options and swaps and similar arrangements; (vii) every obligation of the type referred to in clauses (i) through (vi) of another Person and all dividends of another Person the payment of which, in either case, such Person has guaranteed or is responsible or liable for, directly or indirectly, as obligor or otherwise; and (viii) any renewals, extensions, refundings, amendments or modifications of any obligation of the type referred to in clauses (i) through (vii).

“Defaulted Interest” has the meaning specified in Section 3.1.

“Depository” means an organization registered as a clearing agency under the Exchange Act that is designated as Depository by the Company or any successor thereto.

“Depository Participant” means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Depository effects book-entry transfers and pledges of securities deposited with the Depository.

“Dollar” or “\$” means the currency of the United States of America that, as at the time of payment, is legal tender for the payment of public and private debts.

“EDGAR” has the meaning specified in Section 7.3(c).

“Equity Interests” means with respect to any Person (a) if such Person is a partnership, the partnership interests (general or limited) in such partnership, (b) if such Person is a limited liability company, the membership interests in such limited liability company and (c) if such

Person is such corporation, the shares or stock interests (both common stock and preferred stock) in a corporation.

“*Event of Default*” has the meaning specified in Section 5.1.

“*Exchange Act*” means the Securities Exchange Act of 1934 or any statute successor thereto, in each case as amended from time to time.

“*Exchange Agreement*” means that certain Exchange Agreement executed simultaneously with this Indenture by and among the Company and the parties named therein

“*Expiration Date*” has the meaning specified in Section 1.4.

“*Fixed Rate Period*” shall mean the period commencing on May 8, 2009 and ending on March 29, 2018.

“*Fixed Rate*” means a fixed rate equal to (a) for the Interest Period ending on June 29, 2009, and for each Interest Period thereafter through and including the Interest Period ending on March 29, 2014, two percent (2.00%) per annum, (b) for the Interest Period commencing on March 30 2014 and for each Interest Period thereafter through and including the Interest Period ending on March 29, 2015, three percent (3.00%) per annum, (c) from the Interest Period commencing on March 30, 2015 and for each Interest Period thereafter through and including the Interest Period ending on March 29, 2016, four percent (4.00%) per annum, (d) from the Interest Period commencing on March 30, 2016 and for each Interest Period thereafter through and including the Interest Period ending on March 29, 2017, five percent (5.00%) per annum, (e) from the Interest Period commencing on March 30, 2017 and for each Interest Period commencing on March 30, 2018 thereafter through and including the Interest Period ending on March 29, 2018, six percent (6.00%) per annum.

“*Floating Rate*” means for each Interest Period from and after March 30, 2018, through and including the Stated Maturity Date, a rate equal to LIBOR for the applicable Interest Period plus three and three quarters of one percent (3.75%) per annum.

“*GAAP*” means United States generally accepted accounting principles, consistently applied, from time to time in effect.

“*Global Security*” means a Security that evidences all or part of the Securities, the ownership and transfers of which shall be made through book entries by a Depositary.

“*Government Obligation*” means (a) any security that is (i) a direct obligation of the United States of America of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (b) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any Government Obligation that is specified in clause (a) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any

specific payment of principal of or interest on any Government Obligation that is so specified and held, provided, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

“*Holder*” or “*Holder*s” means a Person or collectively all Persons in whose name a Security is registered in the Securities Register.

“*Indenture*” means this instrument as originally executed or as it may from time to time be amended or supplemented by one or more amendments or indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

“*Interest Payment Date*” means June 30, September 30, December 30 and March 30 of each year, commencing on June 30, 2009, during the term of this Indenture.

“*Interest Period*” means the period commencing on, and including, an Interest Payment Date and continuing through and including the day prior to the next succeeding Interest Payment Date.

“*Interest Rate*” means with respect to any Interest Period, either the Fixed Rate or Floating Rate in effect during such Interest Rate.

“*Investment Company Act*” means the Investment Company Act of 1940 or any successor statute thereto, in each case as amended from time to time.

“*Investment Company Event*” means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of the occurrence of a change in law or regulation (including any announced prospective change) or a written change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is more than an insubstantial risk that the Company is or, within ninety (90) days of the date of such opinion will be, considered an “investment company” that is required to be registered under the Investment Company Act, which change or prospective change becomes effective or would become effective, as the case may be, on or after the date of the issuance of the Securities.

“*LIBOR*” has the meaning specified in Schedule A.

“*LIBOR Business Day*” has the meaning specified in Schedule A.

“*LIBOR Determination Date*” has the meaning specified in Schedule A.

“*Maturity*,” when used with respect to any Security, means the date on which the principal of such Security or any installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

“*Notice of Default*” means a written notice of the kind specified in Section 5.1(c).

“*Officers’ Certificate*” means a certificate signed by the Chairman of the Board, a Vice Chairman of the Board, the Chief Executive Officer, the President or a Vice President, and by the Chief Financial Officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company and delivered to the Trustee.

“*Opinion of Counsel*” means a written opinion of counsel, who may be counsel for or an employee of the Company or any Affiliate of the Company.

“*Optional Redemption Price*” has the meaning set forth in Section 11.1.

“*Original Issue Date*” means the date of original issuance of each Security.

“*Other Taxes*” has the meaning set forth in Section 3.11(c).

“*Outstanding*” means, when used in reference to any Securities, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent in trust for the Holders of such Securities; provided, that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities that have been paid or in substitution for or in lieu of which other Securities have been authenticated and delivered pursuant to the provisions of this Indenture, unless proof satisfactory to the Trustee is presented that any such Securities are held by Holders in whose hands such Securities are valid, binding and legal obligations of the Company;

*provided*, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company, if any, or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding unless the Company shall hold all Outstanding Securities, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

“*Paying Agent*” means the Trustee or any Person authorized by the Trustee (other than the Company or any Affiliate of the Company) to pay the principal of or any premium or interest on, or other amounts in respect of, any Securities on behalf of the Company.

“*Person*” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, company, limited liability company, trust, unincorporated association, government or any agency or political subdivision thereof, or any other entity of whatever nature.

“*Place of Payment*” means, with respect to the Securities, the Corporate Trust Office of the Trustee.

“*Predecessor Security*” of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security. For the purposes of this definition, any security authenticated and delivered under Section 3.6 in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

“*Proceeding*” has the meaning specified in Section 12.2 (b).

“*Redemption Date*” means, when used with respect to any Security to be redeemed, the date fixed for such redemption by or pursuant to this Indenture.

“*Redemption Price*” means, when used with respect to any Security to be redeemed, in whole or in part, the Special Redemption Price or the Optional Redemption Price, as applicable, at which such Security or portion thereof is to be redeemed as fixed by or pursuant to this Indenture.

“*Reference Banks*” has the meaning specified in Schedule A.

“*Regular Record Date*” for the interest payable on any Interest Payment Date with respect to the Securities means the date that is fifteen (15) days preceding such Interest Payment Date (whether or not a Business Day).

“*Responsible Officer*” means, when used with respect to the Trustee, the officer in the Global Corporate Trust department of the Trustee having direct responsibility for the administration of this Indenture.

“*Rights Plan*” means a plan of the Company providing for the issuance by the Company to all holders of its Equity Interests of rights entitling the holders thereof to subscribe for or purchase Equity Interests any class or series of Equity Interests in the Company which rights (i) are deemed to be transferred with such Equity Interests and (ii) are also issued in respect of future issuances of such Equity Interests, in each case until the occurrence of a specified event or events.

“*Securities*” or “*Security*” means any debt securities or debt security, as the case may be, authenticated and delivered under this Indenture.

“*Securities Act*” means the Securities Act of 1933 or any successor statute thereto, in each case as amended from time to time.

“*Securities Register*” and “*Securities Registrar*” have the respective meanings specified in Section 3.5.

“*Senior Debt*” means the principal of and any premium and interest on (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company, whether or not such claim for post-petition interest is allowed in such proceeding) all Debt of the Company, whether incurred on or prior to the date of this Indenture or thereafter incurred, unless it is provided in the instrument creating or evidencing the same or pursuant to which the same is outstanding, that such obligations are not superior in right of payment to the Securities issued under this Indenture provided, that Senior Debt shall not be deemed to include any (i) debt or (ii) other debt securities (and guarantees, if any, in respect of such debt securities) issued to any trust (or a trustee of any such trust), partnership or other entity affiliated with the Company that is a financing vehicle of the Company (a “financing entity”) in connection with the issuance by such financing entity of equity securities or other securities, in each case of (i) or (ii) pursuant to an instrument that ranks *pari passu* with or junior in right of payment to this Indenture.

“*Series B Preferred Stock*” has the meaning set forth in Section 10.6(b).

“*Series C Preferred Stock*” has the meaning set forth in Section 10.6(b).

“*Special Event*” means the occurrence of an Investment Company Event or a Tax Event pursuant to Section 3.1.

“*Special Record Date*” for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.1.

“*Special Redemption Price*” has the meaning set forth in Section 11.2.

“*Stated Maturity*” means March 30, 2034.

“*Subordinated Debt*” means any Debt that is subordinated in right of payment and security to the Securities.

“*Subsidiary*” of a Person means (a) any corporation more than fifty percent (50%) of the outstanding voting stock or other voting interest of which shall at the time be owned, directly or indirectly, by such Person and/or by one or more of its Subsidiaries or (b) any partnership, limited liability company, association, joint venture or similar business organization more than 50% of the ownership interests having ordinary voting power of which shall at the time be owned or Controlled, directly or indirectly, by such Person and/or by one or more of its Subsidiaries. For purposes of this definition, “voting stock” means stock that ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency. Unless otherwise expressly provided, all references herein to a “Subsidiary” shall mean a Subsidiary of the Company.

“*Taberna*” means, initially, Taberna Capital Management, LLC, having and address at 450 Park Avenue, New York, New York 10022, Attn: Rafael Licht (or such other address and notice party so designated by Taberna Capital Management, LLC, and, after written notice from

the Holders delivered to the Trustee and the Company by Holders owning a majority in aggregate principal amount of Outstanding Securities, such successor representative of the Holders so designated in such notice; provided, there shall only be one such Holder's representative at any one time).

“*Tax Event*” means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of (a) any amendment to or change (including any announced prospective change) in the laws or any regulations thereunder of the United States or any political subdivision or taxing authority thereof or therein or (b) any judicial decision or any official administrative pronouncement (including any private letter ruling, technical advice memorandum or field service advice) or regulatory procedure, including any notice or announcement of intent to adopt any such pronouncement or procedure (an “*Administrative Action*”), regardless of whether such judicial decision or Administrative Action is issued to or in connection with a proceeding involving the Company and whether or not subject to review or appeal, which amendment, change, judicial decision or Administrative Action is enacted, promulgated or announced, in each case, on or after the date of issuance of the Securities, there is more than an insubstantial risk that interest payable by the Company on the Securities is not, or within ninety (90) days of the date of such opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes.

“*Trustee*” means the Person named as the “*Trustee*” in the first paragraph of this instrument, solely in its capacity as such and not in its individual capacity, until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and, thereafter, “*Trustee*” shall mean or include each Person who is then a Trustee hereunder.

“*Trust Indenture Act*” means the Trust Indenture Act of 1939, as amended and as in effect on the date as of this Indenture.

#### SECTION 1.2. *Compliance Certificate and Opinions.*

(a) Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officers' Certificate stating that all conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, have been complied with.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificate provided pursuant to Section 10.3) shall include:

- (i) a statement by each individual signing such certificate or opinion that such individual has read such covenant or condition and the definitions herein relating thereto;
- (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions of such individual contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether, in the opinion of such individual, such condition or covenant has been complied with.

SECTION 1.3. *Forms of Documents Delivered to Trustee.*

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to matters upon which his or her certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to such matters are erroneous.

(c) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

(d) Whenever, subsequent to the receipt by the Trustee of any Board Resolution, Officers' Certificate, Opinion of Counsel or other document or instrument, a clerical, typographical or other inadvertent or unintentional error or omission shall be discovered therein, a new document or instrument may be substituted therefor in corrected form with the same force and effect as if originally received in the corrected form and, irrespective of the date or dates of the actual execution and/or delivery thereof, such substitute document or instrument shall be deemed to have been executed and/or delivered as of the date or dates required with respect to the document or instrument for which it is substituted. Without limiting the generality of the foregoing, any Securities issued under the authority of such defective document or instrument shall nevertheless be the valid obligations of the Company entitled to the benefits of this Indenture equally and ratably with all other Outstanding Securities.

SECTION 1.4. *Acts of Holders.*

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given to or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent thereof duly appointed in writing; and, except as herein otherwise

expressly provided, such action shall become effective when such instrument or instruments (including any appointment of an agent) is or are delivered to the Trustee, and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.4.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him or her the execution thereof. Where such execution is by a Person acting in other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority. The fact and date of the execution by any Person of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine.

(c) The ownership of the Securities shall be proved by the Securities Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

(f) Except as set forth in paragraph (g) of this Section 1.4, the Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of the Securities. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; provided, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date (as defined in Section 1.4(h)) by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed

action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities in the manner set forth in Section 1.6.

(g) The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration or rescission or annulment thereof referred to in Section 5.2, (iii) any request to institute proceedings referred to in Section 5.7(b) or (iv) any direction referred to in Section 5.12. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; provided, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of the Securities in the manner set forth in Section 1.6.

(h) With respect to any record date set pursuant to paragraph (f) or (g) of this Section 1.4, the party hereto that sets such record date may designate any day as the "*Expiration Date*" and from time to time may change the Expiration Date to any earlier or later day; provided, that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of the Securities in the manner set forth in Section 1.6, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section 1.4, the party hereto that set such record date shall be deemed to have initially designated the ninetieth (90<sup>th</sup>) day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the one hundred eightieth (180<sup>th</sup>) day after the applicable record date.

SECTION 1.5. Notices, Etc. to Trustee and Company.

(a) Any request, demand, authorization, direction, notice, consent, waiver, Act of Holders, or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(i) the Trustee by any Holder, or the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with and received by the Trustee at its Corporate Trust Office, or

(ii) the Company by the Trustee, or any Holder shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, to the Company addressed to it at 19500 Jamboree Road, Irvine, CA 92612 or at any other address previously furnished in writing to the Trustee by the Company.

(b) The Trustee may, but is not required to, rely upon and comply with instructions and directions sent by email or facsimile, (or any other reasonable means of communication) by persons believed by the Trustee in good faith to be authorized to provide such instructions or direction; provided, however, that the Trustee may require such additional evidence, confirmation or certification from any such party or parties as the Trustee, in its reasonable discretion, deems necessary or advisable before acting or refraining from acting upon any such instruction or direction.

(c) The Trustee agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured email, facsimile transmission or other similar unsecured electronic methods; *provided*, however, that any Person providing such instructions or directions shall provide to the Trustee an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If such Person elects to give the Trustee email or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. Each Person providing instructions or directions to the Trustee hereunder agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting, in good faith, on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 1.6. *Notice to Holders; Waiver.*

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first class, postage prepaid, to each Holder affected by such event to the address of such Holder as it appears in the Securities Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. If, by reason of the suspension of or irregularities in regular mail service or for any other reason, it shall be impossible or impracticable to mail notice of any event to Holders when said notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 1.7. *Effect of Headings and Table of Contents.*

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction of this Indenture.

SECTION 1.8. *Successors and Assigns.*

This Indenture shall be binding upon and shall inure to the benefit of any successor to the Company and the Trustee, including any successor by operation of law. Except in connection with a transaction involving the Company that is permitted under Article VIII and pursuant to which the assignee agrees in writing to perform the Company's obligations hereunder, the Company shall not assign its obligations hereunder.

SECTION 1.9. *Separability Clause.*

If any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

SECTION 1.10. *Benefits of Indenture.*

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors and assigns, the holders of Senior Debt and the Holders of the Securities and any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 1.11. *Governing Law.*

**This Indenture and the rights and obligations of each of the Holders, the Company and the Trustee shall be construed and enforced in accordance with and governed by the laws of the State of New York without reference to its conflict of laws provisions (other than Section 5-1401 of the General Obligations Law).**

SECTION 1.12. *Submission to Jurisdiction.*

ANY LEGAL ACTION OR PROCEEDING BY OR AGAINST ANY PARTY HERETO OR WITH RESPECT TO OR ARISING OUT OF THIS INDENTURE MAY BE BROUGHT IN OR REMOVED TO THE COURTS OF THE STATE OF NEW YORK, IN AND FOR THE COUNTY OF NEW YORK, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK (IN EACH CASE SITTING IN THE BOROUGH OF MANHATTAN). BY EXECUTION AND DELIVERY OF THIS INDENTURE, EACH PARTY ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS INDENTURE.

SECTION 1.13. *Non-Business Days.*

If any Interest Payment Date, Redemption Date or Stated Maturity of any Security shall not be a Business Day, then (notwithstanding any other provision of this Indenture or the Securities) payment of interest, premium, if any, or principal or other amounts in respect of such Security shall not be made on such date, but shall be made on the next succeeding Business Day

(and no interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, until such next succeeding Business Day) except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the Interest Payment Date or Redemption Date or at the Stated Maturity.

## ARTICLE II SECURITY FORMS

### SECTION 2.1. *Form of Security.*

Any Security issued hereunder shall be in substantially the following form:

### **IMPAC MORTGAGE HOLDINGS, INC.**

#### **Junior Subordinated Note due 2034**

No. \_\_\_\_\_

\$31,756,000

Impac Mortgage Holdings, Inc., a corporation organized and existing under the laws of Maryland (hereinafter called the "*Company*," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to Hare & Co. or registered assigns, the principal sum of Thirty-One Million Seven Hundred Fifty-Six Thousand Dollars (\$31,756,000) on March 30, 2034. [*If the Security is a Global Security, then insert – or such other principal amount represented hereby as may be set forth in the records of the Securities Registrar hereinafter referred to in accordance with the Indenture.*] The Company further promises to pay interest on said principal sum from May 8, 2009, quarterly in arrears on June 30, September 30 and December 30, and March 30 of each year, commencing June 30, 2009, or if any such day is not a Business Day, on the next succeeding Business Day (and no interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date until such next succeeding Business Day), except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case, with the same force and effect as if made on the Interest Payment Date, at a fixed rate equal to the applicable Fixed Rate per annum in effect through the Interest Period ending on March 29, 2018 (the "*Fixed Rate Period*") and thereafter at a variable rate equal to the Floating Rate, until the principal hereof is paid or duly provided for or made available for payment; *provided, further*, that any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at a fixed rate equal to the applicable Fixed Rate during the Fixed Rate Period and thereafter at the applicable Floating Rate (to the extent that the payment of such interest shall be legally enforceable), compounded quarterly, from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand.

During the Fixed Rate Period, the amount of interest shall be computed on the basis of a 360-day year of twelve 30-day months and the amount payable for any partial period shall be

computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any Interest Period will be computed on the basis of a 360 day year and the actual number of days elapsed in the relevant Interest Period. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities not less than ten (10) days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

Payment of principal of, premium, if any, and interest on this Security shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of this Security shall be made at the Place of Payment upon surrender of such Securities to the Paying Agent, and payments of interest shall be made, subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Debt, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his or her behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each Holder hereof, by his or her acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Debt, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

**[FORM OF REVERSE OF SECURITY]**

This Security is one of a duly authorized issue of securities of the Company (the "*Securities*") issued under the Junior Subordinated Indenture, dated as of May 8, 2009 (the

“*Indenture*”), between the Company and The Bank of New York Mellon Trust Company, National Association, a national banking association, as Trustee (in such capacity, the “*Trustee*,” which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Senior Debt and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered.

All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

The Company may, on any Interest Payment Date, at its option, upon not less than thirty (30) days’ nor more than sixty (60) days’ written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee) on or after March 30, 2010 and subject to the terms and conditions of Article XI of the Indenture, redeem this Security in whole at any time or in part from time to time at a Redemption Price equal to one hundred percent (100%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date.

In addition, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, upon not less than thirty (30) days’ nor more than sixty (60) days’ written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee), redeem this Security, in whole but not in part, subject to the terms and conditions of Article XI of the Indenture at a Redemption Price equal to one hundred seven and one half percent (107.5%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof. If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any Security.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Securities, on behalf of the Holders of all Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in

exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium, if any, and interest, including any Additional Interest (to the extent legally enforceable), on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is restricted to transfers to "Qualified Purchasers" (as such term is defined in the Investment Company Act of 1940, as amended), and is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar and duly executed by, the Holder hereof or such Holder's attorney duly authorized in writing, and thereupon one or more new Securities, of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form without coupons in minimum denominations of \$100,000 and any integral multiple of \$1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities are exchangeable for a like aggregate principal amount of Securities and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Company and, by its acceptance of this Security or a beneficial interest herein, the Holder of, and any Person that acquires a beneficial interest in, this Security agree that, for United States federal, state and local tax purposes, it is intended that this Security constitute indebtedness.

**This Security shall be construed and enforced in accordance with and governed by the laws of the State of New York, without reference to its conflict of laws provisions (other than Section 5-1401 of the General Obligations Law).**

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed on this 8 day of May, 2009.

IMPAC MORTGAGE HOLDINGS, INC.

By: \_\_\_\_\_  
Name:  
Title:

SECTION 2.2. *Restricted Legend.*

(a) Any Security issued hereunder shall bear a legend in substantially the following form:

**"IF THIS SECURITY IS A GLOBAL SECURITY INSERT:** THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY ("DTC") OR A NOMINEE OF DTC. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND SUCH SECURITIES, AND ANY INTEREST THEREIN, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF ANY SECURITIES IS HEREBY NOTIFIED THAT THE SELLER OF THE SECURITIES MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A UNDER THE SECURITIES ACT.

THE HOLDER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITIES MAY BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED ONLY (I) TO THE COMPANY OR (II) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED PURCHASER" (AS DEFINED IN SECTION 2(a)(51) OF THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED), AND (B) THE HOLDER WILL NOTIFY ANY PURCHASER OF ANY SECURITIES FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

THE SECURITIES WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN BLOCKS HAVING AN AGGREGATE PRINCIPAL AMOUNT OF NOT LESS THAN \$100,000. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY ATTEMPTED TRANSFER OF SECURITIES, OR ANY INTEREST THEREIN, IN A BLOCK HAVING AN AGGREGATE PRINCIPAL AMOUNT OF LESS THAN \$100,000 AND MULTIPLES OF \$1,000 IN EXCESS THEREOF SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH SECURITIES FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PRINCIPAL OF OR INTEREST ON SUCH SECURITIES, OR ANY INTEREST THEREIN, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH SECURITIES.

THE HOLDER OF THIS SECURITY, OR ANY INTEREST THEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF ALSO AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH A "PLAN"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS SECURITY OR ANY INTEREST THEREIN. ANY PURCHASER OR HOLDER OF THE SECURITIES OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF SECTION 3(3) OF ERISA, OR A PLAN TO WHICH SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF AN EMPLOYEE BENEFIT PLAN OR PLAN, OR ANY OTHER PERSON OR ENTITY USING THE ASSETS OF ANY EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE."

(b) The above legends shall not be removed from any Security unless there is delivered to the Company satisfactory evidence, which may include an Opinion of Counsel, as may be reasonably required to ensure that any future transfers thereof may be made without restriction under or violation of the provisions of the Securities Act and other applicable law.

Upon provision of such satisfactory evidence, the Company shall execute and deliver to the Trustee, and the Trustee shall deliver, upon receipt of a Company Order directing it to do so, a Security that does not bear the legend.

*SECTION 2.3. Form of Trustee's Certificate of Authentication.*

The Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Securities referred to in the within-mentioned Indenture.

Dated:

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, NATIONAL ASSOCIATION, *not in  
its individual capacity, but solely as Trustee*

By: \_\_\_\_\_  
*Authorized signatory*

*SECTION 2.4. Temporary Securities.*

(a) Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

(b) If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for the definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for that purpose without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of any authorized denominations having the same Original Issue Date and Stated Maturity and having the same terms as such temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

*SECTION 2.5. Definitive Securities.*

The Securities issued on the Original Issue Date shall be in definitive form. The definitive Securities shall be printed, lithographed or engraved, or produced by any combination of these methods, if required by any securities exchange on which the Securities may be listed, on a steel engraved border or steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as

determined by the officers executing such Securities, as evidenced by their execution of such Securities.

### ARTICLE III

#### THE SECURITIES

##### SECTION 3.1. *Payment of Principal and Interest.*

(a) The unpaid principal amount of the Securities shall bear interest at the applicable Fixed Rate through the Interest Payment Date in March, 2018 and thereafter at the applicable Floating Rate until paid or duly provided for, such interest to accrue from May 8, 2009 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, and any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at the Fixed Rate through the Fixed Rate Period, and thereafter at the Floating Rate, compounded quarterly from the dates such amounts are due until they are paid or funds for the payment thereof are made available for payment.

(b) Interest and Additional Interest on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, except that interest and any Additional Interest payable on the Stated Maturity (or any date of principal repayment upon early maturity) of the principal of a Security or on a Redemption Date shall be paid to the Person to whom principal is paid. The initial payment of interest on any Security that is issued between a Regular Record Date and the related Interest Payment Date shall be payable as provided in such Security.

(c) Any interest on any Security that is due and payable, but is not timely paid or duly provided for, on any Interest Payment Date for the Securities (herein called "*Defaulted Interest*") shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in paragraph (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on a special record date for the payment of such Defaulted Interest (a "*Special Record Date*"), which shall be fixed in the following manner. At least thirty (30) days prior to the date of the proposed payment, the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest, which shall be not more than fifteen (15) days and not less than ten (10) days prior to the date of the proposed payment and not less

than ten (10) days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class, postage prepaid, to each Holder of a Security at the address of such Holder as it appears in the Securities Register not less than ten (10) days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered on such Special Record Date; or

(ii) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Securities may be listed, traded or quoted, and, upon such notice as may be required by such exchange or automated quotation system (or by the Trustee if the Securities are not listed), if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such payment shall be deemed practicable by the Trustee.

(d) Payments of interest on the Securities shall include interest accrued to but excluding the respective Interest Payment Dates. During the Fixed Rate Period, the amount of interest payable for any Interest Period for the Securities shall be computed and paid on the basis of a 360-day year of twelve 30-day months and the amount payable for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any Interest Period will be computed on the basis of a 360 day year and the actual number of days elapsed in the relevant Interest Period.

(e) Payment of principal of, or premium, if any, and interest on the Securities shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of such Securities shall be made at the Place of Payment upon surrender of such Securities to the Paying Agent and payments of interest shall be made subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register.

(f) Subject to the foregoing provisions of this Section 3.1, each Security delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Security.

SECTION 3.2. *Denominations.*

The Securities shall be in registered form without coupons and shall be issuable in minimum denominations of \$100,000 and any integral multiple of \$1,000 in excess thereof.

SECTION 3.3. *Execution, Authentication, Delivery and Dating.*

(a) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver the Securities in an aggregate principal amount (including all then Outstanding Securities) not in excess of Thirty-One Million Seven Hundred Fifty-Six Thousand Dollars (\$31,756,000) executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and shall be fully protected in relying upon:

(i) a copy of any Board Resolution relating thereto; and

(ii) an Opinion of Counsel stating that: (1) such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute, and the Indenture constitutes, valid and legally binding obligations of the Company, each enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles; (2) the Securities have been duly authorized and executed by the Company and have been delivered to the Trustee for authentication in accordance with this Indenture; (3) the Securities are not required to be registered under the Securities Act; and (4) the Indenture is not required to be qualified under the Trust Indenture Act.

(b) The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its President or one of its Vice Presidents. The signature of any of these officers on the Securities may be manual or facsimile. Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

(c) No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by the manual signature of one of its authorized signatories, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 3.8, for all purposes of this

Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

- (d) Each Security shall be dated the date of its authentication.

SECTION 3.4. *Global Securities.*

(a) Upon the election of the Holder after the Original Issue Date, which election need not be in writing, the Securities owned by such Holder shall be issued in the form of one or more Global Securities registered in the name of the Depositary or its nominee. Each Global Security issued under this Indenture shall be registered in the name of the Depositary designated by the Company for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for registered Securities, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (i) such Depositary advises the Trustee and the Company in writing that such Depositary is no longer willing or able to properly discharge its responsibilities as Depositary with respect to such Global Security, and no qualified successor is appointed by the Company within ninety (90) days of receipt by the Company of such notice, (ii) such Depositary ceases to be a clearing agency registered under the Exchange Act and no successor is appointed by the Company within ninety (90) days after obtaining knowledge of such event, (iii) the Company executes and delivers to the Trustee a Company Order stating that the Company elects to terminate the book-entry system through the Depositary or (iv) an Event of Default shall have occurred and be continuing. Upon the occurrence of any event specified in clause (i), (ii), (iii) or (iv) above, the Trustee shall notify the Depositary and instruct the Depositary to notify all owners of beneficial interests in such Global Security of the occurrence of such event and of the availability of Securities to such owners of beneficial interests requesting the same. The Trustee may conclusively rely, and be protected in relying, upon the written identification of the owners of beneficial interests furnished by the Depositary, and shall not be liable for any delay resulting from a delay by the Depositary. Upon the issuance of such Securities and the registration in the Securities Register of such Securities in the names of the Holders of the beneficial interests therein, the Trustees shall recognize such holders of beneficial interests as Holders.

(c) If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, then either (i) such Global Security shall be so surrendered for exchange or cancellation as provided in this Article III or (ii) the principal amount thereof shall be reduced or increased by an amount equal to (x) the portion thereof to be so exchanged or canceled, or (y) the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Securities Registrar, whereupon the Trustee, in accordance with the Applicable Depositary Procedures, shall instruct the Depositary or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security by the Depositary,

accompanied by registration instructions, the Company shall execute and the Trustee shall authenticate and deliver any Securities issuable in exchange for such Global Security (or any portion thereof) in accordance with the instructions of the Depository. The Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

(d) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depository for such Global Security or a nominee thereof.

(e) The Depository or its nominee, as the registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under this Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Depository Procedures. Accordingly, any such owner's beneficial interest in a Global Security shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depository or its nominee or its Depository Participants. The Securities Registrar and the Trustee shall be entitled to deal with the Depository for all purposes of this Indenture relating to a Global Security (including the payment of principal and interest thereon and the giving of instructions or directions by owners of beneficial interests therein and the giving of notices) as the sole Holder of the Security and shall have no obligations to the owners of beneficial interests therein. Neither the Trustee nor the Securities Registrar shall have any liability in respect of any transfers effected by the Depository.

(f) The rights of owners of beneficial interests in a Global Security shall be exercised only through the Depository and shall be limited to those established by law and agreements between such owners and the Depository and/or its Depository Participants.

(g) No holder of any beneficial interest in any Global Security held on its behalf by a Depository shall have any rights under this Indenture with respect to such Global Security, and such Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. None of the Company, the Trustee nor any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or maintaining, supervising or reviewing any records relating to such beneficial ownership interests. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by a Depository or impair, as between a Depository and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depository (or its nominee) as Holder of any Security.

#### *SECTION 3.5. Registration, Transfer and Exchange Generally.*

(a) The Trustee shall cause to be kept at the Corporate Trust Office a register (the "*Securities Register*") in which the registrar and transfer agent with respect to the Securities (the "*Securities Registrar*"), subject to such reasonable regulations as it may prescribe, shall provide

for the registration of Securities and of transfers and exchanges of Securities. The Trustee shall at all times also be the Securities Registrar. The provisions of Article VI shall apply to the Trustee in its role as Securities Registrar.

(b) Subject to compliance with Section 2.2(b), upon surrender for registration of transfer of any Security at the offices or agencies of the Company designated for that purpose the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations of like tenor and aggregate principal amount.

(c) At the option of the Holder, Securities may be exchanged for other Securities of any authorized denominations, of like tenor and aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

(d) All Securities issued upon any transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such transfer or exchange.

(e) Every Security presented or surrendered for transfer or exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar, duly executed by the Holder thereof or such Holder's attorney duly authorized in writing.

(f) No service charge shall be made to a Holder for any transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities.

(g) Neither the Company nor the Trustee shall be required pursuant to the provisions of this Section 3.5 (g): (i) to issue, register the transfer of or exchange any Security during a period beginning at the opening of business fifteen (15) days before the day of selection for redemption of Securities pursuant to Article XI and ending at the close of business on the day of mailing of the notice of redemption or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except, in the case of any such Security to be redeemed in part, any portion thereof not to be redeemed.

(h) The Company shall designate an office or offices or agency or agencies where Securities may be surrendered for registration or transfer or exchange. The Company initially designates the Corporate Trust Office as its office and agency for such purposes. The Company shall give prompt written notice to the Trustee and to the Holders of any change in the location of any such office or agency.

(i) The Securities may only be transferred to the Company or a "Qualified Purchaser" as such term is defined in Section 2(a)(51) of the Investment Company Act.

(j) Neither the Trustee nor the Securities Registrar shall be responsible for ascertaining whether any transfer hereunder complies with the registration provisions of or any exemptions from the Securities Act, applicable state securities laws or the applicable laws of any other jurisdiction, ERISA, the United States Internal Revenue Code of 1986, as amended, or the Investment Company Act; provided, that if a certificate is specifically required by the express terms of this Section 3.5 to be delivered to the Trustee or the Securities Registrar by a Holder or transferee of a Security, the Trustee and the Securities Registrar shall be under a duty to receive and examine the same to determine whether or not the certificate substantially conforms on its face to the requirements of this Indenture and shall promptly notify the party delivering the same if such certificate does not comply with such terms.

*SECTION 3.6. Mutilated, Destroyed, Lost and Stolen Securities.*

(a) If any mutilated Security is surrendered to the Trustee together with such security or indemnity as may be required by the Trustee to save the Company and the Trustee harmless, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and aggregate principal amount and bearing a number not contemporaneously outstanding.

(b) If there shall be delivered to the Trustee (i) evidence to its satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by it to save each of the Company and the Trustee harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a *bona fide* purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and aggregate principal amount as such destroyed, lost or stolen Security, and bearing a number not contemporaneously outstanding.

(c) If any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

(d) Upon the issuance of any new Security under this Section 3.6, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(e) Every new Security issued pursuant to this Section 3.6 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

(f) The provisions of this Section 3.6 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 3.7. *Persons Deemed Owners.*

The Company, the Trustee and any agent of the Company or the Trustee shall treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any interest on such Security and for all other purposes whatsoever, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 3.8. *Cancellation.*

All Securities surrendered for payment, redemption, transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Securities surrendered directly to the Trustee for any such purpose shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section 3.8, except as expressly permitted by this Indenture. All canceled Securities shall be retained or disposed of by the Trustee in accordance with its customary practices and the Trustee shall deliver to the Company a certificate of such disposition.

SECTION 3.9. *Reserved.*

SECTION 3.10. *Reserved.*

SECTION 3.11. *Agreed Tax Treatment.*

(a) Each Security issued hereunder shall provide that the Company and, by its acceptance or acquisition of a Security or a beneficial interest therein, the Holder of, and any Person that acquires a direct or indirect beneficial interest in, such Security, intend and agree to treat such Security as indebtedness of the Company for United States Federal, state and local tax purposes. The provisions of this Indenture shall be interpreted to further this intention and agreement of the parties.

(b) Any and all payments by or for the account of the Holders, or in respect of the Securities, shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding net income taxes and franchise taxes imposed on (or measured by) net income imposed on any Holder, or any other recipient of any payment to be made by or on account of any obligation of the Company hereunder as a result of a present or former connection between such Person and the jurisdiction imposing such tax levy, impost or withholding or any political subdivision or taxing authority thereof or therein, other than any such connection arising solely from such Holder having executed, delivered or performed its obligations or received a payment under, or enforced, the Securities (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities in respect of payments hereunder or under the Securities being hereinafter referred to as "*Taxes*"). If any Holder shall be required by law to deduct or withhold any Taxes from or in respect of any sum payable hereunder or under any Security, (i) the sum payable by the Company shall be increased as may be necessary so that after the

Company and such Holder, as the case may be, have made all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 3.11) such Holder receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the Company shall make all such deductions or withholdings, and (iii) the Company shall pay the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with applicable law.

(c) In addition, the Company shall pay to the relevant taxing authority in accordance with applicable law, and indemnify and hold the Holders harmless from, any present or future stamp, documentary, excise, property or similar taxes, charges or levies that arise from any payment made hereunder or under the Securities or from the execution, delivery or registration of, performance under, or otherwise with respect to, this Indenture or the Securities (hereinafter referred to as "*Other Taxes*").

(d) The Company shall indemnify each Holder for and hold each Holder harmless against the full amount of Taxes and Other Taxes, and for the full amount of Taxes and Other Taxes of any kind imposed by any jurisdiction on amounts payable under this Section 3.11, imposed on or paid by any such Holder and any liability (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto. This indemnification shall be made within thirty (30) days from the date any such Holder makes written demand therefor.

(e) Within thirty (30) days after the date of any payment of Taxes, the Company shall furnish to any such Holder the original or a certified copy of a receipt evidencing such payment.

#### SECTION 3.12. *CUSIP Numbers.*

The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption and other similar or related materials as a convenience to Holders; *provided*, that any such notice or other materials may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption or other materials and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers.

#### SECTION 3.13 *Shareholders Communications Act*

(a) With respect to securities under and as defined in the Shareholders Communications Act of 1985 (the "SCA") issued in the United States, the SCA requires the Trustee to disclose to the issuers, upon their request, the name, address and securities position of its customers who are (i) the "beneficial owners" (as defined in the SCA) of the issuer's securities, if the beneficial owner does not object to such disclosure, or (ii) acting as a "respondent bank" (as defined in the SCA) with respect to the securities. (Under the SCA, "respondent banks" do not have the option of objecting to such disclosure upon the issuers' request.) The SCA defines a "beneficial owner" as any person who has, or shares, the power to vote a security (pursuant to an agreement or otherwise), or who directs the voting of a security.

The SCA defines a "respondent bank" as any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with a bank, such as Trustee. Under the SCA, each Holder is either the "beneficial owner" or a "respondent bank."

(b) For Purposes of this Indenture, until Trustee receives a contrary written instruction from a Holder, Trustee shall assume that such Holder is the beneficial owner of the Securities.

(c) For purposes of this Indenture, until Trustee receives a contrary instruction from a Holder, Trustee shall release the name, address and securities position to the Issuer, if the Issuer requests such information pursuant to the SCA for the specific purpose of direct communications between such Issuer and such Holder. With respect to securities issued outside of the United States, if applicable, information shall be released to issuers only if required by law or regulation of the particular country in which the securities are located.

#### ARTICLE IV

##### SATISFACTION AND DISCHARGE

###### SECTION 4.1. *Satisfaction and Discharge of Indenture.*

This Indenture shall, upon Company Request, cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for and as otherwise provided in this Section 4.1) and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) either

(i) all Securities theretofore authenticated and delivered (other than (A) Securities that have been mutilated, destroyed, lost or stolen and that have been replaced or paid as provided in Section 3.6 and (B) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided in Section 10.2) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee for cancellation

- (A) have become due and payable, or
- (B) will become due and payable at their Stated Maturity within one year of the date of deposit, or
- (C) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of subclause (ii)(A), (B) or (C) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose (x) an amount in the currency or currencies in which the Securities are payable, (y) Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount or (z) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest (including any Additional Interest) to the date of such deposit (in the case of Securities that have become due and payable) or to the Stated Maturity (or any date of principal repayment upon early maturity) or Redemption Date, as the case may be;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.6, the obligations of the Company to any Authenticating Agent under Section 6.11 and, if money shall have been deposited with the Trustee pursuant to subclause (a)(ii) of this Section 4.1, the obligations of the Trustee under Section 4.2 and Section 10.2(e) shall survive.

#### SECTION 4.2. *Application of Trust Money.*

Subject to the provisions of Section 10.2(d), all money deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by the Trustee, in accordance with the provisions of the Securities and this Indenture, to the payment in accordance with Section 3.1, either directly or through any Paying Agent as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest (including any Additional Interest) for the payment of which such money or obligations have been deposited with or received by the Trustee. Moneys held by the Trustee under this Section 4.2 shall not be subject to the claims of holders of Senior Debt under Article XII.

## ARTICLE V

### REMEDIES

#### SECTION 5.1. *Events of Default.*

“*Event of Default*” means, wherever used herein with respect to the Securities, any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any interest upon any Security, including any Additional Interest in respect thereof, when it becomes due and payable, and continuance of such default for a period of thirty (30) days;

(b) default in the payment of the principal of or any premium on any Security at its Maturity;

(c) except as otherwise set forth in this Section 5.1, default in the performance, or breach, of any representation, covenant or warranty of the Company in this Indenture or the Exchange Agreement and continuance of such default or breach for a period of thirty (30) days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least twenty five percent (25%) in aggregate principal amount of the Outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder;

(d) the entry by a court having jurisdiction in the premises of a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of sixty (60) consecutive days;

(e) the institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by the Company to the institution of bankruptcy or insolvency proceedings against it, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt or insolvent, or the taking of corporate action by the Company in furtherance of any such action;

(f) default in the performance or breach of any covenant or warranty of the Company set forth in Sections 10.5 and 10.6 and continuance of such default or breach for a period of fifteen (15) days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least twenty five percent (25%) in aggregate principal amount of the Outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(g) default under that certain Junior Subordinated Indenture ("*Indenture I*") and other agreements related thereto, dated concurrently herewith, by and among the Company and the Trustee, whereby the Company has agreed to issue a Junior Subordinated Note due 2034 in the original principal amount of Thirty Million Two Hundred Forty-Four Thousand Dollars (\$30,244,000) under the terms and conditions set forth in Indenture I.

SECTION 5.2. *Acceleration of Maturity; Rescission and Annulment.*

(a) If an Event of Default occurs and is continuing, then and in every such case the Trustee or the Holders of not less than twenty five percent (25%) in aggregate principal amount of the Outstanding Securities may declare the principal amount of all the Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration the principal amount of and the accrued interest (including any Additional Interest) on all the Securities shall become immediately due and payable.

(b) At any time after such a declaration of acceleration with respect to Securities has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in this Article V, the Holders of a majority in aggregate principal amount of the Outstanding Securities, by written notice to the Trustee, may rescind and annul such declaration and its consequences if:

(i) the Company has paid or deposited with the Trustee a sum sufficient to pay:

(A) all overdue installments of interest on all Securities,

(B) any accrued Additional Interest on all Securities,

(C) the principal of and any premium on any Securities that have become due otherwise than by such declaration of acceleration and interest (including any Additional Interest) thereon at the rate borne by the Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(ii) all Events of Default with respect to Securities, other than the non-payment of the principal of Securities that has become due solely by such acceleration, have been cured or waived as provided in Section 5.13;

No such rescission shall affect any subsequent default or impair any right consequent thereon.

*SECTION 5.3. Collection of Indebtedness and Suits for Enforcement by Trustee.*

(a) The Company covenants that if:

(i) default is made in the payment of any installment of interest (including any Additional Interest) on any Security when such interest becomes due and payable and such default continues for a period of thirty (30) days, or

(ii) default is made in the payment of the principal of and any premium on any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium and interest (including any Additional Interest) and, in addition thereto, all amounts owing the Trustee under Section 6.6.

(b) If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

(c) If an Event of Default with respect to Securities occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

*SECTION 5.4. Trustee May File Proofs of Claim.*

In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or similar judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized hereunder in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to first pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6.

*SECTION 5.5.Trustee May Enforce Claim Without Possession of Securities.*

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, subject to Article XII and after provision for the payment of all the amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

*SECTION 5.6.Application of Money Collected.*

Any money or property collected or to be applied by the Trustee with respect to the Securities pursuant to this Article V shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money or property on account of principal or any premium or interest (including any Additional Interest), upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee, any predecessor Trustee and other Persons under Section 6.6;

SECOND: To the payment of all Senior Debt of the Company if and to the extent required by Article XII;

THIRD: Subject to Article XII, to the payment of the amounts then due and unpaid upon the Securities for principal and any premium and interest (including any Additional Interest) in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and any premium and interest (including any Additional Interest), respectively; and

FOURTH: The balance, if any, to the Person or Persons entitled thereto.

*SECTION 5.7.Limitation on Suits.*

Subject to Section 5.8, no Holder of any Securities shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a custodian, receiver, assignee, trustee, liquidator, sequestrator (or other similar official) or for any other remedy hereunder, unless:

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities;

(b) the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding for sixty (60) days; and

(e) no direction inconsistent with such written request has been given to the Trustee during such sixty (60)-day period by the Holders of a majority in aggregate principal amount of the Outstanding Securities;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Securities, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

*SECTION 5.8. Unconditional Right of Holders to Receive Principal, Premium, if any, and Interest.*

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium on such Security at its Maturity and payment of interest (including any Additional Interest) on such Security when due and payable and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

*SECTION 5.9. Restoration of Rights and Remedies.*

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or such Holder then and in every such case the Company, the Trustee and such Holders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and such Holder shall continue as though no such proceeding had been instituted.

*SECTION 5.10. Rights and Remedies Cumulative.*

Except as otherwise provided in Section 3.6(f), no right or remedy herein conferred upon or reserved to the Trustee or the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

*SECTION 5.11. Delay or Omission Not Waiver.*

No delay or omission of the Trustee or any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or

constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article V or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or the Holders as the case may be.

SECTION 5.12. *Control by Holders.*

The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; *provided*, that:

- (a) such direction shall not be in conflict with any rule of law or with this Indenture,
- (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction, and
- (c) subject to the provisions of Section 6.2, the Trustee shall have the right to decline to follow such direction if a Responsible Officer or Officers of the Trustee shall, in good faith, reasonably determine that the proceeding so directed would be unjustly prejudicial to the Holders not joining in any such direction or would involve the Trustee in personal liability.

SECTION 5.13. *Waiver of Past Defaults.*

(a) The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities may waive any past Event of Default hereunder and its consequences except an Event of Default:

- (i) in the payment of the principal of or any premium or interest (including any Additional Interest) on any Outstanding Security (unless such Event of Default has been cured and the Company has paid to or deposited with the Trustee a sum sufficient to pay all installments of interest (including any Additional Interest) due and past due and all principal of and any premium on all Securities due otherwise than by acceleration), or
  - (ii) in respect of a covenant or provision hereof that under Article IX cannot be modified or amended without the consent of each Holder of any Outstanding Security.
- (b) Any such waiver shall be deemed to be on behalf of the Holders of all the Outstanding Securities.
- (c) Upon any such waiver, such Event of Default shall cease to exist and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

SECTION 5.14. *Undertaking for Costs.*

All parties to this Indenture agree, and each Holder of any Security by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.14 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than ten percent (10%) in aggregate principal amount of the Outstanding Securities, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or any premium on the Security after the Stated Maturity or any interest (including any Additional Interest) on any Security after it is due and payable.

SECTION 5.15. *Waiver of Usury, Stay or Extension Laws.*

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**ARTICLE VI**

**THE TRUSTEE**

SECTION 6.1. *Corporate Trustee Required.*

There shall at all times be a Trustee hereunder with respect to the Securities. The Trustee shall be a corporation or national banking association organized and doing business under the laws of the United States or of any state thereof, authorized to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal or state authority and having an office within the United States. If such entity publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then, for the purposes of this Section 6.1, the combined capital and surplus of such entity shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.1, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VI.

SECTION 6.2. *Certain Duties and Responsibilities.*

Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; *provided*, that in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they substantially conform on their face to the requirements of this Indenture.

(b) If an Event of Default known to the Trustee has occurred and is continuing, the Trustee shall, prior to the receipt of directions, if any, from the Holders of at least a majority in aggregate principal amount of the Outstanding Securities, exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.2. To the extent that, at law or in equity, the Trustee has duties and liabilities relating to the Holders, the Trustee shall not be liable to any Holder for the Trustee's good faith reliance on the provisions of this Indenture. The provisions of this Indenture, to the extent that they restrict the duties and liabilities of the Trustee otherwise existing at law or in equity, are agreed by the Company and the Holders to replace such other duties and liabilities of the Trustee.

(d) No provisions of this Indenture shall be construed to relieve the Trustee from liability with respect to matters that are within the authority of the Trustee under this Indenture for its own negligent action, negligent failure to act or willful misconduct, except that:

(i) the Trustee shall not be liable for any error or judgment made in good faith by an authorized officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of at least a majority in aggregate principal amount of the Outstanding Securities; and

(iii) the Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company and money held

by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law.

*SECTION 6.3. Notice of Defaults.*

Within ninety (90) days after the occurrence of any default actually known to the Trustee, the Trustee shall give the Holders notice of such default unless such default shall have been cured or waived; *provided*, that except in the case of a default in the payment of the principal of or any premium or interest on any Securities, the Trustee shall be fully protected in withholding the notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that withholding the notice is in the interest of holders of Securities; and *provided, further*, that in the case of any default of the character specified in Section 5.1(c), no such notice to Holders shall be given until at least thirty (30) days after the occurrence thereof. For the purpose of this Section 6.3, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

*SECTION 6.4. Certain Rights of Trustee.*

Subject to the provisions of Section 6.2:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting in good faith and in accordance with the terms hereof upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) if (i) in performing its duties under this Indenture the Trustee is required to decide between alternative courses of action, (ii) in construing any of the provisions of this Indenture the Trustee finds ambiguous or inconsistent with any other provisions contained herein or (iii) the Trustee is unsure of the application of any provision of this Indenture, then, except as to any matter as to which the Holders are entitled to decide under the terms of this Indenture, the Trustee shall deliver a notice to the Company requesting the Company's written instruction as to the course of action to be taken and the Trustee shall take such action, or refrain from taking such action, as the Trustee shall be instructed in writing to take, or to refrain from taking, by the Company; *provided*, that if the Trustee does not receive such instructions from the Company within ten (10) Business Days after it has delivered such notice or such reasonably shorter period of time set forth in such notice the Trustee may, but shall be under no duty to, take such action, or refrain from taking such action, as the Trustee shall deem advisable and in the best interests of the Holders, in which event the Trustee shall have no liability except for its own negligence, bad faith or willful misconduct;

(c) any request or direction of the Company shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(d) the Trustee may consult with counsel (which counsel may be counsel to the Trustee, the Company or any of its Affiliates, and may include any of its employees) and the

advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction, including reasonable advances as may be requested by the Trustee;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, indenture, note or other paper or document, but the Trustee in its discretion may make such inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent, attorney, custodian or nominee appointed with due care by it hereunder;

(h) whenever in the administration of this Indenture the Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action with respect to enforcing any remedy or right hereunder, the Trustee (i) may request instructions from the Holders (which instructions may only be given by the Holders of the same aggregate principal amount of Outstanding Securities as would be entitled to direct the Trustee under this Indenture in respect of such remedy, right or action), (ii) may refrain from enforcing such remedy or right or taking such action until such instructions are received and (iii) shall be protected in acting in accordance with such instructions;

(i) except as otherwise expressly provided by this Indenture, the Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Indenture;

(j) without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with any bankruptcy, insolvency or other proceeding referred to in clauses (d) or (e) of the definition of Event of Default, such expenses (including legal fees and expenses of its agents and counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy laws or law relating to creditors rights generally;

(k) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the

absence of bad faith on its part, conclusively rely upon an Officers' Certificate addressing such matter, which, upon receipt of such request, shall be promptly delivered by the Company;

(l) the Trustee shall not be charged with knowledge of any Event of Default unless either (i) a Responsible Officer of the Trustee shall have actual knowledge or (ii) the Trustee shall have received written notice thereof from the Company or a Holder; and

(m) in the event that the Trustee is also acting as Paying Agent, Authenticating Agent or Securities Registrar hereunder, the rights and protections afforded to the Trustee pursuant to this Article VI shall also be afforded such Paying Agent, Authenticating Agent, or Securities Registrar.

*SECTION 6.5. May Hold Securities.*

The Trustee, any Authenticating Agent, any Paying Agent, any Securities Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Securities Registrar or such other agent.

*SECTION 6.6. Compensation; Reimbursement; Indemnity*

(a) The Company agrees:

(i) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder in such amounts as the Company and the Trustee shall agree from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, bad faith or willful misconduct; and

(iii) to the fullest extent permitted by applicable law, to indemnify the Trustee and its Affiliates, and their officers, directors, shareholders, agents, representatives and employees for, and to hold them harmless against, any loss, damage, liability, tax (other than income, franchise or other taxes imposed on amounts paid pursuant to (i) or (ii) hereof), penalty, expense or claim of any kind or nature whatsoever incurred without negligence, bad faith or willful misconduct on its part arising out of or in connection with the acceptance or administration of this trust or the performance of the Trustee's duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

(b) To secure the Company's payment obligations in this Section 6.6, the Company hereby grants and pledges to the Trustee and the Trustee shall have a lien prior to the Securities

on all money or property held or collected by the Trustee, other than money or property held in trust to pay principal and interest on particular Securities. Such lien shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee.

(c) The obligations of the Company under this Section 6.6 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal of the Trustee.

(d) In no event shall the Trustee be liable for any indirect, special, punitive or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(e) In no event shall the Trustee be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Indenture.

*SECTION 6.7. Resignation and Removal; Appointment of Successor.*

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article VI shall become effective until the acceptance of appointment by the successor Trustee under Section 6.8.

(b) The Trustee may resign at any time by giving written notice thereof to the Company.

(c) The Trustee may be removed by the Act of the Holders of at least a majority in aggregate principal amount of the Outstanding Securities, delivered to the Trustee and the Company.

(d) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any reason, the Holders of the Outstanding Securities shall promptly appoint a successor Trustee, and such successor Trustee and the retiring Trustee shall comply with the applicable requirements of Section 6.8. If no successor Trustee shall have been so appointed by the Holders and accepted appointment within sixty (60) days after the giving of a notice of resignation by the Trustee or the removal of the Trustee in the manner required by Section 6.8, any Holder who has been a bona fide Holder of a Security for at least six months (or, if the Securities have been Outstanding for less than six (6) months, the entire period of such lesser time) may, on behalf of such Holder and all others similarly situated, and any resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee.

*SECTION 6.8. Acceptance of Appointment by Successor.*

(a) In case of the appointment hereunder of a successor Trustee, each successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of

the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all rights, powers and trusts referred to in paragraph (a) of this Section 6.8.

(c) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article VI.

*SECTION 6.9. Merger, Conversion, Consolidation or Succession to Business.*

Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided*, that such Person shall be otherwise qualified and eligible under this Article VI. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation or as otherwise provided above in this Section 6.9 to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated, and in case any Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor Trustee or in the name of such successor Trustee, and in all cases the certificate of authentication shall have the full force which it is provided anywhere in the Securities or in this Indenture that the certificate of the Trustee shall have.

*SECTION 6.10. Not Responsible for Recitals or Issuance of Securities.*

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Securities or the proceeds thereof.

SECTION 6.11. *Appointment of Authenticating Agent.*

(a) The Trustee may appoint an Authenticating Agent or Agents with respect to the Securities, which shall be authorized to act on behalf of the Trustee to authenticate Securities issued upon original issue and upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.6, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, or of any State or Territory thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or state authority. If such Authenticating Agent publishes reports of condition at least annually pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 6.11 the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.11, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 6.11.

(b) Any Person into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of an Authenticating Agent shall be the successor Authenticating Agent hereunder, provided such Person shall be otherwise eligible under this Section 6.11, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

(c) An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.11, the Trustee may appoint a successor Authenticating Agent eligible under the provisions of this Section 6.11, which shall be acceptable to the Company, and shall give notice of such appointment to all Holders. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent.

(d) The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.11 in such amounts as the Company and the Authenticating Agent shall agree from time to time.

(e) If an appointment of an Authenticating Agent is made pursuant to this Section 6.11, the Securities may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

This is one of the Securities referred to in the within mentioned Indenture.

Dated:

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, NATIONAL ASSOCIATION, not in  
its individual capacity, but solely as Trustee

By: \_\_\_\_\_  
Authenticating Agent

By: \_\_\_\_\_  
Authorized Signatory

## ARTICLE VII

### HOLDER'S LISTS AND REPORTS BY COMPANY

#### SECTION 7.1. *Company to Furnish Trustee Names and Addresses of Holders.*

The Company will furnish or cause to be furnished to the Trustee:

(a) Upon any change in Holder, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a date not more than fifteen (15) days prior to the delivery thereof, and

(b) at such other times as the Trustee may request in writing, within thirty (30) days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than fifteen (15) days prior to the time such list is furnished,

in each case to the extent such information is in the possession or control of the Company and has not otherwise been received by the Trustee in its capacity as Securities Registrar.

#### SECTION 7.2. *Preservation of Information, Communications to Holders.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Securities Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, shall be as provided in the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of information as to the names and addresses of the Holders made pursuant to the Trust Indenture Act.

SECTION 7.3. *Reports by Company.*

(a) The Company shall furnish to the Holders and to prospective purchasers of Securities, upon their request, the information required to be furnished pursuant to Rule 144A(d)(4) under the Securities Act. The delivery requirement set forth in the preceding sentence may be satisfied by compliance with Section 7.3(b) hereof.

(b) The Company shall furnish to each of (i) the Trustee, (ii) the Holders and to subsequent holders of Securities, (iii) Taberna Capital Management, LLC, 450 Park Avenue, New York, New York 10022, Attn: Raphael Licht (or such other address as designated by Taberna Capital Management, LLC) and (iv) any beneficial owner of the Securities reasonably identified to the Company (which identification may be made either by such beneficial owner or by Taberna Capital Management, LLC), a duly completed and executed certificate substantially and substantively in the form attached hereto as Exhibit A, including the financial statements referenced in such Exhibit, which certificate and financial statements shall be so furnished by the Company not later than forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company and not later than ninety (90) days after the end of each fiscal year of the Company.

(c) If the Company intends to file its annual and quarterly information with the Securities and Exchange Commission (the "*Commission*") in electronic form pursuant to Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval ("*EDGAR*") system, the Company shall notify the Trustee in the manner prescribed herein of each such annual and quarterly filing. The Trustee is hereby authorized and directed to access the EDGAR system for purposes of retrieving the financial information so filed. Compliance with the foregoing shall constitute delivery by the Company of its financial statements to the Trustee in compliance with the provisions of Section 314(a) of the Trust Indenture Act, if applicable. The Trustee shall have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of reports, information and documents to the Trustee pursuant to this Section 7.3(c) shall be solely for purposes of compliance with this Section 7.3(c) and, if applicable, with Section 314(a) of the Trust Indenture Act. The Trustee's receipt of such reports, information and documents shall not constitute notice to it of the content thereof or any matter determinable from the content thereof, including the Company's compliance with any of its covenants hereunder, as to which the Trustee is entitled to rely upon Officers' Certificates.

## ARTICLE VIII

### CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

#### SECTION 8.1. *Company May Consolidate, Etc., Only on Certain Terms.*

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and no Person shall consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(a) if the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the entity formed by such consolidation or into which the Company is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of the Company substantially as an entirety shall be an entity organized and existing under the laws of the United States of America or any State or Territory thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest (including any Additional Interest) on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event of Default, and no event that, after notice or lapse of time, or both, would constitute an Event of Default, shall have happened and be continuing; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, any such supplemental indenture comply with this Article VIII and that all conditions precedent herein provided for relating to such transaction have been complied with; and the Trustee may rely upon such Officers' Certificate and Opinion of Counsel as conclusive evidence that such transaction complies with this Section 8.1.

#### SECTION 8.2. *Successor Company Substituted.*

(a) Upon any consolidation or merger by the Company with or into any other Person, or any conveyance, transfer or lease by the Company of its properties and assets substantially as an entirety to any Person in accordance with Section 8.1 and the execution and delivery to the Trustee of the supplemental indenture described in Section 8.1(a), the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and in the event of any such conveyance or transfer, following the execution and delivery of such supplemental indenture, the Company shall be discharged from all obligations and covenants under the Indenture and the Securities.

(b) Such successor Person may cause to be executed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities that such successor Person thereafter shall cause to be executed and delivered to the Trustee on its behalf. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture.

(c) In case of any such consolidation, merger, sale, conveyance or lease, such changes in phraseology and form may be made in the Securities thereafter to be issued as may be appropriate to reflect such occurrence.

## ARTICLE IX

### SUPPLEMENTAL INDENTURES

#### SECTION 9.1. *Supplemental Indentures without Consent of Holders.*

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form reasonably satisfactory to the Trustee, for any of the following purposes:

- (a) Intentionally omitted;
- (b) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make or amend any other provisions with respect to matters or questions arising under this Indenture, which shall not be inconsistent with the other provisions of this Indenture, *provided*, that such action pursuant to this clause (b) shall not adversely affect in any material respect the interests of any Holders; or
- (c) to comply with the rules and regulations of any securities exchange or automated quotation system on which any of the Securities may be listed, traded or quoted; or
- (d) to add to the covenants, restrictions or obligations of the Company or to add to the Events of Default, *provided*, that such action pursuant to this clause (c) shall not adversely affect in any material respect the interests of any Holders; or
- (e) to modify, eliminate or add to any provisions of the Indenture or the Securities to such extent as shall be necessary to ensure that the Securities are treated as indebtedness of the Company for United States Federal income tax purposes, *provided*, that such action pursuant to this clause (e) shall not adversely affect in any material respect the interests of any Holders.

SECTION 9.2. *Supplemental Indentures with Consent of Holders.*

(a) With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities under this Indenture; *provided*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security,

(i) change the Stated Maturity of the principal or any premium of any Security or change the date of payment of any installment of interest (including any Additional Interest) on any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof or change the place of payment where, or the coin or currency in which, any Security or interest thereon is payable, or restrict or impair the right to institute suit for the enforcement of any such payment on or after such date, or

(ii) reduce the percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with any provision of this Indenture or of defaults hereunder and their consequences provided for in this Indenture, or

(iii) modify any of the provisions of this Section 9.2, Section 5.13 or Section 10.7, except to increase any percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any reason, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security.

(b) It shall not be necessary for any Act of Holders under this Section 9.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 9.3. *Execution of Supplemental Indentures.*

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article IX or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in conclusively relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent herein provided for relating to such action have been complied with. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, indemnities or immunities under this Indenture or otherwise. Copies of the final form of each supplemental indenture shall be delivered by the Trustee at the expense of the Company to each Holder, promptly after the execution thereof.

SECTION 9.4. *Effect of Supplemental Indentures.*

Upon the execution of any supplemental indenture under this Article IX, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

SECTION 9.5. *Reference in Securities to Supplemental Indentures.*

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article IX may, and shall if required by the Company, bear a notation in form approved by the Company as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

**ARTICLE X**

**COVENANTS**

SECTION 10.1. *Payment of Principal, Premium, if any, and Interest.*

The Company covenants and agrees for the benefit of the Holders of the Securities that it will duly and punctually pay the principal of and any premium and interest (including any Additional Interest) on the Securities in accordance with the terms of the Securities and this Indenture.

SECTION 10.2. *Money for Security Payments to be Held in Trust.*

(a) Intentionally Omitted.

(b) Whenever the Company shall have one or more Paying Agents, it will, prior to 10:00 a.m., New York City time, on each due date of the principal of or any premium or interest (including any Additional Interest) on any Securities, deposit with such Paying Agent a sum sufficient to pay such amount, such sum to be held as provided in the Trust Indenture Act and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its failure so to act.

(c) The Company will cause each Paying Agent for the Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 10.2, that such Paying Agent will (i) comply with the provisions of this Indenture and the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities) in the making of any payment in respect of the Securities, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities.

(d) The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

(e) Any money deposited with the Trustee or any Paying Agent for the payment of the principal of and any premium or interest (including any Additional Interest) on any Security and remaining unclaimed for two years after such principal and any premium or interest has become due and payable shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be paid on Company Request to the Company, or (if then held by the Company) shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 10.3. *Statement as to Compliance.*

The Company shall deliver to the Trustee, with a copy to Taberna, within one hundred and twenty (120) days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate covering the preceding calendar year, stating whether or not to the knowledge of the signers thereof the Company is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder), and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge. The delivery requirements of this Section 10.3 may be satisfied by compliance with Section 8.16(a) of the Trust Agreement.

SECTION 10.4. *Calculation Agent.*

(a) The parties hereby agrees that for so long as any of the Securities remain Outstanding, there will at all times be an agent appointed to calculate LIBOR in respect of each Interest Payment Date in accordance with the terms of Schedule A (the "*Calculation Agent*"). The Holders have initially appointed Trustee as Calculation Agent for purposes of determining LIBOR for each Interest Payment Date. The Calculation Agent may be removed by the Holders of a majority in aggregate principal amount of the Securities.

(b) The Calculation Agent shall be required to agree that, as soon as possible after 11:00 a.m. (London time) on each LIBOR Determination Date (as defined in Schedule A), but in no event later than 11:00 a.m. (London time) on the Business Day immediately following each LIBOR Determination Date, the Calculation Agent will calculate the interest rate (the Interest Payment shall be rounded to the nearest cent, with half a cent being rounded upwards) for the related Interest Payment Date, and will communicate such rate and amount to the Company, the Holders, the Trustee, and the Paying Agent. The Calculation Agent will also specify to the Company and the Holders the quotations upon which the foregoing rates and amounts are based and, in any event, the Calculation Agent shall notify the Company and the Holders before 5:00 p.m. (London time) on each LIBOR Determination Date that either: (i) it has determined or is in the process of determining the foregoing rates and amounts or (ii) it has not determined and is not in the process of determining the foregoing rates and amounts, together with its reasons therefor. The Calculation Agent's determination of the foregoing rates and amounts for any Interest Payment Date will (in the absence of manifest error) be final and binding upon all parties. For the sole purpose of calculating the interest rate for the Securities, "Business Day" shall be defined as any day on which dealings in deposits in Dollars are transacted in the London interbank market.

SECTION 10.5. *Inspection of Books and Records; Management and Board Observation Rights.*

(a) Upon written notice from the Holders of a majority in aggregate principal amount of the Outstanding Securities at least five (5) Business Days in advance, the Company shall permit the Holders of a majority in aggregate principal amount of the Outstanding Securities to examine the books and records of account of the Company and its subsidiaries (and to make copies thereof and extracts therefrom) and to discuss the affairs, finances and accounts of such Persons with, and to be advised as to the same by such management representatives of the Company and its subsidiaries as the Holders of a majority in aggregate principal amount of the Outstanding Securities may reasonably request, either in person at the Company's offices or telephonically, all at such reasonable times and intervals during normal business hours as the Holders of a majority in aggregate principal amount of the Outstanding Securities may reasonably request, at the expense of the Company.

(b) The Holders and their Affiliates will keep confidential any non-public information of the Company made available to the Holders of a majority in aggregate principal amount of the Outstanding Securities or their Affiliates; provided, such confidential information shall not include any information that (1) is or becomes generally available to the public (other than through breach of this paragraph by the Holders of a majority in aggregate principal amount of the Outstanding Securities or their Affiliates), (2) was within the possession of the Holders of a majority in aggregate principal amount of the Outstanding Securities prior to its being furnished to the Holders of a majority in aggregate principal amount of the Outstanding Securities by or on behalf of the Company, provided that the source of such information was not known by the Holders of a majority in aggregate principal amount of the Outstanding Securities to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the Company with respect to such information or (3) becomes available to the Holders of a majority in aggregate principal amount of the Outstanding Securities on a non-confidential basis from a source other than the Company or any of its representatives, provided

that such source is not known by the Holders of a majority in aggregate principal amount of the Outstanding Securities to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the Company with respect to such information; and provided further, that such confidential information may be disclosed if the Holders of a majority in aggregate principal amount of the Outstanding Securities or their Affiliates are required to disclose such information pursuant to law, judicial or administrative process, or regulatory demand or request of any body having jurisdiction over the Holders. In the event that the Holders of a majority in aggregate principal amount of the Outstanding Securities or any of their Affiliates are requested or are required by law to disclose any such confidential information, the Holders of a majority in aggregate principal amount of the Outstanding Securities shall provide the Company with prompt written notice of any such request or requirement.

SECTION 10.6. *Additional Covenants.*

(a) For the period commencing on the date of this Agreement and continuing through March 30, 2010, or in any event if an Event of Default has occurred and is continuing, the Company covenants and agrees with each Holder of Securities that it shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of the Company's capital stock (for the avoidance of doubt, the term "capital stock" includes both common stock and preferred stock of the Company), (ii) vote in favor of or permit or otherwise allow any of its subsidiaries to declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to or otherwise retire, any shares of such subsidiaries preferred stock (for the avoidance of doubt, whether such preferred stock is perpetual or otherwise) except for dividends or distributions (x) to the Company or its subsidiaries and (y) by subsidiaries of the Company in which there are third party investors to the Company and such third party investors, or (iii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank pari passu in all respects with or junior in interest to the Securities (other than (A) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase plan or in connection with the issuance of stockholder stock of the Company (or securities convertible into or exercisable for such units of stockholder stock) as consideration in an acquisition transaction entered into prior to the date of this Agreement or, if later than March 30, 2010, prior to an Event of Default, (B) as a result of an exchange or conversion of any class or series of the Company's capital stock (or any capital stock of a Subsidiary of the Company) for any class or series of the Company's capital stock or of any class or series of the Company's indebtedness for any class or series of the Company's capital stock, (C) the purchase of fractional interests in the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, (D) any declaration of a dividend in connection with any Rights Plan or the redemption or repurchase of rights pursuant thereto, or (E) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks pari passu with or junior to such stock).

(b) Notwithstanding the foregoing, the restrictions set forth in Section 10.6(a) shall not apply to (i) payments of interest only (including deferred interest payments of approximately \$525,800 accruing through June 30, 2009) on, and any repayments, repurchases or redemptions of those certain Fixed/Floating Rate Junior Subordinated Debt Securities due 2035, issued pursuant to that certain Junior Subordinated Indenture between Impac Mortgage Holdings, Inc., as issuer, and Wilmington Trust Company, as trustee, dated as of October 15, 2005 and the related securities issued pursuant to the Amended and Restated Declaration of Trust of Impact Capital Trust #4 dated as of October 15, 2005, (ii) a redemption of the Company's 9.375% Series B Cumulative Redeemable Preferred Stock, \$0.01 par value per share (the "*Series B Preferred Stock*") and its 9.125% Series C Cumulative Redeemable Preferred Stock, \$0.01 par value per share (the "*Series C Preferred Stock*"), or the repurchase of all of such Series B Preferred Stock or Series C Preferred Stock (for an aggregate purchase price of up to \$1,861,000) pursuant to the terms of a cash tender offer for all such outstanding stock (which tender offer may include the payment of accumulated but unpaid dividends upon such Series B Preferred Stock and Series C Preferred Stock in an aggregate amount of up to \$7,444,000).

(c) Intentionally Omitted.

SECTION 10.7. *Waiver of Covenants.*

The Company may omit in any particular instance to comply with any covenant or condition contained in Sections 10.5 or 10.6 if, before or after the time for such compliance, the Holders of at least a majority in aggregate principal amount of the Outstanding Securities shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company in respect of any such covenant or condition shall remain in full force and effect.

SECTION 10.8. *Treatment of Securities.*

The Company will treat the Securities as indebtedness, and the amounts, other than payments of principal, payable in respect of the principal amount of such Securities as interest, for all U.S. federal income tax purposes. All payments in respect of the Securities will be made free and clear of U.S. withholding tax to any beneficial owner thereof that has provided an Internal Revenue Service Form W-9 or W-8BEN (or any substitute or successor form) establishing its U.S. or non-U.S. status for U.S. federal income tax purposes, or any other applicable form establishing a complete exemption from U.S. withholding tax.

SECTION 10.9. *Fees Costs and Expenses.*

The Company shall pay on demand all costs and fees, including all reasonable attorneys' fees and disbursements, of the Holders of the Securities and Taberna Capital Management, LLC, as provided in the Exchange Agreement. The Company shall also pay the fees and expenses of the Trustee as provided in that separate fee agreement between the Company and the Trustee and as otherwise required pursuant to Section 6.6. hereof.

## ARTICLE XI

### REDEMPTION OF SECURITIES

#### SECTION 11.1. *Optional Redemption.*

The Company may, at its option, on any Interest Payment Date, on or after March 30, 2010, redeem the Securities in whole at any time or in part from time to time, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof (or of the redeemed portion thereof, as applicable), together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date (the "*Optional Redemption Price*").

#### SECTION 11.2. *Special Event Redemption.*

Prior to March 30, 2010, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, redeem the Securities, in whole but not in part, at a Redemption Price equal to one hundred seven and one half percent (107.5%) of the principal amount thereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date (the "*Special Redemption Price*").

#### SECTION 11.3. *Election to Redeem; Notice to Trustee.*

The election of the Company to redeem any Securities, in whole or in part, shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company, the Company shall, not less than forty-five (45) days and not more than seventy-five (75) days prior to the Redemption Date (unless a shorter notice period shall be satisfactory to the Trustee), notify the Trustee in writing of such date and of the principal amount of the Securities to be redeemed and provide the additional information required to be included in the notice or notices contemplated by [Section 11.5](#). In the case of any redemption of Securities, in whole or in part, (a) prior to the expiration of any restriction on such redemption provided in this Indenture or the Securities or (b) pursuant to an election of the Company which is subject to a condition specified in this Indenture or the Securities, the Company shall furnish the Trustee with an Officers' Certificate and an Opinion of Counsel evidencing compliance with such restriction or condition.

#### SECTION 11.4. *Selection of Securities to be Redeemed.*

(a) If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected and redeemed on a pro rata basis not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, *provided*, that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

(b) The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the

principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security that has been or is to be redeemed.

(c) The provisions of paragraphs (a) and (b) of this Section 11.4 shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

SECTION 11.5. *Notice of Redemption.*

(a) Notice of redemption shall be given not later than the thirtieth (30<sup>th</sup>) day, and not earlier than the sixtieth (60<sup>th</sup>) day, prior to the Redemption Date to each Holder of Securities to be redeemed, in whole or in part, (unless a shorter notice shall be satisfactory to the Holders of the Securities and the Trustee).

(b) With respect to Securities to be redeemed, in whole or in part, each notice of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price or, if the Redemption Price cannot be calculated prior to the time the notice is required to be sent, the estimate of the Redemption Price, as calculated by the Company, together with a statement that it is an estimate and that the actual Redemption Price will be calculated on the fifth Business Day prior to the Redemption Date (and if an estimate is provided, a further notice shall be sent of the actual Redemption Price on the date that such Redemption Price is calculated);

(iii) if less than all Outstanding Securities are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the amount of and particular Securities to be redeemed;

(iv) that on the Redemption Date, the Redemption Price will become due and payable upon each such Security or portion thereof, and that any interest (including any Additional Interest) on such Security or such portion, as the case may be, shall cease to accrue on and after said date; and

(v) the place or places where such Securities are to be surrendered for payment of the Redemption Price.

(c) Notice of redemption of Securities to be redeemed, in whole or in part, at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and shall be irrevocable. The notice if mailed in the manner provided above shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail

or any defect in the notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

**SECTION 11.6.**      *Deposit of Redemption Price.*

Prior to 10:00 a.m., New York City time, on the Redemption Date specified in the notice of redemption given as provided in Section 11.5, the Company will deposit with the Trustee or with one or more Paying Agents an amount of money sufficient to pay the Redemption Price of, and any accrued interest (including any Additional Interest) on, all the Securities (or portions thereof) that are to be redeemed on that date.

**SECTION 11.7.**      *Payment of Securities Called for Redemption.*

(a) If any notice of redemption has been given as provided in Section 11.5, the Securities or portion of Securities with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date. On presentation and surrender of such Securities at a Place of Payment specified in such notice, the Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date.

(b) Upon presentation of any Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the Security so presented and having the same Original Issue Date, Stated Maturity and terms.

(c) If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal of and any premium on such Security shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

**ARTICLE XII**

**SUBORDINATION OF SECURITIES**

**SECTION 12.1.**      *Securities Subordinate to Senior Debt.*

The Company covenants and agrees, and each Holder of a Security, by its acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article XII, the payment of the principal of and any premium and interest (including any Additional Interest) on each and all of the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Debt.

SECTION 12.2. *No Payment When Senior Debt in Default; Payment Over of Proceeds Upon Dissolution, Etc.*

(a) In the event and during the continuation of any default by the Company in the payment of any principal of or any premium or interest on any Senior Debt (following any grace period, if applicable) when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration of acceleration or otherwise, then, upon written notice of such default to the Company by the holders of such Senior Debt or any trustee therefor, unless and until such default shall have been cured or waived or shall have ceased to exist, no direct or indirect payment (in cash, property, securities, by set-off or otherwise) shall be made or agreed to be made on account of the principal of or any premium or interest (including any Additional Interest) on any of the Securities, or in respect of any redemption, repayment, retirement, purchase or other acquisition of any of the Securities.

(b) In the event of a bankruptcy, insolvency or other proceeding described in clause (d) or (e) of the definition of Event of Default (each such event, if any, herein sometimes referred to as a "Proceeding"), all Senior Debt (including any interest thereon accruing after the commencement of any such proceedings) shall first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to any Holder of any of the Securities on account thereof. Any payment or distribution, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment), which would otherwise (but for these subordination provisions) be payable or deliverable in respect of the Securities shall be paid or delivered directly to the holders of Senior Debt in accordance with the priorities then existing among such holders until all Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) shall have been paid in full.

(c) In the event of any Proceeding, after payment in full of all sums owing with respect to Senior Debt, the Holders of the Securities, together with the holders of any obligations of the Company ranking on a parity with the Securities, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid principal of and any premium and interest (including any Additional Interest) on the Securities and such other obligations before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any Equity Interests or any obligations of the Company ranking junior to the Securities and such other obligations. If, notwithstanding the foregoing, any payment or distribution of any character on any security, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment) shall be received by the Trustee or any Holder in contravention of any of the terms hereof and before all Senior Debt shall have been paid in full, such payment or distribution or security shall be received in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior

Debt at the time outstanding in accordance with the priorities then existing among such holders for application to the payment of all Senior Debt remaining unpaid, to the extent necessary to pay all such Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) in full. In the event of the failure of the Trustee or any Holder to endorse or assign any such payment, distribution or security, each holder of Senior Debt is hereby irrevocably authorized to endorse or assign the same.

(d) The Trustee and the Holders, at the expense of the Company, shall take such reasonable action (including the delivery of this Indenture to an agent for any holders of Senior Debt or consent to the filing of a financing statement with respect hereto) as may, in the opinion of counsel designated by the holders of a majority in aggregate principal amount of the Senior Debt at the time outstanding, be necessary or appropriate to assure the effectiveness of the subordination effected by these provisions.

(e) The provisions of this Section 12.2 shall not impair any rights, interests, remedies or powers of any secured creditor of the Company in respect of any security interest the creation of which is not prohibited by the provisions of this Indenture.

(f) The securing of any obligations of the Company, otherwise ranking on a parity with the Securities or ranking junior to the Securities, shall not be deemed to prevent such obligations from constituting, respectively, obligations ranking on a parity with the Securities or ranking junior to the Securities.

**SECTION 12.3.**      *Payment Permitted If No Default.*

Nothing contained in this Article XII or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company, at any time, except during the pendency of the conditions described in paragraph (a) of Section 12.2 or of any Proceeding referred to in Section 12.2, from making payments at any time of principal of and any premium or interest (including any Additional Interest) on the Securities or (b) the application by the Trustee of any moneys deposited with it hereunder to the payment of or on account of the principal of and any premium or interest (including any Additional Interest) on the Securities or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge (in accordance with Section 12.8) that such payment would have been prohibited by the provisions of this Article XII, except as provided in Section 12.8.

**SECTION 12.4.**      *Subrogation to Rights of Holders of Senior Debt.*

Subject to the payment in full of all amounts due or to become due on all Senior Debt, or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Debt, the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this Article XII (equally and ratably with the holders of all indebtedness of the Company that by its express terms is subordinated to Senior Debt of the Company to substantially the same extent as the Securities are subordinated to the Senior Debt and is entitled to like rights of subrogation by reason of any payments or distributions made to holders of such Senior Debt) to the rights of the holders of such Senior Debt to receive payments and distributions of cash,

property and securities applicable to the Senior Debt until the principal of and any premium and interest (including any Additional Interest) on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article XII, and no payments made pursuant to the provisions of this Article XII to the holders of Senior Debt by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Debt, and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Debt.

SECTION 12.5. *Provisions Solely to Define Relative Rights.*

The provisions of this Article XII are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Senior Debt on the other hand. Nothing contained in this Article XII or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as between the Company and the Holders of the Securities, the obligations of the Company, which are absolute and unconditional, to pay to the Holders of the Securities the principal of and any premium and interest (including any Additional Interest) on the Securities as and when the same shall become due and payable in accordance with their terms, (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than their rights in relation to the holders of Senior Debt or (c) prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, including filing and voting claims in any Proceeding, subject to the rights, if any, under this Article XII of the holders of Senior Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

SECTION 12.6. *Trustee to Effectuate Subordination.*

Each Holder of a Security by his or her acceptance thereof authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination provided in this Article XII and appoints the Trustee his or her attorney-in-fact for any and all such purposes.

SECTION 12.7. *No Waiver of Subordination Provisions.*

(a) No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or be otherwise charged with.

(b) Without in any way limiting the generality of paragraph (a) of this Section 12.7, the holders of Senior Debt may, at any time and from to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to such Holders of the Securities and without impairing or releasing the subordination provided in this Article XII or

the obligations hereunder of such Holders of the Securities to the holders of Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Debt, or otherwise amend or supplement in any manner Senior Debt or any instrument evidencing the same or any agreement under which Senior Debt is outstanding, (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Debt, (iii) release any Person liable in any manner for the payment of Senior Debt and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

SECTION 12.8. *Notice to Trustee.*

(a) The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article XII or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder of Senior Debt or from any trustee, agent or representative therefor; *provided*, that if the Trustee shall not have received the notice provided for in this Section 12.8 at least two Business Days prior to the date upon which by the terms hereof any monies may become payable for any purpose (including, the payment of the principal of and any premium on or interest (including any Additional Interest) on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

(b) The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself or herself to be a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact therefor) to establish that such notice has been given by a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article XII, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XII, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 12.9. *Reliance on Judicial Order or Certificate of Liquidating Agent.*

Upon any payment or distribution of assets of the Company referred to in this Article XII, the Trustee and the Holders of the Securities shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such Proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the

Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XII.

SECTION 12.10. *Trustee Not Fiduciary for Holders of Senior Debt.*

The Trustee, in its capacity as trustee under this Indenture, shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article XII or otherwise.

SECTION 12.11. *Rights of Trustee as Holder of Senior Debt; Preservation of Trustee's Rights.*

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XII with respect to any Senior Debt that may at any time be held by it, to the same extent as any other holder of Senior Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

SECTION 12.12. *Article Applicable to Paying Agents.*

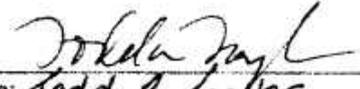
If at any time any Paying Agent other than the Trustee shall have been appointed and shall be then acting hereunder, the term "Trustee" as used in this Article XII shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article XII in addition to or in place of the Trustee. For avoidance of doubt, neither the Company nor any affiliate of the Company shall be permitted to serve as a Paying Agent hereunder.

\* \* \* \*

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

**IMPAC MORTGAGE HOLDINGS, INC.,** a  
Maryland corporation

By:   
Name: Todd B. Taylor  
Title: CFO

(Signatures continue on the next page)

**Signature Page to Junior Subordinated Indenture (Indenture II)**

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**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, NATIONAL  
ASSOCIATION**, not in its individual capacity but  
solely as Trustee

By:   
Name: Bill Marshall  
Title: Vice President

**Signature Page to Junior Subordinated Indenture (Indenture II)**

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## Schedule A

### DETERMINATION OF LIBOR

With respect to the Securities, the London interbank offered rate (“LIBOR”) shall be determined by the Calculation Agent in accordance with the following provisions (in each case rounded to the nearest .000001%):

(1) On the second LIBOR Business Day (as defined below) prior to an Interest Payment Date (each such day, a “LIBOR Determination Date”), LIBOR for any given security shall for the following Interest Period equal the rate, as obtained by the Calculation Agent from Bloomberg Financial Markets Commodities News, for three-month Eurodollar deposits that appears on Dow Jones Telerate Page 3750 (as defined in the International Swaps and Derivatives Association, Inc. 1991 Interest Rate and Currency Exchange Definitions), or such other page as may replace such Page 3750, as of 11:00 a.m. (London time) on such LIBOR Determination Date.

(2) If, on any LIBOR Determination Date, such rate does not appear on Dow Jones Telerate Page 3750 or such other page as may replace such Page 3750, the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks (as defined below) to leading banks in the London interbank market for three-month Eurodollar deposits in an amount determined by the Calculation Agent by reference to requests for quotations as of approximately 11:00 a.m. (London time) on the LIBOR Determination Date made by the Calculation Agent to the Reference Banks. If, on any LIBOR Determination Date, at least two of the Reference Banks provide such quotations, LIBOR shall equal such arithmetic mean of such quotations. If, on any LIBOR Determination Date, only one or none of the Reference Banks provide such quotations, LIBOR shall be deemed to be the arithmetic mean of the offered quotations that leading banks in the City of New York selected by the Calculation Agent are quoting on the relevant LIBOR Determination Date for three-month Eurodollar deposits in an amount determined by the Calculation Agent by reference to the principal London offices of leading banks in the London interbank market; *provided* that, if the Calculation Agent is required but is unable to determine a rate in accordance with at least one of the procedures provided above, LIBOR shall be LIBOR as determined on the previous LIBOR Determination Date.

(3) As used herein: “Reference Banks” means four major banks in the London interbank market selected by the Calculation Agent; and “LIBOR Business Day” means a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London.

**Exhibit A**

**Form of Officer's Financial Certificate**

The undersigned, the [Chairman/Vice Chairman/Chief Executive Officer/President/ Vice President/Chief Financial Officer/Treasurer/Assistant Treasurer], hereby certifies, pursuant to Section 7.3(b) of the Junior Subordinated Indenture, dated as of May 8, 2009, among Impac Mortgage Holdings, Inc. (the "Company") and The Bank of New York Mellon Trust Company, National Association, as trustee, that, as of [date], [20\_\_], the Company, if applicable, and its subsidiaries had the following ratios and balances:

As of [Quarterly/Annual Financial Date], 20\_\_

Senior secured indebtedness for borrowed money ("Debt")	\$ _____
Senior unsecured Debt	\$ _____
Subordinated Debt	\$ _____
Total Debt	\$ _____
Ratio of (x) senior secured and unsecured Debt to (y) total Debt	_____ %

\* A table describing the quarterly report calculation procedures is provided on page \_\_\_\_

[FOR FISCAL YEAR END: Attached hereto are the audited consolidated financial statements (including the balance sheet, income statement and statement of cash flows, and notes thereto, together with the report of the independent accountants thereon) of the Company and its consolidated subsidiaries for the three years ended [date], 20\_\_ and all required Financial Statements (as defined in the Purchase Agreement) for the year ended [date], 20\_\_]

[FOR FISCAL QUARTER END: Attached hereto are the unaudited consolidated and consolidating financial statements (including the balance sheet and income statement) of the Company and its consolidated subsidiaries and all required Financial Statements (as defined in the Purchase Agreement) for the year ended [date], 20\_\_ for the fiscal quarter ended [date], 20\_\_.]

The financial statements fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("GAAP"), the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the date, and for the [\_\_ quarter interim] [annual] period ended [date], 20\_\_, and such financial statements have been prepared in accordance with GAAP consistently applied throughout the period involved (except as otherwise noted therein).

There has been no monetary default with respect to any indebtedness owed by the Company and/or its subsidiaries (other than those defaults cured within 30 days of the occurrence of the same) [ , except as set forth below:].

[Insert any exceptions by listing, in detail, the nature of the condition or event causing such noncompliance, the period during which such condition or event has existed and the action(s) the Company has taken, is taking, or proposes to take with respect to each such condition or event.]

[I, the undersigned, the [Chairman/Vice Chairman/Chief Executive Officer/President/Vice President/Chief Financial Officer/Treasurer/Assistant Treasurer], hereby certify that I have reviewed the terms of the Indenture and I have made, or have caused to be made under my supervision, a detailed review of (i) the covenants of the Company set forth therein, in particular, Section [ ] (the "Financial Covenants") and (ii) the transactions and conditions of the Company and its subsidiaries during the accounting period ended as of [ ] (the "Accounting Period"), which Accounting Period is covered by the financial statements attached hereto. The examinations described in the preceding sentence did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes a Default or an Event of Default (each as defined in the Indenture) during or at the end of the Accounting Period or as of the date of this certificate[ , except as set forth below:].

[Insert any exceptions by listing, in detail, the nature of the condition or event causing such noncompliance, the period during which such condition or event has existed and the action(s) the Company has taken, is taking, or proposes to take with respect to each such condition or event.]

Page \_\_\_ attached hereto sets forth the financial data and computations evidencing the Company's compliance with the Financial Covenants, all of which data and computations are true, complete and correct.]

IN WITNESS WHEREOF, the undersigned has executed this Officer's Financial Certificate as of this \_\_\_ day of \_\_\_\_\_, 20\_\_.

[COMPANY]

By: \_\_\_\_\_

Name: \_\_\_\_\_

[Company]

[Address]

[Address]

[Telephone Number]

EX-21.1 SUBSIDIARIES OF THE REGISTRANT

Name of Subsidiary	State of Incorporation
Impac Funding Corporation*	California
Impac Warehouse Lending Group, Inc.	California
IMH Assets Corp.	California
Integrated Real Estate Service Corporation	California

\* Impac Funding Corporation owns 100% of the common stock of Impac Secured Assets Corporation, a California corporation, and Impac Commercial Capital Corporation, a California corporation.

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## CERTIFICATION

I, Joseph R. Tomkinson, certify that:

1. I have reviewed this report on Form 10-Q of Impac Mortgage Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
  - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Joseph R. Tomkinson

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Joseph R. Tomkinson  
Chief Executive Officer  
August 10, 2009

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## CERTIFICATION

I, Todd R. Taylor, certify that:

1. I have reviewed this report on Form 10-Q of Impac Mortgage Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
  - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Todd R. Taylor

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Todd R. Taylor  
Chief Financial Officer  
August 10, 2009

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**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the report of Impac Mortgage Holdings, Inc. (the "Company") on Form 10-Q for the period ending June 30, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned, in the capacities and on the dates indicated below, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Joseph R. Tomkinson

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Joseph R. Tomkinson  
Chief Executive Officer  
August 10, 2009

/s/ Todd R. Taylor

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Todd R. Taylor  
Chief Financial Officer  
August 10, 2009

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