

# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 10-K

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

For the fiscal year ended December 31, 2005 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.)

**1401 Dove Street, Newport Beach, California 92660**

(Address of principal executive offices)

**(949) 475-3600**

(Registrant's telephone number, including area code)

**Securities registered pursuant to Section 12(b) of the Act:**

**Title of each class**

**Name of each exchange on which registered**

Common Stock, \$0.01 par value	New York Stock Exchange
Preferred Share Purchase Rights	New York Stock Exchange
9.375% Series B Cumulative Redeemable Preferred Stock	New York Stock Exchange
9.125% Series C Cumulative Redeemable Preferred Stock	New York Stock Exchange

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act Yes o No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes o No

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 o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of the Form 10-K or any amendment to this Form 10-K. o

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 o Non-accelerated filer o

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

As of June 30, 2005, the aggregate market value of the voting stock held by non-affiliates of the registrant was approximately \$1.4 billion, based on the closing sales price of common stock on the New York Stock Exchange on that date. For purposes of the calculation only, all directors and executive officers of the registrant have been deemed affiliates. There were 76,112,963 shares of common stock outstanding as of March 1, 2006.

Portions of information required by Items 10, 11, 12, 13 and 14 of Part III, are incorporated by reference from the Proxy Statement for the Company's 2006 Annual Meeting of Stockholders, except for the Stock Performance Graph, Report of the Compensation Committee on Executive Compensation, and Report of the Audit Committee. The Company's Proxy Statement will be filed with the Commission within 120 days after the year ended December 31, 2005.

**IMPAC MORTGAGE HOLDINGS, INC.**  
**2005 FORM 10-K ANNUAL REPORT**  
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## **PART I**

### **ITEM 1. BUSINESS**

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

#### **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," "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, failure to achieve projected earnings levels; unexpected increases in credit and bond spreads; the ability to generate sufficient liquidity; the ability to access the equity markets; increased operating expenses and mortgage origination or purchase expenses that reduce current liquidity position more than anticipated; continued increase in price competition; risks of delays in raising, or the inability to raise, additional capital, either through equity offerings, lines of credit or otherwise; the ability to generate taxable income and to pay dividends; interest rate fluctuations on our assets that differ from those on our liabilities; unanticipated interest rate fluctuations; changes in expectations of future interest rates; unexpected increase in prepayment rates on our mortgages; changes in assumption regarding estimated loan losses or an increase in loan losses; continued ability to access the securitization markets or other funding sources, the availability of financing and, if available, the terms of any financing; changes in markets which the Company serves, such as mortgage refinancing activity and housing price appreciation; 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 Item 1A "Risk Factors" and Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this report. 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.

#### **Available Information**

Our Internet website address is [www.impaccompanies.com](http://www.impaccompanies.com). We make available our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and proxy statement for our annual stockholders' meetings, as well as any amendments to those reports, free of charge through our website as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission, or "SEC." You can learn more about us by reviewing our SEC filings on our website by clicking on "Stockholder Relations" located on our home page and proceeding to "Financial Reports." We also make available on our website, under "Corporate Governance," charters for the audit, compensation, and governance and nominating committees of our board of directors, our Code of Business Conduct and Ethics, our Corporate Governance Guidelines and other company information, including amendments to such documents and waivers, if any to our Code of Business Conduct and Ethics. These documents will also be furnished, free of charge, upon written request to Impac Mortgage Holdings, Inc., Attention: Stockholder Relations, 1401 Dove Street, Newport Beach, California 92660. The SEC also maintains a website at [www.sec.gov](http://www.sec.gov) that contains reports, proxy statements and other information regarding SEC registrants, including the Company.

#### **General Overview**

We are a mortgage real estate investment trust, or "REIT," that is a nationwide acquirer, originator, seller and investor of non-conforming Alt-A mortgages, or "Alt-A mortgages," and to a lesser extent, small-balance multi-family mortgages, or "multi-family mortgages", and sub-prime, or "B/C mortgages." We also provide repurchase financing to originators of mortgages.

We operate three core businesses:

- the long-term investment operations that are conducted by IMH, IMH Assets and IMCC;
- the mortgage operations that are conducted by IFC, ISAC; and
- the warehouse lending operations that are conducted by IWL.G.

The long-term investment operations primarily retain for investment adjustable rate and fixed rate Alt-A mortgages that are acquired and originated by our mortgage operations. Alt-A mortgages are primarily first lien mortgages made to borrowers whose credit is generally within typical Fannie Mae and Freddie Mac guidelines, but have loan characteristics that make them non-conforming under those guidelines. Some of the principal differences between mortgages purchased by Fannie Mae and Freddie Mac and Alt-A mortgages are as follows:

- credit and income histories of the mortgagor;
- documentation required for approval of the mortgagor;
- loan balances in excess of maximum Fannie Mae and Freddie Mac lending limits; and
- applicable loan to value ratios.

For instance, Alt-A mortgages may have higher loan-to-value, or "LTV," ratios than allowable under Fannie Mae or Freddie Mac guidelines. Furthermore, Alt-A mortgages may not have certain documentation or verifications that are required by Fannie Mae and Freddie Mac and, therefore, in making our credit decisions, we are more reliant upon the borrower's credit score and the adequacy of the underlying collateral. We believe that Alt-A mortgages provide an attractive net earnings profile by producing higher yields without commensurately higher credit losses than other types of mortgages.

The long-term investment operations also originate and invest in multi-family mortgages, and recently, commercial mortgages, that are primarily adjustable rate mortgages with initial fixed interest rate periods of two-, three-, five-, seven- and ten-years that subsequently adjust to adjustable rate mortgages, or "hybrid ARMs," with balances that generally range from \$500,000 to \$5.0 million. Multi-family mortgages have interest rate floors, which is the initial start rate, and prepayment penalty periods of three-, five-, seven- and ten-years. Multi-family mortgages provide greater asset diversification on our balance sheet as borrowers of multi-family mortgages typically have higher credit scores and multi-family mortgages typically have lower loan-to-value ratios, or "LTV ratios," and longer average lives than Alt-A mortgages. On January 1, 2006, we elected to convert IMCC from a qualified REIT subsidiary to a taxable REIT subsidiary. We have also changed the name of IMCC to Impac Commercial Capital Corporation ("ICCC"). Beginning in 2006, we are expanding our multi-family lending operations, ICCC, to include commercial loan products. The loan portfolio remains as part of the REIT assets while the commercial origination operations, ICCC, will be subject to state and federal income taxes beginning in 2006.

The long-term investment operations generate earnings primarily from net interest income earned on mortgages held for long-term investment, or "long-term mortgage portfolio." The long-term mortgage portfolio as reported on our consolidated balance sheets consist of mortgages held as collateralized mortgage obligations, or "CMO," and mortgages held-for-investment. Investments in Alt-A mortgages and multi-family and commercial mortgages are initially financed with short-term borrowings under reverse repurchase agreements, which are subsequently converted to long-term financing in the form of CMO financing. Cash flows from the long-term mortgage portfolio and proceeds from the sale of securities also finance new Alt-A and multi-family and commercial mortgages.

The Company securitizes mortgages in the form of CMOs and real estate mortgage investment conduits (REMICs). The typical CMO securitization is designed so that the transferee (securitization trust) is not a qualifying special purpose entity (QSPE) and thus as the sole residual interest holder, the Company consolidates such variable interest entities (VIEs). Amounts consolidated are classified as CMO collateral and CMO borrowings in the consolidated balance sheets. Generally, the typical REMIC securitization qualifies for sale accounting treatment and the securitization trust is a QSPE and thus not consolidated by the Company. To the extent that our REMIC securitization trusts do not meet the QSPE criteria, consolidation is assessed pursuant to Financial Accounting Standards Board (FASB) Interpretation No. 46 (revised December 2003), "Consolidation of Variable Interest Entities" (FIN 46R).

In 2005, we completed the ISAC REMIC 2005-2 securitization which was treated as a sale for tax purposes but treated as a secured borrowing for generally accepted accounting principles (GAAP) purposes and consolidated in the financial statements. The associated collateral and borrowings have been included in CMO collateral and borrowings, respectively, for

reporting purposes. Reference to "CMO collateral" or "CMO borrowings" or "CMO" includes the REMIC 2005-2 securitization collateral and/or borrowings, respectively. In January 2006, we combined our Alt-A wholesale and subprime product offerings under one platform. Our subprime products previously marketed under Novelle Financial Services, Inc., are now offered by our Alt-A wholesale operations, Impac Lending Group (ILG), a division of IFC.

The mortgage operations acquire, originate, sell and securitize primarily adjustable rate and fixed rate Alt-A mortgages and, to a lesser extent, B/C mortgages. The mortgage operations generate income by securitizing and selling mortgages to permanent investors, including the long-term investment operations. This business also earns revenue from fees associated with mortgage servicing rights, master servicing agreements and interest income earned on mortgages held for sale. The mortgage operations use facilities provided by the warehouse lending operations to finance the acquisition and origination of mortgages.

The warehouse lending operations provide short-term repurchase facilities to mortgage loan originators, including our mortgage operations, by funding mortgages from their closing date until sale to pre-approved investors. This business earns fees from each transaction as well as net interest income from the difference between its cost of borrowings and the interest earned on repurchase advances.

For financial information relating to the long-term investment operations, mortgage operations and warehouse lending operations, please refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements beginning on page F-1.

### **Long-Term Investment Operations**

The long-term investment operations retain for investment primarily Alt-A mortgages and, to a lesser extent, multi-family and commercial mortgages and generate revenue primarily from net interest income on its long-term mortgage portfolio. Net interest income represents the difference between income received on mortgages and the corresponding cost of financing. Net interest income also includes (1) amortization of acquisition costs on mortgages acquired from the mortgage operations, (2) amortization of CMO securitization expenses and, to a lesser extent, (3) amortization of CMO bond discounts. Net cash payments or receipts on derivative instruments are included in realized gain (loss) from derivative instruments, which is a component of non-interest income on our financial statements. For additional information regarding the classification of interest income, interest expense and non-interest income items refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations—Results of Operations and Financial Condition."

The mortgage operations support the investment objectives of the long-term investment operations by supplying mortgages at prices that are comparable to those available through mortgage bankers and brokers and other third parties. We believe that retaining mortgages acquired and originated by our mortgage operations give us a competitive advantage because of our historical understanding of the underlying credit of these mortgages and the extensive information on the performance and historical prepayment patterns of these types of mortgages. We also believe that Alt-A mortgages provide an attractive net earnings profile by producing higher yields without commensurately higher credit risks than other types of mortgages.

#### *Long-Term Mortgage Portfolio*

Alt-A mortgages that we retain for long-term investment are primarily adjustable rate mortgages, or "ARMs," hybrid ARMs and, to a lesser extent, fixed rate mortgages, or "FRMs." The interest rate on ARMs are typically tied to an index, such as the six-month London Interbank Offered Rate, or "LIBOR," plus a spread and adjust periodically, subject to lifetime interest rate caps and periodic interest rate and payment caps. The initial interest rates on ARMs are typically lower than average comparable FRMs but may be higher than average comparable FRMs over the life of the mortgage. Hybrid ARMs are mortgages with maturity periods ranging from 15 to 30 years with initial fixed interest rate periods generally ranging from two to ten years, which subsequently adjust to ARMs. The majority of mortgages retained by the long-term investment operations have prepayment penalty features with prepayment penalty periods ranging from six months to seven years. Prepayment penalties may be assessed to the borrower if the borrower refinances or, in some cases, sells the home.

During 2005, the long-term investment operations retained \$12.2 billion in principal balance of primarily adjustable rate Alt-A mortgages for long-term investment, which were initially acquired and originated by the mortgage operations. In addition, the long-term investment operations originated \$798.5 million of multi-family mortgages. The retention and origination of Alt-A and multi-family mortgages increased the long-term mortgage portfolio to \$24.7 billion at year-end.

The following table presents selected information on mortgages held as CMO collateral, which comprise a substantial portion of the long-term mortgage portfolio, for the periods indicated:

	<b>At December 31,</b>		
	<b>2005</b>	<b>2004</b>	<b>2003</b>
Percent of Alt-A mortgages	99	99	99
Percent of ARMs	90	90	86
Percent of FRMs	10	10	14
Percent of hybrid ARMs	76	70	48
Percent of interest-only	68	63	34
Weighted average coupon	6.07	5.62	5.56
Weighted average margin	3.73	3.61	3.10
Weighted average original LTV	75	76	79
Weighted average original credit score	698	696	694
Percent with active prepayment penalty	76	76	81
Prior 3-month constant prepayment rate	38	29	31
Prior 12-month prepayment rate	37	29	28
Lifetime prepayment rate	25	21	21
Percent of mortgages in California	56	62	64
Percent of purchase transactions	59	60	57
Percent of owner occupied	77	81	87
Percent of first lien	99	99	99

The following table presents mortgages retained by the long-term investment operations by loan characteristic for the periods indicated (dollars in thousands):

	At December 31,					
	2005		2004		2003	
	Principal Balance	%	Principal Balance	%	Principal Balance	%
<b>Mortgages by Type:</b>						
Fixed rate first trust deeds	\$ 1,087,092	8	\$ 1,195,200	7	\$ 706,227	12
Fixed rate second trust deeds	69,866	1	244,491	1	6,744	-
Adjustable rate first trust deeds:						
LIBOR ARM's (1)	1,775,892	14	2,754,757	16	1,670,720	27
LIBOR hybrid ARM's (1)	10,096,987	77	13,173,928	76	3,694,687	61
Option ARM's	14,391	-	-	-	-	-
Total adjustable rate first trust deeds	11,887,270	91	15,928,685	92	5,365,407	88
Total mortgages retained	\$ 13,044,228	100	\$ 17,368,376	100	\$ 6,078,378	100
<b>Mortgage by Credit Quality:</b>						
Alt-A mortgages	\$ 12,232,576	94	\$ 16,846,781	97	\$ 5,760,779	95
Multi-family mortgages (2)	798,463	6	458,532	3	290,527	5
B/C mortgages (1)	13,189	-	63,063	-	27,072	-
Total mortgages retained	\$ 13,044,228	100	\$ 17,368,376	100	\$ 6,078,378	100
<b>Mortgage by purpose:</b>						
Purchase	\$ 8,045,595	62	\$ 10,516,622	61	\$ 3,408,584	56
Refinance	4,998,633	38	6,851,754	39	2,669,794	44
Total mortgages retained	\$ 13,044,228	100	\$ 17,368,376	100	\$ 6,078,378	100
<b>Mortgages with Prepayment Penalty:</b>						
With prepayment penalty	\$ 9,512,218	73	\$ 12,657,395	73	\$ 4,823,027	79
Without prepayment penalty	3,532,010	27	4,710,981	27	1,255,351	21
Total mortgages retained	\$ 13,044,228	100	\$ 17,368,376	100	\$ 6,078,378	100

(1) Primarily includes mortgages indexed to one-, three- and six-month LIBOR and one-year LIBOR. Also includes minimal amounts of mortgages indexed to the prime lending rate and constant maturity Treasury index.

(2) Multi-family mortgages are originated by the long term investment operations.

For additional information regarding the long-term mortgage portfolio refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Note C—CMO Collateral," and "Note D—Mortgages Held for Investment" in the accompanying notes to the consolidated financial statements.

#### Financing

We primarily finance our long-term mortgage portfolio as follows:

- issuance of CMO borrowings;
- short-term borrowings under reverse repurchase agreements, prior to securitization as CMOs; and
- proceeds from the sale of securities, including trust preferred issuances during 2005.

As we accumulate mortgages we may issue CMOs secured by such mortgages as a means of financing. The decision to issue CMOs is based on our current and future investment needs, market conditions and other factors. Each issue of CMOs is fully payable from the principal and interest payments on the underlying mortgages securing such debt and any cash or other collateral pledged as a condition of receiving the desired rating on the debt. We earn a net interest spread on interest income on



mortgages held as CMO collateral less interest and other expenses associated with the acquisition or origination of the loans and with CMO financing. Net interest spreads may be directly impacted by levels of early prepayment of underlying mortgages and, to the extent each CMO class has variable rates of interest, may be affected by changes in short-term interest rates. Our CMOs typically are structured as adjustable rate securities that are indexed to one-month LIBOR and fixed rate securities with interest payable monthly.

When we issue CMOs for financing purposes, we seek an investment grade rating for our CMOs by nationally recognized rating agencies. To secure such ratings, it is often necessary to incorporate certain structural features that provide for credit enhancement. This can include the pledge of collateral in excess of the principal amount of the securities to be issued, generally referred to as over collateralization, a bond guaranty insurance policy for some or all of the issued securities, or additional forms of mortgage insurance. The need for additional collateral or other credit enhancements depends upon factors such as the type of collateral provided, the interest rates paid, the geographic concentration of the mortgaged property securing the collateral and other criteria established by the rating agencies. The pledge of additional collateral reduces our capacity to raise additional funds through short-term secured borrowings or additional CMOs, and diminishes the potential expansion of our long-term mortgage portfolio. As a result, our objective is to pledge additional collateral for CMOs only in the amount required to obtain an investment grade rating by nationally recognized rating agencies. Our total loss exposure is limited to total capital invested in the CMOs at any point in time.

For additional information regarding CMOs refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources" and "Note H—CMO Borrowings" in the accompanying notes to the consolidated financial statements.

Prior to the issuance of CMOs, we use reverse repurchase agreements as short-term financing. A reverse repurchase agreement acts as a financing vehicle under which we effectively pledge our mortgages as collateral to secure a short-term loan. Generally, the other party to the agreement makes the loan in an amount equal to a percentage of the market value of the pledged collateral. At maturity of the reverse repurchase agreement, we are required to pay interest and repay the loan and in return, we receive our collateral. Our borrowing agreements require us to pledge cash, additional mortgages or additional investment securities backed by mortgages in the event the market value of existing collateral declines. We may be required to sell assets to reduce our borrowings to the extent that cash reserves are insufficient to cover such deficiencies in collateral.

For additional information regarding reverse repurchase agreements refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources" and "Note G—Reverse Repurchase Agreements" in the accompanying notes to the consolidated financial statements.

#### *Interest Rate Risk Management*

Our primary objective is to manage exposure to the variability in future cash flows attributable to the variability of one-month LIBOR, which is the underlying index of our adjustable rate CMO borrowings. We also monitor on an ongoing basis the prepayment risks that arise in fluctuating interest rate environments. Our interest rate risk management program is formulated with the intent to mitigate the potential adverse effects of changing interest rates on cash flows on adjustable rate CMO borrowings.

To mitigate our exposure to the effect of changing interest rates on cash flows on our adjustable rate CMO borrowings, we acquire derivatives in the form of interest rate swaps, or "swaps," interest rate cap agreements, or "caps" and interest rate floor agreements, or "floors," collectively, "derivatives." For additional information regarding interest rate risk management activities refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations," Item 7A. "Quantitative and Qualitative Disclosures About Market Risk" and "Note O—Derivative Instruments" in the accompanying notes to the consolidated financial statements.

#### **Mortgage Operations**

The mortgage operations acquire, originate, sell and securitize primarily adjustable rate and fixed rate Alt-A mortgages and, to a lesser extent B/C mortgages, from correspondents, mortgage bankers and brokers and retail customers.

*Correspondent Acquisition Channel.* The mortgage operations acquire adjustable rate and fixed rate Alt-A mortgages from its network of third party correspondents on a flow basis (loan-by-loan) or on a bulk basis (pool of multiple loans) from approved correspondent mortgage companies. Correspondents originate and close mortgages under the mortgage operations'

mortgage programs. Correspondents include savings and loan associations, commercial banks and mortgage bankers. The mortgage operations act as intermediaries between the originators of mortgages that may not meet the guidelines for purchase by Fannie Mae and Freddie Mac and permanent investors in mortgage-backed securities secured by or representing an ownership interest in such mortgages. The mortgage operations also acquire Alt-A mortgages on a bulk basis from approved correspondent sellers that are underwritten to guidelines substantially similar to Alt-A loan programs, but not specific to those of the mortgage operations.

*Wholesale and Retail Origination Channel.* The mortgage operations market, underwrite, process and fund mortgages for wholesale and, to a lesser extent, retail customers. The wholesale origination channel works directly with mortgage bankers and brokers to originate, underwrite and fund their mortgages. Many wholesale customers cannot conduct business with the mortgage operations as correspondents because they do not have the necessary net worth or financing to close mortgages in their name. Through its retail channel, the mortgage operations markets mortgages directly to the public.

*B/C Origination Channel.* The mortgage operations also originate B/C mortgages through a network of wholesale mortgage brokers and sells its mortgages to third party investors for cash gains. In January 2006, the B/C Wholesale and Retail Origination channels were combined under Impac Lending Group, a division of IFC.

### *Marketing Strategy*

We believe that we can compete effectively with other Alt-A mortgage conduits through our efficient loan purchasing process, flexible purchase commitment options, competitive pricing and by designing Alt-A mortgages that suit the needs of our correspondents, mortgage bankers, brokers and their borrowers. Our principal strategy is to expand our market position as a low-cost nationwide acquirer and originator of Alt-A mortgages, while continuing to emphasize an efficient centralized operating structure. To help accomplish this, we have developed a second-generation web-based automated underwriting and pricing system called Impac Direct Access System for Lending, or "iDASLg2." iDASLg2 substantially increases efficiencies for our customers and our mortgage operations by significantly decreasing the processing time for a mortgage while improving employee productivity and maintaining superior customer service.

iDASLg2 is an interactive Internet-based system that allows our customers to automatically underwrite mortgages, enabling our customers to pre-qualify borrowers for various mortgage programs and receive automated approval decisions. iDASLg2 is intended to increase efficiencies not only for our customers but also for the mortgage operations by significantly decreasing the processing time for a mortgage. We believe iDASLg2 improves employee production and maintains superior customer service, which together leads to higher closing ratios, improved profit margins and increased profitability at all levels of our business operations. Most importantly, iDASLg2 allows us to move closer to our correspondents and mortgage bankers and brokers with minimal future capital investment while maintaining centralization, a key factor in the success of our operating strategy. All of our correspondents submit mortgages via iDASLg2 and all wholesale mortgages delivered by mortgage bankers and brokers are directly underwritten through iDASLg2. However, mortgages purchased on a bulk basis from approved correspondent sellers that may not be underwritten specifically to our Alt-A mortgage guidelines are not underwritten through iDASLg2.

We also focus on expansion opportunities to attract correspondent originators, mortgage bankers, and brokers to our nationwide network in order to increase mortgage acquisitions and originations in a controlled manner. This allows us to shift the high fixed costs of interfacing with the homeowner to our correspondents, mortgage bankers and brokers. This marketing strategy is designed to accomplish the following three objectives:

- attract a geographically diverse group of both large and small correspondent originators, mortgage bankers and brokers;
- establish relationships with correspondents, mortgage bankers, and brokers that facilitate their ability to offer a variety of loan products designed by the mortgage operations; and
- purchase mortgages, securitize and sell them in the secondary market, or to the long-term investment operations.

In order to accomplish our production objectives, we design and offer mortgage products that we believe are attractive to potential Alt-A borrowers and to end-investors in Alt-A mortgages and mortgage-backed securities. We have historically emphasized and continue to emphasize flexibility in our mortgage product mix as part of our strategy to attract and establish long-term relationships with our correspondents and mortgage bankers and brokers. We also maintain relationships with

numerous investors so that we may develop mortgage products that may be of interest to them as market conditions change. In response to the needs of our correspondents, and as part of our strategy to facilitate the sale of our mortgages through the mortgage operations, our marketing strategy offers efficient response time in the purchase process, direct and frequent contact with our correspondents and mortgage bankers and brokers through a trained sales force and flexible commitment programs. Finally, due to the price sensitivity of most homebuyers, we are competitive in pricing our products in order to attract sufficient numbers of mortgages.

#### *Underwriting*

We have developed comprehensive purchase guidelines for the acquisition and origination of mortgages. Each mortgage underwritten assesses the borrower's credit score and ability to repay the mortgage obligation and the adequacy of the mortgaged property as collateral for the mortgage. Subject to certain exceptions and the type of mortgage product, each purchased mortgage generally conforms to the loan parameters and eligibility requirements specified in our seller/servicer guide with respect to, among other things, loan amount, type of property, compliance, LTV ratio, mortgage insurance, credit history, debt service-to-income ratio, appraisal and loan documentation.

All mortgages acquired or originated under our loan programs are underwritten either by our employees or by contracted mortgage services companies or delegated sellers. Under all of our underwriting methods, loan documentation requirements for verifying the borrower's income and assets vary according to LTV ratios and other factors. Generally, as the standards for required documentation are lowered, the borrowers' down payment requirements are increased and the required LTV ratios are decreased. The borrower is also required to have a stronger credit history, larger cash reserves and an appraisal of the property that may be validated by an enhanced desk or field review, depending on the loan program. Lending decisions are based on a risk analysis assessment after the review of the entire mortgage file. Each mortgage is individually underwritten with emphasis placed on the overall quality of the mortgage.

#### *Seller Eligibility Requirements*

Mortgages acquired by the mortgage operations are originated by various sellers, including mortgage bankers, savings and loan associations and commercial banks. Sellers are required to meet certain regulatory, financial, insurance and performance requirements established by us before they are eligible to participate in our mortgage purchase programs. Sellers must also submit to periodic reviews to ensure continued compliance with these requirements. Our current criteria for seller participation generally includes a minimum tangible net worth requirement of \$250,000, approval as a Fannie Mae or Freddie Mac seller/servicer in good standing, a Housing and Urban Development, or "HUD," approved mortgagee in good standing or a financial institution that is insured by the Federal Deposit Insurance Corporation, or "FDIC," or comparable federal or state agency, or that the seller is examined by a federal or state authority.

In addition, sellers are required to have comprehensive mortgage origination quality control procedures. In connection with its qualification, each seller enters into an agreement that generally provides for recourse by us against the seller in the event of a breach of representations or warranties made by the seller with respect to mortgages sold to us, which includes but is not limited to any fraud or misrepresentation during the mortgage loan origination process or upon early payment default on mortgages.

#### *Mortgage Acquisitions and Originations*

Mortgages acquired and originated by the mortgage operations are adjustable rate and fixed rate Alt-A mortgages. A portion of Alt-A mortgages that are acquired and originated by the mortgage operations exceed the maximum principal balance for a conforming loan purchased by Fannie Mae or Freddie Mac, which was \$417,000 as of November 29, 2005, and are referred to as "jumbo loans." We generally do not acquire or originate Alt-A mortgages with principal balances above \$2.0 million. Alt-A mortgages generally consist of mortgages that are acquired and originated in accordance with underwriting or product guidelines that differ from those applied by Fannie Mae and Freddie Mac. Alt-A mortgages may involve greater risk as a result of different underwriting and product guidelines. Additionally, a portion of mortgages acquired and originated through the mortgage operations are B/C mortgages, which may entail greater credit risks than Alt-A mortgages. B/C mortgages represented 4% and 3% of total acquisitions and originations during 2005 and 2004, respectively.

We generally do not originate B/C mortgages with principal balances above \$650,000. In general, B/C mortgages are residential mortgages made to borrowers with lower credit ratings than borrowers of Alt-A mortgages. B/C mortgages are normally subject to higher rates of loss and delinquency than Alt-A mortgages acquired and originated by the mortgage

operations. As a result, B/C mortgages normally bear a higher rate of interest and are typically subject to higher fees than Alt-A mortgages. In general, greater emphasis is placed upon the value of the mortgaged property and, consequently, the quality of appraisals, and less upon the credit history of the borrower in underwriting B/C mortgages than in underwriting Alt-A mortgages. In addition, B/C mortgages are generally subject to lower LTV ratios than Alt-A mortgages.

Residential mortgages acquired or originated by the mortgage operations are generally secured by first liens and, to a lesser extent, second liens on single-family residential properties with either adjustable rate or fixed rates of interest. FRMs have a constant interest rate over the life of the loan, which is generally 15 or 30 years. The interest rates on ARMs are typically tied to an index, such as six-month LIBOR, plus a spread and adjust periodically, subject to lifetime interest rate caps and periodic interest rate and payment caps. The initial interest rates on ARMs are typically lower than the average comparable FRM but may be higher than average comparable FRMs over the life of the loan. We acquire and originate mortgages with the following most common loan characteristics, although we may purchase mortgages with other interest rate, prepayment and maturity characteristics:

- FRMs that have original terms to maturity ranging from 15 to 30 years with six-month to five-year prepayment penalty periods;
- ARMs that adjust based on one-, three- and six-month LIBOR and one-year LIBOR with terms to maturity ranging from 15 to 30 years with six-month to five-year prepayment penalty periods;
- two-, three-, five- and seven-year hybrid ARMs with terms to maturity ranging from 15 to 30 years that subsequently adjust to one-, three- and six-month LIBOR and one-year LIBOR with six-month to five-year prepayment penalty periods; and
- adjustable rate and fixed rate interest-only mortgages with 5 to 10 year interest-only periods and terms to maturity of 30 years with six-month to five-year prepayment penalty periods.

The following table presents the mortgage operations' acquisitions and originations by loan characteristic for the periods indicated (in thousands):

**For the year ended December 31,**

	2005		2004		2003	
	Principal Balance	%	Principal Balance	%	Principal Balance	%
<b>Mortgages by Type:</b>						
Fixed rate first trust deeds	\$ 2,914,055	13	\$ 1,968,502	9	\$ 3,812,952	40
Fixed rate second trust deeds	1,189,145	5	755,913	3	181,173	2
Adjustable rate first trust deeds:						
LIBOR ARM's (1)	2,776,787	12	3,382,978	15	1,611,392	17
LIBOR hybrid ARM's (1)	14,437,507	65	16,105,711	73	3,919,604	41
Option ARM's	838,343	4	-	-	-	-
Total adjustable rate first trust deeds	18,052,637	81	19,488,689	88	5,530,996	58
Adjustable rate second trust deeds	154,766	1	-	-	-	-
Total adjustable rate first & second trust deeds	18,207,403	82	19,488,689	88	5,530,996	58
Total mortgage acquisitions and originations	\$ 22,310,603	100	\$ 22,213,104	100	\$ 9,525,121	100
<b>Mortgages by Channel:</b>						
Correspondent acquisitions:						
Flow acquisitions	\$ 8,386,911	37	\$ 10,996,260	50	\$ 5,399,428	57
Bulk acquisitions	10,659,756	48	8,537,504	38	2,159,116	23
Total correspondent acquisitions	19,046,667	85	19,533,764	88	7,558,544	80
Wholesale and retail originations	2,431,382	11	1,994,569	9	1,468,697	15
B/C originations (2)	832,554	4	684,771	3	497,880	5
Total mortgage acquisitions and originations	\$ 22,310,603	100	\$ 22,213,104	100	\$ 9,525,121	100
<b>Mortgage by Credit Quality:</b>						
Alt-A mortgages	\$ 21,460,424	96	\$ 21,453,383	97	\$ 8,988,018	94
B/C mortgages	850,179	4	759,721	3	537,103	6
Total mortgage acquisitions and originations	\$ 22,310,603	100	\$ 22,213,104	100	\$ 9,525,121	100
<b>Mortgage by Purpose:</b>						
Purchase	\$ 13,469,872	60	\$ 13,373,840	60	\$ 4,683,202	49
Refinance	8,840,731	40	8,839,264	40	4,841,919	51
Total mortgage acquisitions and originations	\$ 22,310,603	100	\$ 22,213,104	100	\$ 9,525,121	100
<b>Mortgages with Prepayment Penalty:</b>						
With prepayment penalty	\$ 16,071,802	72	\$ 15,965,959	72	\$ 7,165,949	75
Without prepayment penalty	6,238,801	28	6,247,145	28	2,359,172	25
Total mortgage acquisitions and originations	\$ 22,310,603	100	\$ 22,213,104	100	\$ 9,525,121	100

(1) Primarily includes mortgages indexed to one-, three- and six-month LIBOR and one-year LIBOR. Also includes minimal amounts of mortgages indexed to the prime lending rate and constant maturity Treasury index.

(2) These mortgages were subsequently sold to third party investors on a whole loan basis.

Our mortgage acquisition and origination activities focus on those regions of the country where higher volumes of Alt-A mortgages are originated including California, Florida, New York, Colorado, New Jersey, Maryland, Virginia, Illinois, Arizona and Nevada. During the years ended December 31, 2005 and 2004, 54% and 61%, respectively, of mortgage acquisitions and originations were secured by properties located in California, and 11% and 8%, respectively, were secured by properties located in Florida.

Of the \$22.3 billion in principal balance of mortgages acquired and originated in 2005, \$10.2 billion, or 46%, were acquired from our top ten correspondents. Decision One Mortgage accounted for \$2.2 billion, or 10% of mortgages acquired and originated by the mortgage operations in 2005. No other correspondents, banker or broker accounted for more than 10% of the total mortgages acquired and originated by the mortgage operations in 2005.

#### *Securitization and Sales*

After acquiring mortgages from correspondents on a flow or bulk basis and originating mortgages through wholesale and retail channels, the mortgage operations securitize or sell mortgages to permanent investors. The mortgage operations sell much of its ARM acquisitions to the long-term investment operations at prices comparable to prices available from third party investors at the date of sale. When a sufficient volume of FRMs with similar characteristics has been accumulated, generally \$100 million to \$350 million, the mortgage operations may (1) sell bulk packages, referred to as whole loan sales, to third party investors, (2) securitize mortgages through the issuance of mortgage-backed securities in the form of REMICs, or (3) sell them to the long-term investment operations.

During 2005, the mortgage operations sold \$12.2 billion in principal balance of mortgages to the long-term investment operations, sold \$8.1 billion in principal balance of mortgages as whole loan sales and sold \$633.9 million in principal balance of mortgages as a REMIC. Generally, the mortgage operations sell all of its mortgage acquisitions and originations to third party investors as servicing released, which means that it does not retain primary mortgage servicing rights. However, the mortgage operations does retain rights as master servicer for its securitizations, see "Master Servicing" below.

The period of time between when we commit to purchase mortgages and the time we sell or securitize mortgages generally ranges from 15 to 45 days, depending on certain factors, including the length of the purchase commitment period, volume by product type and the securitization process. REMIC securities generally consist of one or more classes of "regular interests" and a single class of "residual interest." The regular interests are tailored to the needs of investors and may be issued in multiple classes with varying maturities, average lives and interest rates. REMICs created by us are structured so that one or more of the classes of securities are rated investment grade by at least one nationally recognized rating agency. The ratings for our REMICs are based upon the perceived credit risk by the applicable rating agency of the underlying mortgages, the structure of the securities and the associated level of credit enhancement. Credit enhancement is designed to provide protection to the security holders in the event of borrower defaults and other losses including those associated with fraud or reductions in the principal balances or interest rates on mortgages as required by law or a bankruptcy court.

#### *Master Servicing*

We retain master servicing rights on substantially all of our Alt-A and multi-family mortgage acquisitions and originations. Our function as master servicer includes collecting loan payments from loan servicers and remitting loan payments, less master servicing fees receivable and other fees, to a trustee or other purchaser for each series of mortgage-backed securities or loans master serviced. In addition, as master servicer, we monitor compliance with our servicing guidelines and are required to perform, or to contract with a third party to perform, all obligations not adequately performed by any loan servicer. We may also be required to advance funds or we may cause our loan servicers to advance funds to cover interest payments not received from borrowers depending on the status of their mortgages. We also earn income or incur expense on principal and interest payments we receive from our borrowers until those payments are remitted to the investors in those mortgages. Master servicing fees are generally 0.03% per annum on the declining principal balances of the loans serviced. At year-end 2005, we master serviced approximately 115,000 mortgages with a principal balance of approximately \$28.4 billion.

The following table presents the amount of delinquent mortgages, both those sold to third parties and those we own, in our master servicing portfolio for the periods indicated (dollars in thousands):

	As of December 31,					
	2005		2004		2003	
	Principal Balance of Mortgage	% of Master Servicing Portfolio	Principal Balance of Mortgage	% of Master Servicing Portfolio	Principal Balance of Mortgage	% of Master Servicing Portfolio
<b>Loans delinquent for:</b>						
60-89 days	\$ 379,848	1.34%	\$ 205,486	0.72%	\$ 105,455	0.76%
90 days and over	265,085	0.93%	87,277	0.31%	87,297	0.63%
Total 60 days and over	644,933	2.27%	292,763	1.03%	192,752	1.39%
Foreclosures pending	308,965	1.09%	258,189	0.91%	158,261	1.14%
Bankruptcies pending	50,314	0.17%	23,807	0.08%	19,912	0.14%
<b>Total</b>	<b>\$ 1,004,212</b>	<b>3.53%</b>	<b>\$ 574,759</b>	<b>2.02%</b>	<b>\$ 370,925</b>	<b>2.67%</b>

### Servicing

We sell or subcontract all of our servicing obligations to independent third parties pursuant to sub-servicing agreements. We believe that the sale of servicing rights or the selection of third-party sub-servicers is more effective than establishing a servicing department within our mortgage operations. However, part of our responsibility is to continually monitor the performance of servicers or sub-servicers through performance reviews and regular site visits. Depending on our reviews, we may in the future rely on our internal default management group to take an ever more active role to assist servicers or sub-servicers in the servicing of our mortgages. Servicing includes collecting and remitting loan payments, making required advances, accounting for principal and interest, holding escrow or impound funds for payment of taxes and insurance, if applicable, making required inspections of the mortgaged property, contacting delinquent borrowers, and supervising foreclosures and property dispositions in the event of un-remedied defaults in accordance with our guidelines. Servicing fees are charged on the declining principal balances of loans serviced and generally range from 0.25% per annum for FRMs, 0.375% per annum for ARMs, 0.50% per annum for B/C mortgages and 0.75% per annum for properties secured by second liens. To the extent the mortgage operations finance the acquisition of mortgages with facilities provided by the warehouse lending operations, the mortgage operations pledges mortgages and the related servicing rights to the warehouse lending operations as collateral. As a result, the warehouse lending operations have an absolute right to control the servicing of such mortgages, including the right to collect payments on the underlying mortgages, and to foreclose upon the underlying real property in the case of default. Typically, the warehouse lending operations delegate its right to service the mortgages securing the facility to the mortgage operations.

The following table presents information regarding our mortgage servicing portfolio which includes our mortgages held-for-sale and mortgages held for long-term investment for the periods shown (dollars in millions, except average loan size):

	For the year ended December 31,		
	2005	2004	2003
Beginning servicing portfolio	\$ 1,690.8	\$ 1,402.1	\$ 2,653.4
Add: Loan acquisitions and originations	22,310.6	22,213.1	9,525.1
Less: Servicing transferred and principal repayment (1)	(21,793.0)	(21,924.4)	(10,776.4)
Ending servicing portfolio	\$ 2,208.4	\$ 1,690.8	\$ 1,402.1
Number of loans serviced	10,892	9,256	6,695
Average loan size	\$ 203,000	\$ 183,000	\$ 209,000
Weighted average coupon rate	6.39%	6.62%	6.28%

(1) Includes the sale of mortgages on a servicing released basis, the sale of servicing rights on mortgages owned and scheduled and unscheduled principal repayments.

The mortgage operations manage interest rate risk and price volatility on its pipeline of rate-locked mortgage loans, or "mortgage pipeline," during the time it commits to acquire or originate mortgages at a pre-determined rate and the time it sells the mortgage loans. To mitigate interest rate and price volatility risks, the mortgage operations may enter into derivatives. The nature and quantity of derivatives are determined based on various factors, including expected pull-through, price sensitivity, market conditions, and the expected volume of mortgage acquisitions and originations. For additional information regarding interest rate risk management activities refer to Item 7A. "Quantitative and Qualitative Disclosures About Market Risk" and "Note O—Derivative Instruments" in the accompanying notes to the consolidated financial statements.

### **Warehouse Lending Operations**

The warehouse lending operations provide warehouse lines of credit to affiliated companies and reverse repurchase financing to approved non-affiliated mortgage bankers, or "non-affiliated clients," some of which are correspondents of the mortgage operations, to finance mortgages during the time from the closing of the mortgages to sale or other settlement with pre-approved investors. The warehouse lending operations rely mainly on the sale or liquidation of the mortgages as a source of repayment. Any claim of the warehouse lending operations as a secured lender in a bankruptcy proceeding may be subject to adjustment and delay. Borrowings under these facilities are presented on our balance sheet as finance receivables. Terms of non-affiliated clients' repurchase facilities, including the commitment amount, are determined based upon the financial strength, historical performance and other qualifications of the borrower. As of December 31, 2005, the warehouse lending operations had approved facilities to non-affiliated clients of \$691.5 million, of which \$350.2 million was outstanding, as compared to \$738.7 million and \$471.8 million, respectively, as of December 31, 2004.

### **Regulation**

We establish underwriting guidelines that include provisions for inspections and appraisals, require credit reports on prospective borrowers and determine maximum loan amounts. Our mortgage acquisition and origination activities are subject to, among other laws, the Equal Credit Opportunity Act, Federal Truth-in-Lending Act, Fair Credit Reporting Act, Fair and Accurate Credit Transaction Act, Fair Housing Act, Gramm-Leach, Bliley Act, Telephone Consumer Protection Act, Can Spam Act, Real Estate Settlement Procedures Act and Home Mortgage Disclosure Act and the regulations promulgated there-under. These laws and regulations, among other things, prohibit discrimination and require the disclosure of certain basic information to mortgagors concerning credit terms and settlement costs, prohibit the payment of kickbacks for the referral of business incident to a real estate settlement service, limit payment for settlement services to the reasonable value of the services rendered and goods furnished, restrict the marketing practices we may use to find customers, require us to safeguard non-public information about our customers and require the maintenance and disclosure of information regarding the disposition of mortgage applications based on race, gender, geographical distribution, price and income level. Our mortgage acquisition and origination activities are also subject to state and local laws and regulations, including state licensing laws, anti-predatory lending laws, and may also be subject to applicable state usury statutes. IFC is an approved Fannie Mae seller/servicer, an approved servicer of Freddie Mac, and an approved Housing and Urban Development "HUD" lender. In addition, IFC is required annually to submit to Fannie Mae, Freddie Mac, and HUD audited financial statements, or the equivalent, according to the financial reporting requirements of each regulatory entity for its sellers/ servicers. IFC's affairs are also subject to examination by Fannie Mae and Freddie Mac at any time to assure compliance with applicable regulations, policies and procedures.

On December 15, 2004, the Securities and Exchange Commission (SEC) approved the final regulations covering the registration, disclosure, communications, and reporting requirements for for asset-backed securities ("Regulation AB"), which became effective January 1, 2006. The new rules contain several new disclosure requirements, including requirements to provide historical financial data with respect to either previously securitized pools of the same asset class or prior originations and information with respect to the background, experience and roles of the various transaction parties, including those involved in the origination, sale or servicing of the loans in the securitized pool. Moreover, annual assessments of compliance with enhanced servicing criteria by servicers and attestation reports from an independent accounting firm must be obtained with respect to securitized pools of our mortgage loans.

### **Competition**

In acquiring and originating Alt-A mortgages and issuing securities backed by such loans, we compete with other established mortgage conduit programs, investment banking firms, savings and loan associations, banks, thrift and loan



associations, finance companies, mortgage bankers and brokers, insurance companies, other lenders and other entities purchasing mortgage assets. As the Federal Reserve continues to raise interest rates at a measured pace and the number of mortgage refinance opportunities diminish, the mortgage industry may experience a consolidation that may reduce the number of current correspondents and independent mortgage bankers and brokers available to the mortgage operations, reducing our potential customer base and resulting in the mortgage operations acquiring and originating a larger percentage of mortgages from a smaller number of customers. In addition, until a consolidation occurs in the mortgage industry, price competition among competitors can affect the profitability on the sale of mortgage loans or the return on investments as mortgage lenders are willing to cut their profitability margins to maintain current production levels. Changes of this nature could negatively impact our businesses.

Mortgage-backed securities issued by the mortgage operations and the long-term investment operations face competition from other investment opportunities available to prospective investors. We face competition in our mortgage operations and warehouse lending operations from other financial institutions, including but not limited to banks and investment banks. Our main competitors include Countrywide Home Loans, IndyMac Bancorp, Inc., Greenpoint Financial Corporation, Residential Funding Corporation, Aurora Loan Services, Inc., Credit Suisse First Boston Corporation and Bear Stearns and Company, Inc.

Competition can take place on various levels, including convenience in obtaining a mortgage, service, marketing, origination channels and pricing. We depend primarily on correspondents and independent mortgage bankers and brokers for the acquisition and origination of mortgages. These independent mortgage bankers and brokers deal with multiple lenders for each prospective borrower. We compete with these lenders for the independent bankers and brokers' business on the basis of price, service, loan fees, costs and other factors. Our competitors also seek to establish relationships with such bankers and brokers, who are not obligated by contract or otherwise to do business with us. Many of the institutions with which we compete in our mortgage operations and warehouse lending operations have significantly greater financial resources than we have. However, we can compete effectively with other Alt-A mortgage conduits through our efficient loan purchasing process, flexible purchase commitment options and competitive pricing and by designing Alt-A mortgage programs that suit the needs of our correspondents and their borrowers, which is intended to provide sufficient credit quality to our investors.

Risk factors, as outlined below, provide additional information related to risks associated with competition in the mortgage banking industry.

## **Employees**

As of December 31, 2005, we had a total of 989 full-time, part-time, temporary and contract employees. Management believes that relations with its employees are good. We are not a party to any collective bargaining agreements.

## **Revisions in Policies and Strategies**

Our board of directors has approved our investment and operating policies and strategies. Our core operations involve the acquisition and origination of mortgages and their subsequent securitization and sale. We also act as a warehouse lender providing financing facilities to mortgage originators. These operations and their associated policies and strategies, are further described herein. Our board of directors has delegated asset/liability management to the Asset/Liability Committee, or "ALCO," which reports to the board of directors at least quarterly. See a further discussion of ALCO in Item 7. "Management's Discussion of Financial Condition and Results of Operations" and Item 7A. "Quantitative and Qualitative Disclosures About Market Risk." Any of our policies, strategies and activities may be modified or waived by our board of directors without stockholder consent. Developments in the market, which affect the policies and strategies mentioned herein or which change our assessment of the market, may cause our board of directors to revise our policies and financing strategies.

We have elected to qualify as a REIT for tax purposes. We have adopted certain compliance guidelines to ensure we maintain our REIT status which include limitations on the acquisition, holding and sale of certain assets.

The long-term investment operations primarily invest in Alt-A and multi-family mortgages. The long-term investment operation does not limit the proportion of its assets that may be invested in each type of mortgage.

We closely monitor our acquisition and investment in mortgage assets and the sources of our income, including income or expense from interest rate risk management strategies, to ensure at all times that we maintain our qualifications as a REIT. We have developed certain accounting systems and testing procedures to facilitate our ongoing compliance with the REIT provisions of the Internal Revenue Code. No changes in our investment policies, including credit criteria for mortgage asset investments, may be made without the approval of our board of directors.

We may at times and on terms that our board of directors deems appropriate:

- Issue senior securities – In 2004, we issued 2,000,000 shares of our 9.375% Series B Cumulative Redeemable Preferred Stock, par value \$0.01 per share, liquidation preference \$25.00 per share. In 2004 and 2005, we issued an aggregate of 4,300,000 shares and 71,200 shares respectively, of our 9.125% Series C Cumulative Redeemable Preferred Stock, par value \$0.01 per share, liquidation preference \$25.00 per share;
- Borrow money – We finance our operations in large part through the issuance of CMOs and short-term borrowings under reverse repurchase agreements;
- Make loans to other persons – The warehouse lending operations provide financing to affiliated companies and to approved non-affiliated clients, some of which are correspondents of the mortgage operations, to finance mortgages during the time from the closing of the mortgages to their sale or other settlement with pre-approved investors;
- Engage in the purchase and sale of investments – In connection with the issuance of mortgage-backed securities by our mortgage operations in the form of REMICs, our long-term investment operations may retain senior or subordinated securities on a short- or long-term basis;
- Repurchase or otherwise reacquire our shares or other securities in the future – During 2003, we did not repurchase any shares of common stock. In February of 2004, the share repurchase program was cancelled by our board of directors. During 2005, we adopted a repurchase plan to repurchase up to 5.0 million shares of our common stock in the open market. As of the date of the filing of this report, we have not repurchased any shares of common stock; and
- Issue common stock and other securities – During 2005 and 2004, we issued an aggregate of 363,700 shares and 18.4 million shares of common stock, respectively. During 2005, we formed four wholly-owned trust subsidiaries for the purposes of issuing an aggregate of \$96.3 million of trust preferred securities.

We may also offer securities in exchange of property, invest in securities of other issuers for the purpose of exercising control and underwrite the securities of other issuers, although we have not done so in the past three years and have no present intention to do so. Historically, we have and intend to continue to distribute annual reports to our stockholders, including financial statements audited by independent auditors, describing our current business and strategy.

## **ITEM 1.A. RISK FACTORS**

Some of the following risk factors relate to a discussion of our assets. For additional information on our asset categories refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Note B—Mortgages Held-for-Sale," "Note C—CMO Collateral," "Note D—Mortgages Held-for-Investment," and "Note E—Allowance for Loan Losses" and in the accompanying notes to the consolidated financial statements.

### **Risks Related To Our Businesses**

#### **If we are unable to generate sufficient liquidity we may be unable to conduct our operations as planned.**

If we cannot generate sufficient liquidity, we may be unable to continue to grow our operations, grow our asset base, maintain our current interest rate risk management policies and pay dividends. We have traditionally derived our liquidity from the following primary sources:

- financing facilities provided to us by others to acquire or originate mortgage assets;
- whole loan sales and securitizations of acquired or originated mortgages;
- our issuance of equity and debt securities;

- excess cash flow from our long-term mortgage portfolio; and
- earnings from operations.

We cannot assure you that any of these alternatives will be available to us, or if available, that we will be able to negotiate favorable terms. Our ability to meet our long-term liquidity requirements is subject to the renewal of our credit and repurchase facilities and/or obtaining other sources of financing, including additional debt or equity from time to time. Any decision by our lenders and/or investors to make additional funds available to us in the future will depend upon a number of factors, such as our compliance with the terms of our existing credit arrangements, our financial performance, industry and market trends in our various businesses, the lenders' and/or investors' own resources and policies concerning loans and investments, and the relative attractiveness of alternative investment or lending opportunities. If we cannot raise cash by selling debt or equity securities, we may be forced to sell our assets at unfavorable prices or discontinue various business activities. Our inability to access the capital markets could have a negative impact on our growth of taxable income and also our ability to pay dividends.

**Any significant margin calls under our financing facilities would adversely affect our liquidity and may adversely affect our financial results.**

During periods of disruption in the financial markets, the mortgage industry may experience substantial turmoil as a result of a lack of liquidity in the secondary markets. At such times, investors may be unwilling to purchase interests in securitizations due, in part, to:

- the lack of financing to acquire these securitization interests;
- the widening of returns expected by institutional investors on securitization interests over the prevailing Treasury rate; and
- market uncertainty.

As a result, during these periods, many mortgage originators, including us, may be unable to access the securitization market on favorable terms. This may result in some companies declaring bankruptcy. Some companies, like us, may be required to sell loans on a whole loan basis and liquidate holdings of mortgage-backed securities to repay short-term borrowings. However, the large amount of mortgages available for sale on a whole loan basis may create an oversupply and affect the pricing offered for these mortgages, which in turn may reduce the value of the collateral underlying the financing facilities. Therefore, many providers of financing facilities may initiate margin calls. Margin calls may result when our lenders evaluate the market value of the collateral securing our financing facilities and require us to provide them with additional equity or collateral to secure our borrowings.

Our financing facilities are short-term borrowings and in the event of a market disruption, many traditional providers of financing facilities may be unwilling to provide facilities on favorable terms, or at all. Our current financing facilities continue to be short-term borrowings and we expect this to continue. If we cannot renew or replace maturing borrowings, we may have to sell, on a whole loan basis, the loans securing these facilities, which, depending upon market conditions may result in substantial losses.

**Increased levels of early prepayments of mortgages may accelerate our amortization expenses and decrease our net interest income.**

Mortgage prepayments generally increase on our ARMs when fixed mortgage interest rates fall below the then-current interest rates on outstanding ARMs or fully indexed ARMs. Prepayments on mortgages are also affected by the terms and credit grades of the mortgages, their interest rate reset date, conditions in the financial markets, housing appreciation and general economic conditions. If we acquire mortgages at a premium and they are subsequently prepaid, we must expense the unamortized premium at the time of the prepayment. We could possibly lose the opportunity to earn interest at a higher rate over the expected life of the mortgage. Also, if prepayments on mortgages increase when interest rates are declining, our net interest income may decrease if we cannot reinvest the prepayments in mortgage assets with comparable net interest margins. If prepayment rates differ from our projections, we may experience a change in net earnings due to a change in the ratio of derivatives to the related mortgages. This may result in a reduction of cash flows from our mortgage loans net of financing costs as we have a higher percentage of derivative costs related to these loans than originally projected.

We generally acquire mortgages on a servicing released basis, meaning we acquire both the mortgages and the rights to service them. This strategy requires us to pay a higher purchase price or premium for the mortgages. If the mortgages that we

acquire a premium prepay faster than originally projected GAAP requires us to write down the remaining capitalized premium amounts at a faster speed than was originally projected, which would decrease our current net interest income.

**Interest rate fluctuations may adversely affect our operating results.**

Our operations, as a mortgage loan acquirer and originator, an investor in mortgage loans or a warehouse lender, may be adversely affected by rising and falling interest rates. Interest rates have been historically low over the past few years; however increases in interest rates may discourage potential borrowers from refinancing mortgages, borrowing to purchase homes or seeking second mortgages. For example, during 2005, the Federal Reserve Bank increased short term rates a total of 200 basis points. This has decreased the amount of mortgages available to be acquired or originated by our mortgage operations and has decreased the demand for repurchase financing provided by our warehouse lending operations, which adversely affects our operating results if we are not able to commensurately increase our market share. If short-term interest rates exceed long-term interest rates, there is a higher risk of increased loan prepayments, as borrowers may seek to refinance their fixed and adjustable rate mortgages at lower long-term fixed interest rates. Increased loan prepayments could lead to a reduction in the number of loans in our long-term mortgage portfolio and reduce our net interest income. Rising interest rates may also increase delinquencies, foreclosures and losses on our adjustable rate mortgages.

We are subject to the risk of rising mortgage interest rates between the time we commit to purchase mortgages at a fixed price through the issuance of individual, bulk or other rate-locks and the time we sell or securitize those mortgages. An increase in interest rates will generally result in a decrease in the market value of mortgages that we have committed to purchase at a fixed price, but have not been sold or securitized. As a result, we may record a smaller gain, or even a loss, upon the sale or securitization of those mortgages.

**If we are unable to complete securitizations or if we experience delayed mortgage loan sales or securitization closings, we could face a liquidity shortage which would adversely affect our operating results.**

We rely significantly upon securitizations to generate cash proceeds to repay borrowings and replenish our borrowing capacity. If there is a delay in a securitization closing or any reduction in our ability to complete securitizations we may be required to utilize other sources of financing, which, if available at all, may not be on similar terms. In addition, delays in closing mortgage sales or securitizations of our mortgages increase our risk by exposing us to credit and interest rate risks for this extended period of time. Furthermore, gains on sales from certain of our securitizations represent a significant portion of the taxable income dividend to the REIT from our taxable REIT subsidiary, IFC. Several factors could affect our ability to complete securitizations of our mortgages, including:

- conditions in the securities and secondary markets;
- credit quality of the mortgages acquired or originated through our mortgage operations;
- volume of our mortgage loan acquisitions and originations;
- our ability to obtain credit enhancements; and
- lack of investors purchasing higher risk components of the securities.

If we are unable to sell a sufficient number of mortgages at a premium or profitably securitize a significant number of our mortgages in a particular financial reporting period, then we could experience lower net earnings or a loss for that period, which could have a material adverse affect on our operations. We cannot assure you that we will be able to continue to profitably securitize or sell our loans on a whole loan basis, or at all.

The market for first loss risk securities, which are securities that take the first loss when mortgages are not paid by the borrowers, is generally limited. In connection with our REMIC securitizations, we may not sell all securities subjecting us to a first loss risk. If we do not sell these securities, we may hold them for an extended period, subjecting us to a first loss risk.

**A prolonged economic downturn or recession would likely result in a reduction of our mortgage origination activity which could adversely affect our financial results.**

The United States economy has undergone in the past and may in the future, undergo, a period of economic slowdown, which some observers view as a recession. An economic downturn or a recession may have a significant adverse impact on our operations and our financial condition. For example, a reduction in new mortgages may adversely affect our ability to maintain

or expand our long-term mortgage portfolio, our principal means of generating earnings. In addition, a decline in new mortgage activity may likely result in reduced activity for our warehouse lending operations and our long-term investment operations. In the case of our mortgage operations, a decline in mortgage activity may result in fewer loans that meet its criteria for purchase and securitization or sale, thus resulting in a reduction in interest income and fees and gain on sale of loans. We may also experience larger than previously reported losses on our long-term mortgage portfolio due to a higher level of defaults or foreclosures or higher loss rates on our mortgages.

**We may experience reduced net earnings or losses if our liabilities reprice at different rates than our assets.**

Our principal source of revenue is net interest income or net interest spread from our long-term mortgage portfolio, which is the difference between the interest we earn on our interest earning assets and the interest we pay on our interest bearing liabilities. The rates we pay on our borrowings are independent of the rates we earn on our assets and may be subject to more frequent periodic rate adjustments. Therefore, we could experience a decrease in net earnings or a loss because the interest rates on our borrowings could increase faster than the interest rates on our assets, if the increased borrowing costs are not offset by reduced cash payments on derivatives recorded in other non-interest income. If our net interest spread becomes negative, we will be paying more interest on our borrowings than we will be earning on our assets and we will be exposed to a risk of loss.

Additionally, the rates paid on our borrowings and the rates received on our assets may be based upon different indices. Our long-term mortgage portfolio includes mortgages that are one-, three- and six-month LIBOR and one-year LIBOR hybrid ARMs. These are mortgages with fixed interest rates for an initial period of time, after which they begin bearing interest based upon short-term interest rate indices and adjust periodically. We generally fund mortgages with adjustable interest rate borrowings having interest rates that are indexed to short-term interest rates, typically one-month LIBOR, and adjust periodically at various intervals. During 2005, borrowing costs on adjustable rate CMO borrowings, which are tied to one month LIBOR and reprice monthly without limitation, rose at a faster pace than coupons on LIBOR ARMs securing CMO borrowings, which generally reprice every six months with limitation. To the extent that there is an increase in the interest rate index used to determine our adjustable interest rate borrowings and it increases faster than the indices used to determine the rates on our assets (i.e., the increase is not offset by a corresponding increase in the rates at which interest accrues on our assets) or is not offset by various cash payments on interest rate derivatives that we have in place at any given time, our net earnings will decrease or we will have net losses.

ARMs typically have interest rate caps, which limit interest rates charged to the borrower during any given period. Our borrowings are not subject to similar restrictions. As a result, in a period of rapidly increasing interest rates, the interest rates we pay on our borrowings could increase without limitation, while the interest rates we earn on our ARMs would be capped. If this occurs, our net interest spread could be significantly reduced or we could suffer a net interest loss if not offset by a decrease in the cash payments on interest rate derivatives that we have in place at any given time.

**Our operating results will be affected by the results of our interest rate risk management activities.**

To mitigate interest rate risks associated with our mortgage and long-term investment operations, we enter into transactions designed to limit our exposure to interest rate risks. To mitigate the interest rate risks associated with adjustable rate borrowings, we attempt to match the interest rate sensitivities of our ARMs with the associated financing liabilities. Management determines the nature and quantity of derivative transactions based on various factors, including market conditions and the expected volume of mortgage acquisitions. While we believe that we properly manage our interest rate risk on an economic and tax basis, we have elected not to achieve hedge accounting, as established by the Financial Accounting Standards Board, or FASB, under the provisions of Statement of Financial Accounting Standards No. 133, or "SFAS 133," for our interest rate risk management activities in our financial statements. The effect of not applying hedge accounting means that our interest rate risk management activities may result in significant volatility in our quarterly net earnings as interest rates go up or down. It is possible that there will be periods during which we will incur losses on derivative transactions that may result in net losses, as was the case in 2001 after the restatement of our consolidated financial statements, and for the three months ended June 30, 2005. In addition, if the counter parties to our derivative transactions are unable to perform according to the terms of the contracts, we may incur losses. Our derivative transactions may not offset the risk of adverse changes in our net interest margins.

**We may be subject to losses on mortgages for which we do not obtain credit enhancements.**

We do not obtain credit enhancements such as mortgage pool or special hazard insurance for all of our mortgages and investments. Generally, we require mortgage insurance on any mortgage with an LTV ratio greater than 80%. During the time

we hold mortgages for investment, we are subject to risks of borrower defaults and bankruptcies and special hazard losses that are not covered by standard hazard insurance. If a borrower defaults on a mortgage that we hold, we bear the risk of loss of principal to the extent there is any deficiency between the value of the related mortgaged property and the amount owing on the mortgage loan and any insurance proceeds available to us through the mortgage insurer. In addition, since defaulted mortgages, which under our financing arrangements are mortgages that are generally 60 to 90 days delinquent in payments, may be considered ineligible collateral under our borrowing arrangements, we could bear the risk of being required to own these loans without the use of borrowed funds until they are ultimately liquidated or possibly sold at a loss.

**Our mortgage products may expose us to greater credit risks.**

We are an acquirer and originator of Alt-A mortgages, and to a lesser extent, multi-family and B/C mortgages. These are mortgages that generally may not qualify for purchase by government-sponsored agencies such as Fannie Mae and Freddie Mac or "conforming loans". Our operations may be negatively affected due to our investments in these mortgages. Credit risks associated with these mortgages may be greater than those associated with conforming mortgages. The interest rates we charge on these mortgages are often higher than those charged for conforming loans in order to compensate for the higher risk and lower liquidity. Lower levels of liquidity may cause us to hold loans or other mortgage-related assets supported by these loans that we otherwise would not hold. By doing this, we assume the potential risk of increased delinquency rates and/or credit losses as well as interest rate risk. Additionally, the combination of different underwriting criteria and higher rates of interest leads to greater risk, including higher prepayment rates and higher delinquency rates and/or credit losses. We also have loan programs that allow a borrower to pay only the interest attributable to his loan for a set period of time. If there is a decline in real estate values borrowers may default on these types of loans since they have not reduced their principal balances, which, therefore, could exceed the value of their property. In addition, a reduction in property values would also cause an increase in the LTV ratio for that loan which could have the effect of reducing the value of that loan.

There has been an increase in production of our loan product which is characterized as "interest only" and option ARM loans. There have been recent announcements by federal regulators concerning interest-only loan programs, option ARM loan programs and other ARM loans with deeply discounted initial rates and/or negative amortization features. There is increasing public policy debate focused on the rapid increase in the use of loans with interest-only features that require no amortization of principal for a protracted period or loans with potential negative amortization features, such as option payment ARMs. Already one rating agency (Standard & Poors) has required greater credit enhancements for securitization pools that are backed by option ARMs. These could lead to the loan product becoming less available as financing options and hence this could have a material affect on the value of such products.

**Our multi-family and commercial mortgages may expose us to increased lending risks.**

Generally, we consider multi-family and commercial mortgages to involve a higher degree of risk compared to first mortgages on one- to four-family, owner occupied residential properties. These mortgages have higher risks than mortgages secured by residential real estate because repayment of the mortgages often depends on the successful operations and the income stream of the borrowers. Furthermore, multi-family and commercial mortgages typically involve larger mortgage balances to single borrowers or groups of related borrowers compared to one- to four-family residential mortgages.

**Our use of second mortgages exposes us to greater credit risks.**

Our security interest in the property securing second mortgages is subordinated to the interest of the first mortgage holder and the second mortgages have a higher combined LTV ratio than does the first mortgage. If the value of the property is equal to or less than the amount needed to repay the borrower's obligation to the first mortgage holder upon foreclosure, our second mortgage loan will not be repaid.

**Lending to non-conforming borrowers may expose us to a higher risk of delinquencies, foreclosures and losses.**

Our market includes borrowers who may be unable to obtain mortgage financing from conventional mortgage sources. Mortgages made to such borrowers generally entail a higher risk of delinquency and higher losses than mortgages made to borrowers who utilize conventional mortgage sources. Delinquency, foreclosures and losses generally increase during economic slowdowns or recessions. The actual risk of delinquencies, foreclosures and losses on mortgages made to our borrowers could be higher under adverse economic conditions than those currently experienced in the mortgage lending industry in general.

Further, any material decline in real estate values increases the LTV ratios of mortgages previously made by us, thereby weakening collateral coverage and increasing the possibility of a loss in the event of a borrower default. Any sustained period of increased delinquencies, foreclosures or losses after the mortgages are sold could adversely affect the pricing of our future loan sales and our ability to sell or securitize our mortgages in the future. In the past, certain of these factors have caused revenues and net earnings of many participants in the mortgage industry, including us, to fluctuate from quarter to quarter.

**Our borrowings and use of substantial leverage may cause losses.**

*Our use of CMOs may expose our operations to credit losses.*

To grow our long-term mortgage portfolio, we borrow a substantial portion of the market value of substantially all of our investments in mortgages in the form of CMOs. There are no limitations on the amount of CMO borrowings we may incur, other than the aggregate value of the underlying mortgages. We currently use CMOs as financing vehicles to increase our leverage since mortgages held for CMO collateral are retained for investment.

Retaining mortgages as collateral for CMOs exposes our operations to greater credit losses than does the use of other securitization techniques that are treated as sales because as the equity holder in the security, we are allocated losses from the liquidation of defaulted loans first, prior to any other security holder. Although our liability under a collateralized mortgage obligation is limited to the collateral used to create the collateralized mortgage obligation, we generally are required to make a cash equity investment to fund collateral in excess of the amount of the securities issued in order to obtain the appropriate credit ratings for the securities being sold, and therefore obtain the lowest interest rate available, on the CMOs. If we experience greater credit losses than expected on the pool of loans subject to the CMO, the value of our equity investment will decrease and we may have to increase the allowance for loan losses on our financial statements.

*If we default under our financing facilities, we may be forced to liquidate collateral.*

If we default under our financing facilities, our lenders could force us to liquidate the collateral. If the value of the collateral is less than the amount borrowed, we could be required to pay the difference in cash. Furthermore, if we default under one facility, it would generally cause a default under our other facilities. If we were to declare bankruptcy, some of our reverse repurchase agreements may obtain special treatment and our creditors would then be allowed to liquidate the collateral without any delay. On the other hand, if a lender with whom we have a reverse repurchase agreement declares bankruptcy, we might experience difficulty repurchasing our collateral, or enforcing our claim for damages, and it is possible that our claim could be repudiated and we could be treated as an unsecured creditor. If this occurs, our claims would be subject to significant delay and we may receive substantially less than our actual damages or nothing at all.

*If we are forced to liquidate, we may have few unpledged assets for distribution to unsecured creditors.*

We have pledged a substantial portion of our assets to secure the repayment of CMO borrowings issued in securitizations and our financing facilities. We will also pledge substantially all of our current and future mortgages to secure borrowings pending their securitization or sale. The cash flows we receive from our investments that have not yet been distributed or pledged or used to acquire mortgages or other investments may be the only unpledged assets available to our unsecured creditors if we were liquidated.

**The geographic concentration of our mortgages increases our exposure to risks in those areas.**

We do not set limitations on the percentage of our long-term mortgage portfolio composed of properties located in any one area (whether by state, zip code or other geographic measure). Concentration in any one area increases our exposure to the economic and natural hazard risks associated with that area. A majority of our mortgage acquisitions and originations, long-term mortgage portfolio and finance receivables are secured by properties in California and, to a lesser extent, Florida. Certain parts of California have experienced an economic downturn in past years and California and Florida have suffered the effects of certain natural hazards.

Furthermore, if borrowers are not insured for natural disasters, which are typically not covered by standard hazard insurance policies, then they may not be able to repair the property or may stop paying their mortgages if the property is damaged. This would cause increased foreclosures and decrease our ability to recover losses on properties affected by such disasters. This would have a material adverse effect on our results of operations or financial condition. As a result of the hurricanes during 2005, we have provided a specific reserve of \$12.8 million to record an estimated loss exposure for 886

properties securing a total unpaid principal balance of \$183.7 million in the affected areas. Declines in those residential real estate markets may reduce the values of the properties collateralizing the mortgages, increase foreclosures and losses and have material adverse effect on our results of operations or financial condition.

**Representations and warranties made by us in our loan sales and securitizations may subject us to liability.**

In connection with our loan sales to third parties and our securitizations, we transfer mortgages acquired and originated by us to the third parties or into a trust in exchange for cash and, in the case of a CMO, residual certificates issued by the trust. The trustee or purchaser will have recourse to us with respect to the breach of the standard representations and warranties made by us at the time such mortgages are transferred. While we may have recourse to our customers for any such breaches, there can be no assurance of our customers' abilities to honor their respective obligations. Also, we engage in bulk whole loan sales pursuant to agreements that generally provide for recourse by the purchaser against us in the event of a breach of one of our representations or warranties, any fraud or misrepresentation during the mortgage origination process, or upon early default on such mortgage. We generally limit the potential remedies of such purchasers to the potential remedies we receive from the customers from whom we acquired or originated the mortgages. However, in some cases, the remedies available to a purchaser of mortgages from us may be broader than those available to us against the sellers of the mortgages and should a purchaser enforce its remedies against us, we are not always able to enforce whatever remedies we have against our customers. Furthermore, if we discover, prior to the sale or transfer of a loan, that there is any fraud or misrepresentation with respect to the mortgage and the originator fails to repurchase the mortgage, then we may not be able to sell the mortgage or we may have to sell the mortgage at a discount.

In the ordinary course of our business, we are subject to claims made against us by borrowers and trustees in our securitizations arising from, among other things, losses that are claimed to have been incurred as a result of alleged breaches of fiduciary obligations, misrepresentations, errors and omissions of our employees, officers and agents (including our appraisers), incomplete documentation and our failure to comply with various laws and regulations applicable to our business. Any claims asserted against us may result in legal expenses or liabilities that could have a material adverse effect on our results of operations or financial condition.

**A reduction in the demand for our loan products may adversely affect our operations.**

The availability of sufficient mortgages meeting our criteria is dependent in part upon the size and level of activity in the residential real estate lending market and, in particular, the demand for residential mortgages, which is affected by:

- interest rates;
- national economic conditions;
- residential property values; and
- regulatory and tax developments.

If our mortgage acquisitions and originations decline, we may have:

- decreased economies of scale;
- higher origination costs per loan;
- reduced fee income;
- smaller gains on the sale of mortgages; and
- an insufficient volume of mortgages to generate securitizations which thereby causes us to accumulate mortgages over a longer period.

**Competition for mortgages is intense and may adversely affect our operations.**

We compete in acquiring and originating Alt-A, B/C and multi-family mortgages and issuing mortgage-backed securities with other mortgage conduit programs, investment banking firms, savings and loan associations, banks, thrift and



loan associations, finance companies, mortgage bankers and brokers, insurance companies, other lenders, and other entities purchasing mortgage assets.

We also face intense competition from Internet-based lending companies where entry barriers are relatively low. Some of our competitors are much larger than we are, have better name recognition than we do, and have far greater financial and other resources. Government-sponsored entities, in particular Fannie Mae and Freddie Mac, are also expanding their participation in the Alt-A mortgage industry. These government-sponsored entities have a size and cost-of-funds advantage over us that allows them to price mortgages at lower rates than we are able to offer. This phenomenon may seriously destabilize the Alt-A mortgage industry. In addition, if as a result of what may be less-conservative, risk-adjusted pricing, these government-sponsored entities experience significantly higher-than-expected losses, it would likely adversely affect overall investor perception of the Alt-A and B/C mortgage industry because the losses would be made public due to the reporting obligations of these entities.

The intense competition in the Alt-A, B/C and multi-family mortgage industry has also led to rapid technological developments, evolving industry standards and frequent releases of new products and enhancements. As mortgage products are offered more widely through alternative distribution channels, such as the Internet, we may be required to make significant changes to our current retail and wholesale structure and information systems to compete effectively. Our inability to continue enhancing our current Internet capabilities, or to adapt to other technological changes in the industry, could have a material adverse effect on our business, financial condition, liquidity and results of operations.

The need to maintain mortgage loan volume in this competitive environment creates a risk of price competition in the Alt-A, B/C and multi-family mortgage industry. Competition in the industry can take many forms, including interest rates and costs of a loan, less stringent underwriting standards, convenience in obtaining a loan, customer service, amount and term of a loan and marketing and distribution channels. Our failure to maintain our customer service levels may affect our ability to effectively compete in the mortgage industry. Price competition would lower the interest rates that we are able to charge borrowers, which would lower our interest income and/or our gain on sale of mortgage loans. Price-cutting or discounting reduces profits and will depress earnings if sustained for any length of time. If our competition uses less stringent underwriting standards we will be pressured to do so as well, resulting in greater loan risk without being able to price for that greater risk. Our competitors may lower their underwriting standards to increase their market share. If we do not relax underwriting standards in the face of competition, we may lose market share. Increased competition may also reduce the volume of our loan originations and acquisitions. Any increase in these pricing and credit pressures could have a material adverse effect on our business, financial condition, liquidity and results of operations.

**We are a defendant in purported class actions and may not prevail in these matters.**

Class action lawsuits and regulatory actions alleging improper marketing practices, abusive loan terms and fees, disclosure violations, improper yield spread premiums and other matters are risks faced by all mortgage originators, particularly those in the Alt-A and B/C market. We are a defendant in purported class actions pending in different states. The class actions allege generally that the loan originator improperly charged fees in violation of various state lending or consumer protection laws in connection with mortgages that we acquired. Although the suits are not identical, they generally seek unspecified compensatory damages, punitive damages, pre- and post-judgment interest, costs and expenses and rescission of the mortgages, as well as a return of any improperly collected fees.

Since January 10, 2006, several purported class action complaints have been filed against us and our executive officers and directors. The complaints, which are brought on behalf of persons who acquired common stock during the period of May 13, 2005 through August 9, 2005, generally allege violations of the federal securities laws due to allegedly false and misleading statements or omissions, related to the Company's financial condition and future prospects. Since February 1, 2006 derivative shareholder actions have also been filed against our officers and directors alleging breach of fiduciary duty, abuse of control, unjust enrichment and other related claims.

These actions are in the early stages of litigation and, accordingly, it is difficult to predict the outcome or resolution of these matters or the timing for their resolution. We expect to incur defense costs and other expenses in connection with the class action lawsuits, and we cannot assure you that the ultimate outcome of these or other actions will not have a material adverse effect on our financial condition or results of operations. In addition to the expense and burden incurred in defending this litigation and any damages that we may suffer, our management's efforts and attention may be diverted from the ordinary business operations in order to address these claims. If the final resolution of this litigation is unfavorable to us, our financial condition, results of operations and cash flows might be materially adversely affected if our existing insurance coverage is unavailable or inadequate to resolve the matters.

We believe we have meritorious defenses to the actions and intend to defend against them vigorously; however, an adverse judgment in any of these matters could have a material adverse effect on us.

**We may incur losses in the future.**

During the years ended December 31, 2001 and 2000, we experienced net losses of \$2.2 million and \$54.5 million. The 2001 loss was related to a loss on derivatives and the 2000 loss was the result of write-downs of non-performing investment securities secured by mortgages and additional increases in the provision for loan losses to provide for the deterioration of the performance of collateral supporting specific investment securities for 2000. During the year ended December 31, 1998, we experienced a net loss of \$5.9 million primarily as the mortgage industry experienced substantial turmoil as a result of a lack of liquidity in the secondary markets, which caused us to sell mortgages at losses to meet margin calls on our financing facilities. We cannot be certain that revenues will remain at current levels or improve or that we will generate net earnings in the future, which could prevent us from effectuating our business strategy.

**A substantial interruption in our use of iDASLg2 may adversely affect our level of mortgage acquisitions and originations.**

We utilize the Internet in our business principally for the implementation of our automated mortgage origination program, iDASLg2. iDASLg2 allows our customers to pre-qualify borrowers for various mortgage programs based on criteria requested from the borrower and renders an automated underwriting decision by issuing an approval of the mortgage loan or a referral for further review or additional information. Substantially all of our correspondents submit mortgages through iDASLg2 and all wholesale mortgages delivered by mortgage bankers and brokers are directly underwritten through the use of iDASLg2. iDASLg2 may be interrupted if the Internet experiences periods of poor performance, if our computer systems or the systems of our third-party service providers contain defects, or if customers are reluctant to use or have inadequate connectivity to the Internet. Increased government regulation of the Internet could also adversely affect our use of the Internet in unanticipated ways and discourage our customers from using our services. If our ability to use the Internet in providing our services is impaired, our ability to originate or acquire mortgages on an automated basis could be delayed or reduced. Furthermore, we rely on a third party hosting company in connection with the use of iDASLg2. If the third party hosting company fails for any reason, and adequate back-up is not implemented in a timely manner, it may delay and reduce those mortgage acquisitions and originations done through iDASLg2. Any substantial delay and reduction in our mortgage acquisitions and originations will reduce our taxable income for the applicable period.

**We are exposed to potential fraud and credit losses in providing repurchase financing.**

As a warehouse lender, we lend money to mortgage bankers on a secured basis and we are subject to the risks associated with lending to mortgage bankers, including the risks of fraud, borrower default and bankruptcy, any of which could result in credit losses for us. Fraud risk may include, but is not limited to, the financing of nonexistent loans or fictitious mortgage loan transactions or the delivery to us of fraudulent collateral that could result in the loss of all sums we have advanced to the borrower. For example, during 2004, the warehouse lending operations had a specific allowance for loan losses of \$10.7 million for impaired repurchase advances. Also, our claims as a secured lender in a bankruptcy proceeding may be subject to adjustment and delay.

**Our delinquency ratios and our performance may be adversely affected by the performance of parties who service or sub-service our mortgages.**

We sell or contract with third-parties for the servicing of all mortgages, including those in our securitizations. Our operations are subject to risks associated with inadequate or untimely servicing. Poor performance by a servicer may result in greater than expected delinquencies and losses on our mortgages. A substantial increase in our delinquency or foreclosure rate could adversely affect our ability to access the capital and secondary markets for our financing needs. Also, with respect to mortgages subject to a securitization, greater delinquencies would adversely impact the value of our equity interest, if any, we hold in connection with that securitization.

In a securitization, relevant agreements permit us to be terminated as servicer or master servicer under specific conditions described in these agreements. If, as a result of a servicer or sub-servicer's failure to perform adequately, we were terminated as master servicer of a securitization, the value of any master servicing rights held by us would be adversely affected.

**We face risks related to our recent accounting restatements.**

On July 22, 2004, we publicly announced that we had discovered accounting inaccuracies in previously reported financial statements. As a result, following consultation with our auditors, we decided to restate our financial statements for the three months ended March 31, 2004 and 2003, the three and six months ended June 30, 2003, the three and nine months ended September 30, 2003 and for each of the years ended December 31, 2003, 2002 and 2001. The restatements related to a correction to our revenue recognition policy with respect to the cash sales of mortgage servicing rights to unrelated third parties when the mortgage loans are retained, our accounting for derivatives and interest rate risk management activities, the accounting for loan purchase commitments as derivatives and selected elimination entries to consolidate IFC with that of IMH. We also corrected a clerical error in the calculation of earnings per share for the six months ended June 30, 2004.

The restatement of our financial statements could lead to litigation claims and/or regulatory proceedings against us. The defense of any such claims or proceedings may cause the diversion of management's attention and resources, and we may be required to pay damages if any such claims or proceedings are not resolved in our favor. Any litigation or regulatory proceeding, even if resolved in our favor, could cause us to incur significant legal and other expenses. We also may have difficulty raising equity capital or obtaining other financing, such as lines of credit or otherwise. We may not be able to effectuate our current operating strategy, including the ability to originate, acquire or securitize mortgage loans for retention or sale at projected levels. The occurrence of any of the foregoing could harm our business and reputation and cause the price of our securities to decline.

**We are exposed to environmental liabilities, with respect to properties that we take title to upon foreclosure, that could increase our costs of doing business and harm our results of operations.**

In the course of our activities, we may foreclose and take title to residential properties and become subject to environmental or mold liabilities with respect to those properties. The laws and regulations related to mold or environmental contamination often impose liability without regard to responsibility for the contamination. We may be held liable to a governmental entity or to third parties for property damage, personal injury, investigation and clean-up costs incurred by these parties in connection with mold or environmental contamination, or may be required to investigate or clean up hazardous or toxic substances, or chemical releases at a property. The costs associated with investigation or remediation activities could be substantial. Moreover, as the owner or former owner of a contaminated site, we may be subject to common law claims by third parties based upon damages and costs resulting from mold or environmental contamination emanating from the property. If we ever become subject to significant mold or environmental liabilities, our business, financial condition, liquidity and results of operations could be significantly harmed.

**We are subject to risks of operational failure that are beyond our control.**

Substantially all of our operations are located in Newport Beach, California. Our systems and operations are vulnerable to damage and interruption from fire, flood, telecommunications failure, break-ins, earthquake and similar events. Our operations may also be interrupted by power disruptions, including rolling black-outs implemented in California due to power shortages. We do not have alternative power sources in all of our locations. Furthermore, our security mechanisms may be inadequate to prevent security breaches to our computer systems, including from computer viruses, electronic break-ins and similar disruptions. Such security breaches or operational failures could expose us to liability, impair our operations, result in losses, and harm our reputation.

**If we fail to maintain effective systems of internal control over financial reporting and disclosure controls and procedures, we may not be able to accurately report our financial results or prevent fraud, which could cause current and potential shareholders to lose confidence in our financial reporting, adversely affect the trading price of our securities or harm our operating results.**

Effective internal control over financial reporting and disclosure controls and procedures are necessary for us to provide reliable financial reports and effectively prevent fraud and operate successfully as a public company. Any failure to develop or maintain effective internal control over financial reporting and disclosure controls and procedures could harm our reputation or operating results, or cause us to fail to meet our reporting obligations. Furthermore, if we do not have effective internal control over financial reporting, our external auditors will not be able to issue an unqualified opinion on the effectiveness of our internal control over financial reporting. In the past, we have reported, and may discover in the future, material weaknesses in our internal control over financial reporting.

Ineffective internal control over financial reporting and disclosure controls and procedures could cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our securities or affect our ability to access the capital markets and could result in regulatory proceedings against us by, among others, the SEC. In addition, a material weakness in internal control over financial reporting, which may lead to deficiencies in the preparation of financial statements, could lead to litigation claims against us. The defense of any such claims may cause the diversion of management's attention and resources, and we may be required to pay damages if any such claims or proceedings are not resolved in our favor. Any litigation, even if resolved in our favor, could cause us to incur significant legal and other expenses. Such events could harm our business, affect our ability to raise capital and adversely affect the trading price of our securities.

### **Regulatory Risks**

#### **Violation of various federal, state and local laws may result in losses on our loans.**

Applicable state and local laws generally regulate interest rates and other charges, require certain disclosure, and require licensing of the mortgage broker, lender and purchaser. In addition, other state and local laws, public policy and general principles of equity relating to the protection of consumers, unfair and deceptive practices and debt collection practices may apply to the origination, servicing and collection of our loans. Mortgage loans are also subject to federal laws, including:

- the Federal Truth-in-Lending Act and Regulation Z promulgated there under, which require certain disclosures to the borrowers regarding the terms of the loans;
- the Equal Credit Opportunity Act and Regulation B promulgated there under, which prohibit discrimination on the basis of age, race, color, sex, religion, marital status, national origin, receipt of public assistance or the exercise of any right under the Consumer Credit Protection Act, in the extension of credit;
- the Fair Housing Act, which prohibits discrimination in housing on the basis of race, color, national origin, religion, sex, familial status, or handicap, in housing-related transactions;
- the Fair Credit Reporting Act, which regulates the use and reporting of information related to the borrower's credit experience;
- the Fair and Accurate Credit Transaction Act, which regulates credit reporting and use of credit information in making unsolicited offers of credit;
- the Gramm-Leach-Bliley Act, which imposes requirements on all lenders with respect to their collection and use of nonpublic financial information and requires them to maintain the security of that information;
- the Real Estate Settlement Procedures Act, which requires that consumers receive disclosures at various times and outlaws kickbacks that increase the cost of settlement services;
- the Home Mortgage Disclosure Act, which requires the reporting of public loan data;
- the Telephone Consumer Protection Act and the Can Spam Act, which regulate commercial solicitations via telephone, fax, and the Internet;
- the Depository Institutions Deregulation and Monetary Control Act of 1980, which preempts certain state usury laws; and
- the Alternative Mortgage Transaction Parity Act of 1982, which preempts certain state lending laws which regulate alternative mortgage transactions.

Violations of certain provisions of these federal and state laws may limit our ability to collect all or part of the principal of or interest on the loans and in addition could subject us to damages and could result in the mortgagors rescinding the loans whether held by us or subsequent holders of the loans. In addition, such violations may cause us to be in default under our credit and repurchase facilities and could result in the loss of licenses held by us.

Similarly, it is possible borrowers may assert that the loan forms we use or acquire, including forms for "interest-only" and "option ARM" loans for which there is little standardization or uniformity, fail to properly describe the transactions they intended, or that our forms fail to comply with applicable consumer protection statutes or other federal and state laws. This could result in liability for violations of certain provisions of federal and state consumer protection laws and our inability to sell the loans and our obligation to repurchase the loans or indemnify the purchasers.

**New regulatory laws affecting the mortgage industry may increase our costs and decrease our mortgage origination and acquisition.**

The regulatory environments in which we operate have an impact on the activities in which we may engage, how the activities may be carried out, and the profitability of those activities. Therefore, changes to laws, regulations or regulatory policies can affect whether and to what extent we are able to operate profitably. For example, recently enacted and proposed local, state and federal legislation targeted at predatory lending could have the unintended consequence of raising the cost or otherwise reducing the availability of mortgage credit for those potential borrowers with less than prime-quality credit histories, thereby resulting in a reduction of otherwise legitimate Alt-A or B/C lending opportunities. Similarly, recently enacted and proposed local, state and federal privacy laws and laws prohibiting or limiting marketing by telephone, facsimile, email and the Internet may limit our ability to market and our ability to access potential loan applicants. For example, the Can Spam Act of 2003 establishes the first national standards for the sending of commercial email allowing, among other things, unsolicited commercial email provided it contains certain information and an opt-out mechanism. We cannot provide any assurance that the proposed laws, rules and regulations, or other similar laws, rules or regulations, will not be adopted in the future. Adoption of these laws and regulations could have a material adverse impact on our business by substantially increasing the costs of compliance with a variety of inconsistent federal, state and local rules, or by restricting our ability to charge rates and fees adequate to compensate us for the risk associated with certain loans.

Some states and local governments have enacted, or may enact, laws or regulations that prohibit inclusion of some provisions in mortgage loans that have mortgage rates or origination costs in excess of prescribed levels, and require that borrowers be given certain disclosures prior to the consummation of such mortgage loans. Our failure to comply with these laws could subject us to monetary penalties and could result in the borrowers rescinding the mortgage loans, whether held by us or subsequent holders. Lawsuits have been brought in various states making claims against assignees of these loans for violations of state law. Compliance with some of these restrictions requires lenders to make subjective judgments, such as whether a loan will provide a "net tangible benefit" to the borrower. These restrictions expose a lender to risks of litigation and regulatory sanction no matter how carefully a loan is underwritten and impact the way in which a loan is underwritten. The remedies for violations of these laws are not based solely on actual harm to the consumer and can result in damages that exceed the loan balance. Liability for violations of HOEPA, as well as violations of many of the state and local equivalents, could extend not only to us, but to our secured warehouse lenders, institutional loan purchasers, securitization trusts that hold our loans and other assignees, regardless of whether such assignee knew of or participated in the violation.

Furthermore, various federal and state laws impose significant privacy or customer information security obligations which may subject us to additional costs and legal risks and we cannot assure you that we will not be subject to lawsuits or compliance actions under such requirements. Similarly various state and federal laws have been enacted to restrict unsolicited advertising using telephones, facsimile machines and electronic means of transmission. These laws and regulations could have a material adverse impact on our business by substantially increasing the costs of compliance or by subjecting us to lawsuits or compliance actions.

In addition to changes to legal requirements contained in statutes, regulations, case law, and other sources of law, changes in the investigation or enforcement policies of federal and state regulatory agencies could impact the activities in which we may engage, how the activities may be carried out, and the profitability of those activities. For example, various state and federal agencies have initiated regulatory enforcement proceedings against mortgage companies for engaging in business practices that were not specifically or clearly proscribed by law, but which in the judgment of the regulatory agencies were unfair or deceptive to consumers. Federal and state regulatory agencies might also determine in the future that certain of our business practices not presently proscribed by any law and not the subject of previous enforcement actions are unfair or deceptive to consumers. If this happens, it could impact the activities in which we may engage, how we carry out those activities, and our profitability. We might also be required to pay fines, make reimbursements, and make other payments to third parties for past business practices. Additionally, if an administrative enforcement proceeding were to result in us having to discontinue or alter certain business practices, then we might be placed at a competitive disadvantage vis-à-vis competitors who are not required to make comparable changes to their business practices. This competitive disadvantage could be most acute if

the business practices that we are required to discontinue or change are not clearly proscribed by any federal or state law of general applicability.

#### **New Criteria May Effect the Value or Marketability of Certain of Our Loan Products**

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (none of whom regulate IMH) jointly issued draft guidance to promote sound credit risk management practices. The guidance cautions lenders to consider all relevant risk factors when establishing underwriting guidelines, including a borrower's income and debt levels, credit score as well as the loan size, collateral value, lien position and property type and location. It stresses that prudently underwritten home equity loans should include an evaluation of a borrower's capacity to adequately service the debt, and that reliance on a credit score is insufficient because it relies on historical financial performance not present capacity to pay. While not specifically applicable to IMH, the guidance is instructive of the regulatory climate covering low and no documentation loans, which IMH does acquire and originate, and hence it may affect our ability to sell these loans to third parties, should we elect to sell them. If we were required to make these changes to our business practices, it might affect the business activities in which we may engage and the profitability of those activities. Furthermore, some of the institutions from which we purchase or to which we sell nontraditional mortgage products might be among the institutions directly subject to the Guidance. Our business could be adversely impacted if these institutions are required to make changes to their business practices and policies relative to nontraditional mortgage products. For example, if entities from which we purchase our loans are required to change their origination guidelines thereby affecting the volume, diversity and quality of loans available for purchase by us, or if purchasers of our mortgage loans are required to make changes to the purchasing policies then our ability to sell mortgage loans, our profitability and our credit risk exposure could be adversely impacted.

There has been an increase in production of loan products which we characterize as "interest-only" and "option-ARM" loans. There is increasing public policy debate over loans with interest-only features that require no amortization of principal for a protracted period and loans with potential negative amortization features, such as option payment ARMs. There is a risk that this debate will lead to the enactment of laws which limit our ability to continue producing these loan products at our present levels, or which augment the risks of legal liability that we face in connection with such loan products. Further, one rating agency has required greater credit enhancements for securitization pools that are backed by option ARMS, actions such as this by rating agencies can impact the profitability of originating or dealing in these loan products.

#### **We may be subject to fines or other penalties based upon the conduct of our independent brokers or correspondents.**

The mortgage brokers and correspondents from which we obtain mortgages have parallel and separate legal obligations to which they are subject. While these laws may not explicitly hold the originating lenders or an acquirer of the loan responsible for the legal violations of mortgage bankers and brokers, increasingly federal and state agencies have sought to impose such liability. Previously, for example, the United States Federal Trade Commission, or "FTC," entered into a settlement agreement with a mortgage lender where the FTC characterized a broker that had placed all of its loan production with a single lender as the "agent" of the lender; the FTC imposed a fine on the lender in part because, as "principal," the lender was legally responsible for the mortgage broker's unfair and deceptive acts and practices. The United States Justice Department, various state attorney generals, and other state officials have sought to hold sub-prime mortgage lenders responsible for the pricing practices of their mortgage bankers and brokers, alleging that the mortgage lender was directly responsible for the total fees and charges paid by the borrower under the Fair Housing Act even if the lender neither dictated what the mortgage banker could charge nor kept the money for its own account. Accordingly, we may be subject to fines or other penalties based upon the conduct of our independent mortgage bankers, brokers or correspondents.

#### **Our operations may be adversely affected if we are subject to the Investment Company Act.**

We intend to conduct our business at all times so as not to become regulated as an investment company under the Investment Company Act. The Investment Company Act exempts entities that are primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

In order to qualify for this exemption we must maintain at least 55% of our assets directly in mortgages, qualifying pass-through certificates and certain other qualifying interests in real estate. Our ownership of certain mortgage assets may be limited by the provisions of the Investment Company Act, should we ever be subject to the Act. If the SEC adopts a contrary interpretation with respect to these securities or otherwise believes we do not satisfy the above exception, we could be required to restructure our activities or sell certain of our assets. To insure that we continue to qualify for the exemption we may be required at times to adopt less efficient methods of financing certain of our mortgage assets and we may be precluded from acquiring certain types of higher-yielding mortgage assets. The net effect of these factors will be to lower our net interest income. If we fail to qualify for exemption from registration as an investment company, our ability to use leverage would be substantially reduced, and we would not be able to conduct our business as described. Our business will be materially and adversely affected if we fail to qualify for this exemption.

**Regulation AB may create additional liabilities, costs and restrictions for our business.**

On December 15, 2004, the Securities and Exchange Commission (SEC) approved the final regulations covering the registration, disclosure, communications, and reporting requirements for for asset-backed securities ("Regulation AB"), which became effective January 1, 2006. The new rules contain several new disclosure requirements, including requirements to provide historical financial data with respect to either prior securitized pools of the same asset class or prior originations and information with respect to the background, experience and roles of the various transaction parties, including those involved in the origination, sale or servicing of the loans in the securitized pool. Moreover, annual assessments of compliance with enhanced servicing criteria by servicers and attestation reports from an independent accounting firm must be obtained with respect to securitized pools of our mortgage loans.

**Securizations.** Our failure to provide the information required by Regulation AB could subject us to Securities Act liability either directly or indirectly through the indemnification provisions of the transaction documents related to a securitization of our mortgage loans. Furthermore, any failure to comply with the new reporting requirements for asset-backed securities under the Securities Exchange Act of 1934, as amended, may result in the loss of eligibility to register our asset-backed securities on Form S-3 which would increase the costs of and limit our access to the public asset-backed securities market.

**Mortgage Loan Sales.** As a result of the implementation of Regulation AB, our loan sale agreements with third parties may require us to provide certain information with respect to ourselves and historical information with respect to the performance of our mortgage loans to such purchasers. Our failure to provide this information with respect to any of our mortgage loan products may result in a breach of a contractual obligation for which we provide an indemnification. In addition, if we are not able to provide such information, the number of potential purchasers of our mortgage loans may be limited or the transaction sizes of sales of our mortgage loans may be limited, each of which may have an adverse effect on the price we receive for our mortgage loans.

In the case of both securitizations and loan sales, compliance with Regulation AB will increase our cost of doing business as we are required to develop systems and procedures to ensure that we do not violate any aspect of these new requirements.

**Risks Related To Our Status As A REIT**

**We may not pay dividends to stockholders.**

REIT provisions of the Internal Revenue Code generally require that we annually distribute to our stockholders at least 90% of all of our taxable income, exclusive of the application of any tax loss carry forwards that may be used to offset current period taxable income. These provisions restrict our ability to retain earnings and thereby generate capital from our operating activities. We may decide at a future date to terminate our REIT status, which would cause us to be taxed at the corporate levels and cease paying regular dividends. In addition, for any year that we do not generate taxable income, we are not required to declare and pay dividends to maintain our REIT status. For instance, due to losses incurred in 2000, we did not declare any dividends from November 2000 until September 2001.

To date, a portion of our taxable income and cash flow has been attributable to our receipt of dividend distributions from the mortgage operations. The mortgage operations is not a REIT and is not, therefore, subject to the above-described REIT distribution requirements. Because the mortgage operations is seeking to retain earnings to fund the future growth of our mortgage operations business, IFC's board of directors, only comprised of executive officers of the Company, which is not the

same as IMH's board of directors, may decide that the mortgage operations should cease making dividend distributions in the future. This would materially reduce the amount of our taxable income and in turn, would reduce the amount we would be required to distribute as dividends.

**If we fail to maintain our REIT status, we may be subject to taxation as a regular corporation.**

We believe that we have operated and intend to continue to operate in a manner that enables us to meet the requirements for qualification as a REIT for federal income tax purposes. We have not requested, and do not plan to request, a ruling from the Internal Revenue Service that we qualify as a REIT.

Moreover, no assurance can be given that legislation, new regulations, administrative interpretations or court decisions will not significantly change the tax laws with respect to qualification as a REIT or the federal income tax consequences of such qualification. Our continued qualification as a REIT will depend on our satisfaction of certain asset, income, organizational and stockholder ownership requirements on a continuing basis.

If we fail to qualify as a REIT, we would not be allowed a deduction for distributions to stockholders in computing our taxable income and would be subject to federal income tax at regular corporate rates. We also may be subject to the federal alternative minimum tax. Unless we are entitled to relief under specific statutory provisions, we could not elect to be taxed as a REIT for four taxable years following the year during which we were disqualified. Therefore, if we lose our REIT status, the funds available for distribution to stockholders would be reduced substantially for each of the years involved. Failure to qualify as a REIT could adversely affect the value of our securities.

On October 22, 2004, President Bush signed the American Jobs Creation Act of 2004 (the "2004 Act"), which, among other things, amends the rules applicable to REIT qualification. In particular, the 2004 Act provides that a REIT that fails the quarterly asset tests for one or more quarters will not lose its REIT status as a result of such failure if either (i) such failure is regarded as a de minimis failure under standards set out in the 2004 Act, or (ii) the failure is greater than a de minimis failure but is attributable to reasonable cause and not willful neglect. In the case of a greater than de minimis failure, however, the REIT must pay a tax and must remedy the failure within 6 months of the close of the quarter in which such failure occurred. In addition, the 2004 Act provides relief for failures of other tests imposed as a condition of REIT qualification, as long as such failures are attributable to reasonable cause and not willful neglect. A REIT would be required to pay a penalty of \$50,000, however, in the case of each such failure. The above-described changes apply for taxable years of REITs beginning after the date of enactment.

**Potential characterization of distributions or gain on sale as unrelated business taxable income to tax-exempt investors.**

If (1) all or a portion of our assets are subject to the rules relating to taxable mortgage pools, (2) we are a "pension-held REIT," (3) a tax-exempt stockholder has incurred debt to purchase or hold our common stock, or (4) the residual REMIC interests we buy generate "excess inclusion income," then a portion of the distributions to and, in the case of a stockholder described in (3), gains realized on the sale of common stock by such tax-exempt stockholder may be subject to Federal income tax as unrelated business taxable income under the Internal Revenue Code.

**Classification as a taxable mortgage pool could subject us or certain of our stockholders to increased taxation.**

If we have borrowings with two or more maturities and, (1) those borrowings are secured by mortgages or mortgage-backed securities and, (2) the payments made on the borrowings are related to the payments received on the underlying assets, then the borrowings and the pool of mortgages or mortgage-backed securities to which such borrowings relate may be classified as a taxable mortgage pool under the Internal Revenue Code. If any part of our Company were to be treated as a taxable mortgage pool, then our REIT status would not be impaired, but a portion of the taxable income we recognize may, under regulations to be issued by the Treasury Department, be characterized as "excess inclusion" income and allocated among our stockholders to the extent of and generally in proportion to the distributions we make to each stockholder. Any excess inclusion income would:

- not be allowed to be offset by a stockholder's net operating losses;
- be subject to a tax as unrelated business income if a stockholder were a tax-exempt stockholder;



- be subject to the application of federal income tax withholding at the maximum rate (without reduction for any otherwise applicable income tax treaty) with respect to amounts allocable to foreign stockholders; and
- be taxable (at the highest corporate tax rate) to us, rather than to our stockholders, to the extent the excess inclusion income relates to stock held by disqualified organizations (generally, tax-exempt companies not subject to tax on unrelated business income, including governmental organizations).

Based on our analysis and advice of our tax counsel, we believe our existing financing arrangements do not create a taxable mortgage pool.

**We may be subject to possible adverse consequences as a result of limits on ownership of our shares.**

Our charter limits ownership of our capital stock by any single stockholder, including a corporation, to 9.5% of our outstanding shares unless waived by the board of directors. By subjecting entities, such as corporations, to the ownership limitation, our charter is more restrictive than the requirements of the federal tax laws applicable to REITs, and thereby serves the dual purpose of helping us maintain our REIT status and protecting us from an unwanted takeover. Our board of directors may increase the 9.5% ownership limit. In addition, to the extent consistent with the REIT provisions of the Internal Revenue Code, our board of directors may, pursuant to our articles of incorporation, waive the 9.5% ownership limit for a stockholder or purchaser of our stock. In order to waive the 9.5% ownership limit our board of directors must require the stockholder requesting the waiver to provide certain representations to the Company to ensure compliance with the REIT provisions of the Internal Revenue Code. Our charter also prohibits anyone from buying shares if the purchase would result in us losing our REIT status. This could happen if a share transaction results in fewer than 100 persons owning all of our shares or in five or fewer persons, applying certain broad attribution rules of the Internal Revenue Code, owning more than 50% (by value) of our shares. If you or anyone else acquires shares in excess of the ownership limit or in violation of the ownership requirements of the Internal Revenue Code for REITs, we:

- will consider the transfer to be null and void;
- will not reflect the transaction on our books;
- may institute legal action to enjoin the transaction;
- will not pay dividends or other distributions with respect to those shares;
- will not recognize any voting rights for those shares;
- may redeem the shares; and
- will consider the shares held in trust for the benefit of a charitable beneficiary as designated by us.

The trustee shall sell the shares held in trust and the owner of the excess shares will be entitled to the lesser of:

- (a) the price paid by the owner;
- (b) if the owner did not purchase the excess shares, the closing price for the shares on the national securities exchange on which IMH is listed on the day of the event causing the shares to be held in trust; or
- (c) the price received by the trustee from the sale of the shares.

Notwithstanding the above, our charter contains a provision which provides that nothing in the charter will preclude the settlement of transactions entered into through the facilities of the NYSE.

**Limitations on acquisition and change in control ownership limit.**

Our charter and bylaws, and Maryland corporate law contain a number of provisions that could delay, defer, or prevent a transaction or a change of control of us that might involve a premium price for holders of our capital stock or otherwise be in their best interests by increasing the associated costs and timeframe necessary to make an acquisition, making the process for acquiring a sufficient number of shares of our capital stock to effectuate or accomplish such a change of control longer and

more costly. In addition, investors may refrain from attempting to cause a change in control because of the difficulty associated with such a venture because of the limitations.

### **Risks Related To Ownership of Our Securities**

#### **Our share prices have been and may continue to be volatile.**

Historically, the market price of our securities has been volatile. The market price of our securities is likely to continue to be highly volatile and could be significantly affected by factors including:

- the amount of dividends paid;
- availability of liquidity in the securitization market;
- loan sale pricing;
- termination of financing agreements;
- margin calls by warehouse lenders or changes in warehouse lending rates;
- unanticipated fluctuations in our operating results;
- prepayments on mortgages;
- valuations of securitization related assets;
- the effect of the restatement of our financial condition and results of operations;
- mark to market adjustments related to the fair value of derivatives;
- cost of funds; and
- general market conditions.

During 2005, our common stock reached an intra-day high sales price of \$23.49 on February 2, and closed at the low sales price of \$9.00 on October 11. In addition, significant price and volume fluctuations in the stock market have particularly affected the market prices for the securities of mortgage REIT companies such as ours. These broad market fluctuations have adversely affected and may continue to adversely affect the market price of our common stock. If our results of operations fail to meet the expectations of securities analysts or investors in a future quarter, the market price of our securities could also be materially adversely affected and we may experience difficulty in raising capital.

#### **Sales of additional common or preferred stock may adversely affect its market price.**

To sustain our growth strategy we intend to raise capital through the sale of equity. The sale or the proposed sale of substantial amounts of our common stock or preferred stock in the public market could materially adversely affect the market price of our common stock or other outstanding securities. We do not know the actual or perceived effect of these offerings, the timing of these offerings, the potential dilution of the book value or earnings per share of our securities then outstanding and the effect on the market price of our securities then outstanding. For example, during 2005, the Company issued shares of common and preferred stock which resulted in net proceeds of approximately \$4.2 million and \$1.6 million, respectively.

We also have shares reserved for future issuance under our stock plans. The sale of a large amount of shares or the perception that such sales may occur, could adversely affect the market price for our common stock or other outstanding securities.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

## ITEM 2. PROPERTIES

Our primary executive and administrative offices are located at 1401 Dove Street, Newport Beach, California where we have a premises lease expiring in May of 2008 to use approximately 74,000 square feet of office space. We also executed premises leases located at 1500 Quail Street, Newport Beach, California expiring in September of 2008 to use approximately 15,000 square feet of office space and 1301 Dove St., Newport Beach, California expiring in August of 2008 to use approximately 16,000 square feet of office space to accommodate expansion. In addition, the mortgage operations have mortgage production offices located in various states with premises lease terms ranging from month to month or one to two years.

On March 4, 2005, we entered into a new lease for our business and corporate facilities. The lease is for a term of ten years and commences on the date construction of the premises is complete or the date we commence business operations on the premises. We have two options to extend the term for five-year periods for each option. The premises are to be located at 19500 Jamboree Road, Newport Beach, California and are anticipated to be ready for business June of 2006. The premises will consist of a seven-story building containing approximately 200,000 square feet with an initial annual rental rate of \$31.80 per square foot, which amount increases every 30 months. We have options for additional space in the complex if needed. We anticipate moving our entire Orange County operations to this facility in June 2006.

## ITEM 3. LEGAL PROCEEDINGS

### Mortgage-related Litigation

On June 27, 2000, a complaint captioned Michael P. and Shellie Gilmore v. Preferred Credit Corporation and Impac Funding Corporation, et al. was filed in the Circuit Court for Clay County, Missouri, as a purported class action lawsuit alleging that the defendants violated Missouri's Second Loans Act and Merchandising Practices Act. In July 2001, the Missouri complaint was amended to include IMH and other Impac-related entities. A plaintiffs class was certified on January 2, 2003. On June 22, 2004, the court issued an order to stay all proceedings pending the outcome of an appeal in a similar case in the Eighth Circuit.

On February 3, 2004, a complaint captioned James and Jill Baker v. Century Financial Group, Inc., et al was filed in the Circuit Court of Clay County, Missouri, as a purported class action lawsuit alleging that the defendants violated Missouri's Second Loan Act and Merchandising Practices Act.

On October 2, 2001, a complaint captioned Deborah Searcy, Shirley Walker, et al. v. Impac Funding Corporation, Impac Mortgage Holdings, Inc. et. al. was filed in the Wayne County Circuit Court, State of Michigan, as a purported class action lawsuit alleging that the defendants violated Michigan's Secondary Mortgage Loan Act, Credit Reform Act and Consumer Protection Act. A motion to dismiss an amended complaint has been filed, but not yet ruled upon.

On July 31, 2003, a purported class action complaint captioned Frazier, et al v. Impac Funding Corp., et al. was filed in federal court in Tennessee. The causes of action in the action allege violations of Tennessee's usury statute and Consumer Protection Act. A motion to dismiss the complaint was filed and not yet ruled upon. The court agreed to administratively close the case on April 5, 2004 pending an appeal in a similar case. On April 29, 2004, the court issued its order administratively closing the case.

On November 25, 2003, a complaint captioned Michael and Amber Stallings v. Empire Funding Home Loan Owner Trust 1997-3; U.S. Bank, National Association; and Wilmington Trust Company was filed in the United States District Court for the Western District of Tennessee, as a purported class action lawsuit alleging that the defendants violated Tennessee predatory lending laws governing second mortgage loans. The complaint further alleges that certain assignees of mortgage loans, including two Impac-related trusts, should be included as defendants in the lawsuit. Like the Frazier matter this case was administratively closed on April 29, 2004 pending an appeal in a similar case.

All of the above purported class action lawsuits are similar in nature in that they allege that the mortgage loan originators violated the respective state's statutes by charging excessive fees and costs when making second mortgage loans on residential real estate. The complaints allege that IFC was a purchaser, and is a holder, along with other affiliated entities, of second mortgage loans originated by other lenders. The plaintiffs in the lawsuits are seeking damages that include disgorgement of interest paid, restitution, rescission, actual damages, statutory damages, exemplary damages, pre-judgment interest and punitive damages. No specific dollar amount of damages is specified in the complaints.

We believe that we have meritorious defenses to the above claims and intend to defend these claims vigorously. Nevertheless, litigation is uncertain and we may not prevail in the lawsuits and can express no opinion as to its ultimate outcome. An adverse judgment in any of these matters could have a material adverse affect on us; however, no judgment in any matter is probable to occur nor is any amount of any loss from such judgment reasonably estimable at this time.

#### Securities Litigation

From January 10, 2006 through February 28, 2006, six purported class action complaints have been filed against IMH and its senior officers and all but one of its directors by the following plaintiffs, individually and on behalf of all others similarly situated, in the U.S. District Court, Central District of California: Earl Schriver, Jr. (filed January 10, 2006), Jeff Dayton (filed January 13, 2006), Joseph Mathieu (filed January 18, 2006), Fred Safir and Wilma Libar (filed January 26, 2006), Ronald Kelner (filed February 1, 2006), and Miroslav Bardos (filed February 9, 2006). The complaints, which are brought on behalf of persons who acquired IMH's common stock during the period of May 13, 2005 through August 9, 2005, allege claims against all defendants for violations under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder, and claims against the individual defendants for violations of Section 20(a) of the Exchange Act. Plaintiffs claim that the defendants caused IMH's common stock to trade at artificially inflated prices through false and misleading statements related to the Company's financial condition and future prospects and that the individual defendants improperly sold holdings. The complaints seek compensatory damages for all damages sustained as a result of the defendants' actions, including interest, reasonable costs and expenses, and other relief as the court may deem just and proper.

From January 27, 2006 through February 28, 2006, seven shareholder derivative actions have been filed against the Company and all of its senior officers and directors by the following parties, derivatively on behalf of nominal defendant IMH, four of which are filed in the U.S. District Court, Central District of California and three of which are filed in Orange County Superior Court: Green Meadows Partners, LLP (filed January 27, 2006), Louis Misarti and Anne Misarti (filed February 1, 2006), Miguel Portillo (filed February 6, 2006), Brian Dawley (filed February 14, 2006), Michael Eleftheriou (filed February 21, 2006), Henry J. Krsjak (filed February 21, 2006) and Ronald A. Gustafson (filed February 24, 2006). The actions allege claims for a shareholder derivative complaint for breach of fiduciary duties for insider selling and misappropriation of information, abuse of control, gross mismanagement, waste of corporate assets, unjust enrichment and violation of California Corporations Code related to false and misleading statements regarding the Company's business and future prospects, and in the case of one complaint, related to materially deficient internal controls and illegal stock sales. The shareholder derivative actions generally seek, in favor of the Company, damages sustained as a result of the individual defendants' breach of fiduciary duties and the other causes of action, and, in the case of two derivative actions, in an amount equal to three times the difference between prices at which stock was sold and the market value at which shares would have been sold had the alleged non-public information been publicly disseminated; a constructive trust for the stock proceeds; equitable and injunctive relief; disgorgement of all profits, benefits and other compensation obtained by defendants; costs and disbursements of the action including attorneys', accountants' and experts' fees and further relief as the court deems just and proper. Furthermore, one derivative action is seeking relief directing all necessary actions to reform and improve corporate governance and internal procedures to comply with applicable law; and another derivative action includes punitive damages.

We believe that we have meritorious defenses to the above claims and intend to defend these claims vigorously. 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.

#### Other Litigation

We are a party to other litigation and claims which are normal in the course of our operations. While the results of such other litigation and claims cannot be predicted with certainty, we believe the final outcome of such matters will not have a material adverse effect on our financial condition or results of operations.

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

No matters were submitted to the security holders to be voted on during the fourth quarter of 2005.

**PART II****ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS**

Our common stock is listed on the NYSE under the symbol "IMH."

The following table summarizes the high, low and closing sales prices for our common stock for the periods indicated:

	2005			2004		
	High	Low	Close	High	Low	Close
First Quarter	\$ 23.49	\$ 16.00	\$ 19.18	\$ 27.20	\$ 18.25	\$ 27.20
Second Quarter	22.32	15.60	18.65	26.73	17.15	22.52
Third Quarter	19.11	11.15	12.26	27.91	21.07	26.30
Fourth Quarter	12.49	9.00	9.41	27.19	20.50	22.67

On March 1, 2006, the last reported sale price of our common stock on the NYSE was \$8.42 per share. As of March 1, 2006, there were 595 holders of record, including holders who are nominees for an undetermined number of beneficial owners, of our common stock.

*Common Stock Dividend Distributions.* To maintain our qualification as a REIT, we intend to make annual distributions to stockholders at an amount that maintains our REIT status in accordance with the Internal Revenue Code, which may not necessarily equal net earnings as calculated in accordance with GAAP. Our dividend policy is subject to revision at the discretion of the board of directors. All distributions in excess of those required to maintain our REIT status will be made at the discretion of the board of directors and will depend on our taxable income, financial condition and other factors as the board of directors deems relevant. The board of directors has not established a minimum distribution level. Distributions to stockholders will generally be taxable as ordinary income or qualified income, which is subject to a 15% tax rate, although a portion of such distributions may be designated by us as capital gain or may constitute a tax-free return of capital. We annually furnish to each of our stockholders a statement setting forth distributions paid during the preceding year and their characterization as ordinary income, qualified income, capital gain or return of capital.

The following table presents our common stock dividend record dates and per share dividend amounts for the quarters indicated:

Quarter Ended	Stockholder Record Date	Per Share Dividend Amount
March 31, 2004	April 5, 2004	\$ 0.65
June 30, 2004	July 6, 2004	0.75
September 30, 2004	October 8, 2004	0.75
December 31, 2004	December 15, 2004	0.75
March 31, 2005	April 8, 2005	0.75
June 30, 2005	July 8, 2005	0.75
September 30, 2005	October 7, 2005	0.45
December 31, 2005	January 17, 2006	0.20

*Repurchases of Common Stock.* On October 13, 2005, the board of directors approved the repurchase of up to 5.0 million shares of our common stock. No shares were repurchased during the period from October 13, 2005 through December 31, 2005.

**ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA**

The following selected consolidated statements of operations data for each of the years in the five-year period ended December 31, 2005 and the consolidated balance sheet data as of the year end for each of the years in the five-year period ended December 31, 2005 were derived from the audited consolidated financial statements. Such selected financial data should be read in conjunction with the consolidated financial statements and the notes to the consolidated financial statements starting on page F-1 and with Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations."

**IMPAC MORTGAGE HOLDINGS, INC.**  
(amounts in thousands, except per share data)

For the year ended December 31,

	2005	2004	2003	2002	2001
<b>Statement of Operations Data:</b>					
Net interest income:					
Interest income	\$ 1,251,960	\$ 755,616	\$ 385,716	\$ 230,267	\$ 141,563
Interest expense	1,047,209	412,533	209,009	127,801	108,183
Net interest income	204,751	343,083	176,707	102,466	33,380
Provision for loan losses	30,563	30,927	24,853	19,848	16,813
Net interest income after provision for loan losses	174,188	312,156	151,854	82,618	16,567
Non-interest income:					
Gain on sale of loans	39,509	24,729	37,523	-	-
Other income	13,888	10,948	9,995	2,864	5,295
Realized gain (loss) from derivative instruments	22,595	(91,881)	(47,847)	(28,361)	(5,214)
Change in fair value of derivative instruments	144,932	96,575	31,826	(22,141)	(28,177)
Equity in net earnings of IFC	-	-	11,537	11,299	19,499
Total non-interest income (expense)	220,924	40,371	43,034	(36,339)	(8,597)
Non-interest expense:					
Personnel expense	77,508	60,420	25,250	1,856	1,192
Other expense	26,327	17,392	11,072	1,898	1,669
General and administrative and other expense	25,384	17,097	7,660	985	1,686
Amortization of deferred charge	27,174	16,212	5,658	-	-
Impairment on investment securities available-for-sale	-	1,120	298	1,039	2,217
(Gain) loss on sale of real estate owned	(1,888)	(3,901)	(2,632)	154	(1,931)
Total non-interest expense	154,505	108,340	47,306	5,932	4,833
Earnings before extraordinary item and cumulative effect of change in accounting principle	240,607	244,187	147,582	40,347	3,137
Extraordinary item	-	-	-	-	(1,006)
Income tax benefit	(29,651)	(13,450)	(1,397)	-	-
Cumulative effect of change in accounting principle	-	-	-	-	(4,313)
Net earnings (loss)	\$ 270,258	\$ 257,637	\$ 148,979	\$ 40,347	\$ (2,182)
Net earnings per share before extraordinary item and cumulative effect of change in accounting principle:					
Basic	\$ 3.38	\$ 3.79	\$ 2.94	\$ 1.01	\$ 0.07
Diluted	\$ 3.35	\$ 3.72	\$ 2.88	\$ 0.99	\$ 0.11
Net earnings per share:					
Basic	\$ 3.38	\$ 3.79	\$ 2.94	\$ 1.01	\$ (0.16)
Diluted	\$ 3.35	\$ 3.72	\$ 2.88	\$ 0.99	\$ (0.16)
Dividends declared per share	\$ 1.95	\$ 2.90	\$ 2.05	\$ 1.76	\$ 0.69

**As of December 31,**

	<b>2005</b>	<b>2004</b>	<b>2003 (1)</b>	<b>2002</b>	<b>2001</b>
<b>Balance Sheet Data:</b>					
CMO collateral and mortgages held-for-investment	\$ 24,654,360	\$ 21,895,592	\$ 9,296,893	\$ 5,215,731	\$ 2,242,036
Finance receivables	350,217	471,820	630,030	664,021	300,571
Mortgages held-for-sale	2,052,694	587,745	397,618	-	-
Investments in and advances to IFC (1)	-	-	-	531,032	210,134
Total assets	27,720,379	23,815,767	10,577,957	6,540,339	2,842,677
CMO borrowings	23,990,430	21,206,373	8,489,853	5,019,934	2,139,818
Reverse repurchase agreements	2,430,075	1,527,558	1,568,807	1,168,029	469,491
Total liabilities	26,553,432	22,771,692	10,105,170	6,256,814	2,646,847
Total stockholders' equity	1,166,947	1,044,075	472,787	283,525	195,830

**As of and for the year ended December 31,**

	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>
<b>Operating Data:</b>					
Mortgage acquisitions and originations for the year	\$ 22,310,603	\$ 22,213,104	\$ 9,525,121	\$ 5,945,498	\$ 3,203,559
Master servicing portfolio at year-end	28,448,507	28,404,008	13,919,694	8,694,474	5,568,740
Servicing portfolio at year-end	2,208,433	1,690,800	1,402,100	2,653,414	1,754,366

- (1) On July 1, 2003, IMH purchased 100% of the outstanding shares of common stock of IFC. The purchase of IFC's common stock combined with IMH's ownership of 100% of IFC's preferred stock resulted in the consolidation of IFC from July 1, 2003 through December 31, 2003. Prior to July 1, 2003, IFC was a non-consolidated subsidiary of IMH and 99% of the net earnings of IFC were reflected in IMH's financial statements as "Equity in net earnings (loss) of IFC."

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Management's discussion and analysis of financial condition and results of operations contain 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. Refer to Item 1. "Business—Forward-Looking Statements" for a complete description of forward-looking statements. All of our businesses actively work together to deliver comprehensive mortgage and lending services to our correspondents, mortgage bankers and brokers, retail customers and capital market investors through a wide array of mortgage loan programs using web-based technology and centralized operations so that we can provide high levels of customer service at low per loan operating costs. We elect to be taxed as a REIT for federal income tax purposes, which generally allows us to pass through income to stockholders without payment of federal income tax at the corporate level. Our goal is to generate consistent and reliable income for distribution to our stockholders primarily from the earnings of our core operating businesses, which include the long-term investment operations, mortgage operations and warehouse lending operations. Refer to Item 1. "Business" for additional information on our businesses and operating segments.

### Summary of 2005 Financial and Operating Results

- Net earnings per diluted common share were \$3.35 for 2005 as compared to net earnings per diluted common share of \$3.72 for 2004.
- Estimated taxable income per diluted common share was \$1.87 for 2005 as compared to actual taxable income per diluted common share of \$2.97 for 2004. See the "Estimated Taxable Income available to IMH Common Stockholders" table for the calculation of taxable income.
- Cash dividends paid for 2005 were \$1.95 per common share as compared to \$2.90 per common share for 2004.
- Total assets as of December 31, 2005 were \$27.7 billion compared to \$23.8 billion as of prior year-end.
- Book value per common share was \$13.24 as of December 31, 2005 as compared to \$11.80 as of prior year-end primarily as a result of the increase in fair value of derivative instruments.
- The mortgage operations acquired and originated approximately \$22.3 billion of primarily non-conforming Alt-A mortgages during 2005, as compared to \$22.2 billion for 2004.
- The long-term investment operations retained approximately \$12.2 billion of primarily Alt-A mortgages and originated \$798.5 million of small-balance multi-family mortgages during 2005 compared to \$16.9 billion and \$458.5 million, respectively, for 2004.
- For 2005, the long-term investment operations securitized approximately \$14.0 billion of mortgages as CMO transactions to finance the acquisition and origination and retention of Alt-A and multi-family mortgages for long-term investment.
- During 2005, the Company issued 363,700 shares of common stock which resulted in net proceeds of \$4.2 million; 71,200 shares of Series C preferred stock which resulted in net proceeds of \$1.6 million, and issued trust preferred securities, which resulted in net proceeds of \$93.2 million.

### Critical Accounting Policies

We define critical accounting policies as those that are important to the portrayal of our financial condition and results of operations and require estimates and assumptions based on our judgment of changing market conditions and the performance of our assets and liabilities at any given time. In determining which accounting policies meet this definition, we considered our policies with respect to the valuation of our assets and liabilities and estimates and assumptions used in determining those valuations. We believe the most critical accounting issues that require the most complex and difficult judgments and that are particularly susceptible to significant change to our financial condition and results of operations include the following:

- allowance for loan losses;



- derivative financial instruments;
- securitization of financial assets as financing versus sale; and
- amortization of loan premiums and securitization costs.

### ***Allowance for Loan Losses***

We provide an allowance for loan losses for mortgages held as CMO collateral, finance receivables and mortgages held-for-investment ("loans provided for"). In evaluating the adequacy of the allowance for loan losses, management takes several items 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 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 allowance for loan losses. Management also recognizes that there are qualitative factors that must be taken into consideration when evaluating and measuring inherent loss in our 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, projected loss curves, political factors and industry statistics. Specific valuation allowances may be established for loans that are deemed impaired, if default by the borrower is deemed probable, and if the fair value of the loan or the collateral is estimated to be less than the gross carrying value of the loan. Actual losses on loans are recorded as a reduction to the allowance through charge-offs. Subsequent recoveries of amounts previously charged off are credited to the allowance.

### ***Derivative Financial Instruments***

#### ***Loan Commitments***

We enter into commitments to make loans whereby the interest rate on the loan is set prior to funding. We enter commitments on an individual loan basis, referred to as an Interest Rate Lock Commitment (IRLC), and on a bulk purchase basis, referred to as bulk purchase commitments (collectively referred to as "loan commitments"). These loan commitments are considered to be derivatives and are recorded at fair value in the consolidated balance sheets. The change in fair value of derivative instruments are recorded in the consolidated statements of operations and comprehensive earnings. Subsequent to the April 1, 2004 issuance of Staff Accounting Bulletin No. 105 "Application of Accounting Principles to Loan Commitments" (SAB 105), when measuring the fair value of interest rate lock commitments, the amount of the expected servicing rights is not included in the valuation. The fair value is calculated and adjusted using an anticipated fallout factor for loan commitments that are not expected to be funded.

Unlike most other derivative instruments, there is no active market for the loan commitments that can be used to determine their fair value. Consequently, we have developed a method for estimating the fair value of our loan commitments. The fair value of the loan commitments is determined by calculating the change in market value from the point of commitment date to the measurement date based upon changes in interest rates during the period, adjusted for an anticipated fallout factor for loan commitments that are not expected to fund. Under this fair value methodology, the loan commitment has zero value on day one and all future value is the result of changes in interest rates, exclusive of any inherent servicing value.

#### ***Forward Sale Commitments***

The policy of recognizing the fair value of the loan commitments has the effect of recognizing a gain or loss on the related mortgage loans based on changes in the interest rate environment before the mortgage loans are funded and sold. As such, loan commitments expose us to interest rate risk. We mitigate such risk by entering into forward sale commitments, such as mandatory commitments on U.S. Treasury bonds and mortgage-backed securities, call options and put options. These forward sale commitments are treated as derivatives under the provisions of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" (SFAS 133), with the change in fair value of derivative instruments reported as such in the consolidated statement of operations.

The fair value of our forward sale commitments are generally based on market prices provided by dealers, which make markets in these financial instruments.

### *Interest Rate Swaps, Caps, and Floors*

Our 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 CMO and short-term borrowings under reverse repurchase agreements. We also monitor on an ongoing basis the prepayment risks that arise in fluctuating interest rate environments. Our interest rate risk management policies are formulated with the intent to offset the potential adverse effects of changing interest rates on CMO and reverse repurchase borrowings.

To mitigate exposure to the effect of changing interest rates on cash flows on CMO and reverse repurchase borrowings, we purchase 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). The swaps, caps and floors are treated as derivatives under the provisions of SFAS 133, with changes in fair value of derivative instruments reported as such in the consolidated statements of operations. Cash paid or received on swaps, caps and floors is recorded as a current period expense or income as realized gain (loss) on derivative instruments in the consolidated statements of operations.

The fair value of our interest rate swaps, caps, floors and other derivative transactions are generally based on market prices provided by dealers, which make markets in these financial instruments.

### ***Securitization of Financial Assets as Financing versus Sale***

The mortgage operations recognize gains or losses on the sale of mortgages when the sales transaction settles or upon the securitization of the mortgages when the risks of ownership have passed to the purchasing party. Gains and losses may be increased or decreased by the amount of any servicing related premiums received and costs associated with the acquisition or origination of mortgages. A transfer of financial assets in which control is surrendered is accounted for as a sale to the extent that consideration other than a beneficial interest in the transferred assets is received in the exchange. The long-term investment operations structure CMO securitizations as financing arrangements and recognize no gain or loss on the transfer of mortgage assets. The CMO securitization trusts do not meet criteria within SFAS No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities" (SFAS 140), to be qualifying special purpose entities, and further, are considered variable interest entities under FASB Interpretation No. 46R (FIN 46R) and, therefore, are consolidated by the long-term investment operations as the entities' primary beneficiary. The mortgage operations generally structure REMIC securitizations as sales and gains and losses are recognized. REMICs which do not meet the sale criteria within SFAS 140 are accounted for as secured borrowing transactions and consolidated under FIN46R to the extent the Company holds a residual interest and thus considered the primary beneficiary. Liabilities and derivatives incurred or obtained at the transfer of financial assets are required to be measured at fair value, if practicable. Also, servicing assets and other retained interests in the transferred assets must be measured by allocating the previous carrying value between the asset sold and the interest retained, if any, based on their relative fair values at the date of transfer. To determine the value of the securities and retained interest, management uses certain analytics and data to estimate future rates of prepayments, prepayment penalties to be received, delinquencies, defaults and default loss severity and their impact on estimated cash flows.

### ***Amortization of Loan Premiums and Securitization Costs***

In accordance with Statement of Financial Accounting Standard No. 91, "Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases" ("SFAS 91"), we amortize the mortgage premiums, securitization costs, bond discounts, deferred gains/losses to interest income over the estimated lives of the mortgages as an adjustment to yield of the mortgages. Amortization calculations include certain loan information including the interest rate, loan maturity, principal balance and certain assumptions including expected prepayment rates. We estimate prepayments on a collateral-specific basis and consider actual prepayment activity for the collateral pool. We also consider the current interest rate environment and the forward market curve projections.

## Compliance with Regulation AB

Our securitization program represents an additional source of liquidity. We currently maintain a shelf registration with the SEC relating to the issuance of securities secured by mortgage loans. In December 2004, the SEC adopted Regulation AB relating to offerings of and the on-going reporting with respect to asset-backed securities ("Regulation AB") which became effective January 1, 2006. We are required to comply with Regulation AB to ensure our ability to utilize securitization as a source of liquidity. Refer to the "BUSINESS—Mortgage Operations—Regulation" section of this Annual Report for further discussion about our securitization program. We expect compliance with Regulation AB will increase the scope, complexity and cost of our reporting and disclosure practices with respect to our securitization program.

## Taxable Income

Estimated taxable income available to common stockholders was \$142.9 million, or \$1.87 per diluted common share, for 2005 as compared to \$202.9 million, or \$2.97 per diluted common share, for 2004 and \$127.5 million, or \$2.46 per diluted common share, for 2003. To maintain our REIT status, we are required to distribute a minimum of 90% of our annual taxable income to our stockholders. Because we pay dividends based on taxable income, dividends may be more or less than net earnings. As such, we believe that the disclosure of estimated taxable income available to common stockholders, which is a non-generally accepted accounting principle, or "GAAP," financial measurement, is useful information for our investors.

We paid total cash dividends of \$1.95 per common share during 2005, \$2.90 per common share during 2004 and \$2.53 per common share during 2003, which, when combined with available tax loss carry-forwards met taxable income distribution requirements for each year. Distributions to stockholders will generally be taxable as ordinary or qualified dividends, although such distributions may be designated as capital gains or a tax-free return of capital. Under the Jobs and Growth Tax Relief Act of 2003, a portion of the total common stock dividends paid to our stockholders during 2005 was the result of dividends paid from IFC to IMH which will be taxed as qualifying dividends. IMH annually furnishes to each of its stockholders a statement setting forth tax characteristics. The 2005 dividend distribution characteristics are as follows: 77.1%, 20.3% and 2.6% ordinary income, qualifying dividends, capital gains or return of capital, respectively.

Upon the filing of our 2004 tax return, we had a federal net operating tax loss carry-forward of \$18.1 million, which expires in the year 2020 and which may or may not be used to offset taxable income in 2005 or in subsequent years. We expect to file our 2005 federal and state tax returns in September 2006 at which time changes to federal net operating loss carry-forwards, if any, will be determined.

*Year Ended 2005 vs. Year Ended 2004*

**Estimated Taxable Income available to IMH Common Stockholders**

Estimated taxable income available to IMH common stockholders excludes net earnings from IFC and its subsidiaries and the elimination of intercompany loan sale transactions. The following schedule reconciles net earnings to estimated taxable income available to common stockholders of the REIT.

	<b>For the year ended December 31,</b>		
	<b>2005 (1)</b>	<b>2004</b>	<b>2003</b>
Net earnings	\$ 270,258	\$ 257,637	\$ 148,979
Adjustments to net earnings: (2)			
Loan loss provision	30,563	30,927	24,853
Cash received from previously charged-off assets	-	-	(5,533)
Tax loss on sale of investment securities	-	-	(4,725)
Tax deduction for actual loan losses	(16,004)	(16,252)	(12,859)
Change in fair value of derivatives (3)	(155,695)	(103,724)	(38,762)
Dividends on preferred stock	(14,530)	(3,750)	-
Net earnings of IFC (4)	(14,968)	(42,944)	(16,889)
Equity in net earnings of IFC	-	-	(11,537)
Dividend from IFC (5)	32,850	37,000	31,385
Elimination of inter-company loan sales transactions (6)	10,429	44,048	12,339
Net miscellaneous adjustments	-	-	215
Estimated taxable income available to common stockholders (7)	\$ 142,903	\$ 202,942	\$ 127,466
Estimated taxable income per diluted common share (7)	\$ 1.87	\$ 2.97	\$ 2.46
Diluted weighted average common shares outstanding	76,277	68,244	51,779

- (1) Estimated taxable income includes estimates of book to tax adjustments and can differ from actual taxable income as calculated when we file our annual corporate tax return. Since estimated taxable income is a non-GAAP financial measurement, the reconciliation of estimated taxable income available to common stockholders to net earnings is intended to meet the requirement of Regulation G as promulgated by the SEC for the presentation of non-GAAP financial measurements.
- (2) Certain adjustments are made to net earnings in order to calculate taxable income due to differences in the way revenues and expenses are recognized under the two methods. As an example, to calculate estimated taxable income, actual loan losses are deducted; however, the calculation of net earnings using GAAP requires a deduction for estimated losses inherent in our mortgage portfolios in the form of a provision for loan losses. To maintain our REIT status, we are required to distribute a minimum of 90% of our annual taxable income to our stockholders.
- (3) The mark-to-market change for the valuation of derivatives at IMH is income or expense for GAAP financial reporting but is not included as an addition or deduction for taxable income calculations.
- (4) Represents net earnings of IFC, a taxable REIT subsidiary, which may not necessarily equal taxable income.
- (5) Any dividends paid by IFC to IMH are prorated to IMH stockholders based on total dividends paid by IMH and are taxed at the qualifying dividend tax rate. The IFC dividend distribution to IMH represents federal taxable income to IMH as distributions from IFC were from current and accumulated earnings and profits (E&P). Based on estimates as of December 31, 2005, the accumulated E&P is approximately \$1.0 million. Any dividends paid to IMH by IFC in excess of IFC's accumulated E&P would be recognized as return of capital by IMH to the extent of IMH's capital investment in IFC. Any distributions by IFC in excess of IMH's capital investment in IFC would be taxed as capital gains.
- (6) Includes the effects to taxable income associated with the elimination of gains from inter company loan sales between IFC and IMH, net of tax and the related amortization of the deferred charge.
- (7) Excludes the deduction for dividends paid and the availability of a deduction attributable to net operating loss carry-forwards. As of December 31, 2004, the company has Federal net operating loss carry-forwards of \$18.1 million that expire in the year 2020.

Estimated taxable income available to common shareholders decreased to \$142.9 million for the year ended 2005 as compared to \$202.9 million for the year ended 2004. The decline in estimated taxable income of \$60.0 million for 2005 as compared to 2004 was mainly attributable to:

- a decline of \$33.0 million in adjusted net interest margin at IMH, which includes the realized gain (loss) from derivative instruments and excludes amortization of intercompany gains;
- an increase in preferred dividends of \$10.7 million;
- an increase in operating expenses of \$5.5 million; and
- a decrease in the dividend from IFC of \$4.1 million.

The decline in adjusted net interest margin at IMH of \$33.0 million was the result of an increase in borrowing costs of \$641.4 million, offset by an increase in interest income of \$493.9 million and an increase in the realized gain (loss) from derivative instruments of \$114.5 million.

## Financial Condition and Results of Operations

### Financial Condition

	As of December 31,		Increase (Decrease)	% Change
	2005	2004		
CMO collateral	\$ 24,494,290	\$ 21,308,906	\$ 3,185,384	15 %
Mortgages held-for-investment	160,070	586,686	(426,616)	(73)
Finance receivables	350,217	471,820	(121,603)	(26)
Allowance for loan losses	(78,514)	(63,955)	(14,559)	23
Mortgages held-for-sale	2,052,694	587,745	1,464,949	249
Derivatives	250,368	95,388	154,980	162
Other assets	491,254	829,177	(337,923)	(41)
<b>Total assets</b>	<b>\$ 27,720,379</b>	<b>\$ 23,815,767</b>	<b>\$ 3,904,612</b>	<b>16 %</b>
CMO borrowings	\$ 23,990,430	\$ 21,206,373	\$ 2,784,057	13 %
Reverse repurchase agreements	2,430,075	1,527,558	902,517	59
Other liabilities	132,927	37,761	95,166	252
Total liabilities	26,553,432	22,771,692	3,781,740	17
Total stockholder's equity	1,166,947	1,044,075	122,872	12
<b>Total liabilities and stockholder's equity</b>	<b>\$ 27,720,379</b>	<b>\$ 23,815,767</b>	<b>\$ 3,904,612</b>	<b>16 %</b>

Total assets grew 16% to \$27.7 billion as of December 31, 2005 as compared to \$23.8 billion as of prior year-end, as the long-term investment operations retained \$12.2 billion of primarily Alt-A mortgages and originated \$798.5 million of multi-family mortgages, substantially offset by approximately \$10.3 billion in prepayments. The retention of Alt-A and multi-family mortgages increased the long-term mortgage portfolio to \$24.7 billion as of December 31, 2005 as compared to \$21.9 billion as of prior year-end. The acquisition and origination of mortgages were primarily financed through the issuance of \$14.0 billion of CMO transactions and net proceeds of \$4.2 million in new common equity and net proceeds of \$1.7 million in new preferred equity.

	As of December 31,		Increase (Decrease)	% Change
	2004	2003		
CMO collateral	\$ 21,308,906	\$ 8,644,079	\$ 12,664,827	147 %
Mortgages held-for-investment	586,686	652,814	(66,128)	(10)
Finance receivables	471,820	630,030	(158,210)	(25)
Allowance for loan losses	(63,955)	(38,596)	(25,359)	(66)
Mortgages held-for-sale	587,745	397,618	190,127	48
Derivatives	95,388	-	95,388	100
Other assets	829,177	292,012	537,165	184
<b>Total assets</b>	<b>\$ 23,815,767</b>	<b>\$ 10,577,957</b>	<b>\$ 13,237,810</b>	<b>125 %</b>
CMO borrowings	\$ 21,206,373	\$ 8,489,853	\$ 12,716,520	150 %
Reverse repurchase agreements	1,527,558	1,568,807	(41,249)	(3)
Other liabilities	37,761	46,510	(8,749)	(19)
Total liabilities	22,771,692	10,105,170	12,666,522	125
Total stockholder's equity	1,044,075	472,787	571,288	121
<b>Total liabilities and stockholder's equity</b>	<b>\$ 23,815,767</b>	<b>\$ 10,577,957</b>	<b>\$ 13,237,810</b>	<b>125 %</b>

Total assets grew 125% to \$23.8 billion as of December 31, 2004 as compared to \$10.6 billion in 2003, as the long-term investment operations retained \$16.9 billion of primarily Alt-A mortgages and originated \$458.5 million of multi-family mortgages. The retention of Alt-A and multi-family mortgages increased the long-term mortgage portfolio to \$21.9 billion as of December 31, 2004 as compared to \$9.3 billion as of the prior year-end.

The following table presents selected financial data for the periods indicated (dollars in thousands, except per share data):

	As of and for the year ended December 31,		
	2005	2004	2003
Book value per share	\$ 13.24	\$ 11.80	\$ 8.39
Return on average assets	1.04%	1.51%	1.80%
Return on average equity	24.66%	35.62%	41.59%
Assets to equity ratio	23.75:1	22.81:1	22.35:1
Debt to equity ratio	22.72:1	21.77:1	21.28:1
Allowance for loan losses as a percentage of loans provided	0.31%	0.29%	0.39%
Prior 12-month constant prepayment rate (CPR)	37%	29%	28%
Total non-performing assets	\$ 479,660	\$ 259,695	\$ 140,369
Total non-performing assets to total assets	1.73%	1.09%	1.33%
Mortgages owned 60+ days delinquent	\$ 733,348	\$ 381,290	\$ 175,313
60+ day delinquency of mortgages owned	3.12%	1.74%	1.79%

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

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

**Credit Risk.** We manage credit risk by retaining high credit quality Alt-A mortgages and, to a lesser extent, multi-family mortgages, also by adequately providing for loan losses and actively managing delinquencies and defaults. We believe that by improving the overall credit quality of our long-term mortgage portfolio we can consistently generate stable future cash

flow and net earnings. During 2005 we retained primarily Alt-A mortgages with an original weighted average credit score of 694 and an original weighted average LTV ratio of 76%. Alt-A mortgages are primarily first lien mortgages made to borrowers whose credit is generally within typical Fannie Mae and Freddie Mac guidelines, but that have loan characteristics that make them non-conforming under those guidelines. We primarily acquire non-conforming "A" or "A-" credit quality mortgages, collectively, Alt-A mortgages. As of December 31, 2005, the original weighted average credit score of mortgages held as CMO collateral was 698 and the original weighted average LTV ratio was 75%. For additional information regarding the long-term mortgage portfolio refer to Item 1. "Long-Term Mortgage Portfolio," "Note C—CMO Collateral" and "Note D—Mortgages Held-for-Investment" in the accompanying notes to the consolidated financial statements.

In addition to retaining mortgages acquired and originated by our mortgage operations, the long-term investment operations originated \$798.5 million of multi-family mortgages through IMCC, which was formed to primarily originate small balance and multi-family mortgages of high credit quality. IMCC primarily originates hybrid ARMs with balances generally ranging from \$500,000 to \$5.0 million. Multi-family mortgages provide greater asset diversification on our balance sheet as multi-family mortgages typically have longer lives than residential mortgages. All multi-family mortgages originated during 2005 had interest rate floors with prepayment penalty periods ranging from three to ten years.

We believe that we have adequately provided for loan losses as allowance for loan losses increased to \$78.5 million as of December 31, 2005 as compared to \$64.0 million as of prior year-end. During 2005, the long-term investment operations retained \$12.2 billion of mortgages and originated \$798.5 million of small-balance multi-family mortgages for long-term investment. Actual loan charge-offs net of recoveries on mortgages held for long-term investment increased to \$16.0 million for 2005 as compared to \$5.6 million for 2004 due to the increase and seasoning of our loan portfolio. Included in the allowance at December 31, 2005 was a specific reserve of \$12.8 million for expected losses from hurricane affected areas. Additionally in 2004, we provided specific loan loss allowances of \$10.7 million for impaired repurchase advances by our warehouse lending operations.

We monitor our servicers and sub-servicers to make sure that they perform loss mitigation, foreclosure and collection functions according to our servicing guidelines. This includes an effective and aggressive collection effort in order to minimize mortgages from becoming non-performing assets. However, when resolving issues related to non-performing assets, including potential disposition, servicers and sub-servicers are required to take timely and aggressive action. Servicers and sub-servicers are required to take collection action under various circumstances in accordance with our servicing guidelines, which results in maximum financial benefit. This is accomplished by either working with the borrower to bring the mortgage current or by foreclosing and liquidating the property. We perform ongoing review of mortgages that display weaknesses and believe that we maintain adequate loss allowance on our mortgages. 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. If the mortgage is not reinstated within the time permitted by law for reinstatement, the property may then be sold at a foreclosure sale. In foreclosure sales, we generally acquire title to the property. As of December 31, 2005, mortgages that we owned included 3.12% of mortgages that were 60 days or more delinquent as compared to 1.74% as of year-end 2004 and 1.79% as of year-end 2003.

The following table summarizes mortgages that we own, including CMO collateral, mortgages held for long-term investment and mortgages held-for-sale, that were 60 or more days delinquent for the periods indicated (in thousands):

	<b>As of December 31,</b>		
	<b>2005</b>	<b>2004</b>	<b>2003</b>
60 - 89 days delinquent	\$ 300,039	\$ 139,872	\$ 51,173
90 or more days delinquent	221,581	68,877	52,080
Foreclosures	161,414	157,867	66,767
Delinquent bankruptcies	50,314	14,674	5,293
<b>Total 60 or more days delinquent</b>	<b>\$ 733,348</b>	<b>\$ 381,290</b>	<b>\$ 175,313</b>

Non-performing assets consist of mortgages that are 90 days or more delinquent, including loans in foreclosure and delinquent bankruptcies. It is our policy to place a mortgage that is categorized as held for investment on our financial statements on non-accrual status when it becomes 90 days delinquent and any previously accrued interest will be reversed from revenue. When real estate is acquired in settlement of loans, or other real estate owned, the mortgage is written-down to a percentage of the property's appraised value or broker's price opinion less anticipated selling costs. As of year-end 2005,

non-performing assets as a percentage of total assets was 1.73% compared to 1.09% as of year-end 2004 and 1.33% as of year-end 2003.

The following table summarizes mortgages that we own, including CMO collateral, mortgages held for long-term investment and mortgages held-for-sale, that were non-performing for the periods indicated (in thousands):

	As of December 31,		
	2005	2004	2003
90 or more days delinquent, foreclosures and delinquent bankruptcies	\$ 433,309	\$ 241,418	\$ 124,140
Other real estate owned	46,351	18,277	16,229
<b>Total non-performing assets</b>	<b>\$ 479,660</b>	<b>\$ 259,695</b>	<b>\$ 140,369</b>

*Prepayment Risk.* Mortgage industry evidence suggests that the increase in home appreciation rates and lower payment option mortgage products over the last three years was a significant factor affecting Alt-A borrowers refinancing decisions during 2004 and 2005. Mortgage prepayment rates accelerated during the latter part of 2004 and continued through the fourth quarter of 2005. It appears that borrowers are more willing to pay the penalties in order to cash out or obtain lower monthly payments by refinancing into other mortgage products. The Company uses prepayment penalties as a method of reducing prepayment risk.

During 2005, 71% of Alt-A mortgages acquired by the long-term investment operations from the mortgage operations had prepayment penalty features ranging from six-months to five years, and as of December 31, 2005, 76% of mortgages held as CMO collateral had prepayment penalties. As of December 31, 2005, the twelve-month CPR of mortgages held as CMO collateral was 37% as compared to a 29% twelve-month CPR as of December 31, 2004 and a 28% twelve-month CPR as of December 31, 2003. CPR increased during 2005 as compared to 2004 even as short-term interest rates increased 200 basis points, and resulted in an increase in amortization of premiums during 2005. Prepayment penalties are charged to borrowers for mortgages that are repaid early and recorded as interest income on our consolidated financial statements. Interest income from prepayment penalties helps offset additional amortization of loan premiums and securitization costs. During 2005 prepayment penalties received from borrowers was recorded as interest income and increased the yield on average mortgage assets by 16 basis points as compared to 6 basis points for 2004.

*Liquidity Risk.* We employ a leveraging strategy to increase assets by financing our long-term mortgage portfolio primarily with CMO borrowings, reverse repurchase agreements and capital, then using cash proceeds to acquire additional mortgage assets. We retain ARMs and FRMs that are acquired and originated from the mortgage operations and finance the acquisition of those mortgages, during this accumulation period, with reverse repurchase agreements. After accumulating a pool of mortgages, generally between \$200 million and \$2.5 billion, we securitize the mortgages in the form of CMOs. Our strategy is to sell or securitize our mortgages every 15 to 45 days in order to reduce the accumulation period that mortgages are outstanding on short-term reverse repurchase facilities, which reduces our exposure to margin calls on these facilities. CMO borrowings are classes of bonds that are sold to investors of mortgage-backed securities and as such are not subject to margin calls. In addition, CMOs generally require a smaller initial cash investment as a percentage of mortgages financed than does interim reverse repurchase financing. For additional information regarding financing refer to Item 1. "—Financing."

Because of the historically favorable loss rates of our Alt-A mortgages, we have received favorable credit ratings on our CMO borrowings from credit rating agencies, which has increased the percentage of bonds issued and reduced our required initial capital investment. The ratio of total assets to total equity, or "leverage ratio," was 23.75 to 1 as of December 31, 2005 as compared to 22.81 to 1 as of prior year-end. This use of leverage at these historical levels allows us to grow our balance sheet by efficiently using available capital. We continually monitor our leverage ratio and liquidity levels to insure that we are adequately protected against adverse changes in market conditions. For additional information regarding liquidity refer to "—Liquidity and Capital Resources."

*Interest Rate Risk.* Refer to Item 7A. "Quantitative and Qualitative Disclosures About Market Risk."



## Results of Operations

### Condensed Statements of Operations Data (in thousands, except per share data)

	For the Year Ended December 31,			
	2005	2004	Increase (Decrease)	% Change
Interest income	\$ 1,251,960	\$ 755,616	\$ 496,344	66 %
Interest expense	1,047,209	412,533	634,676	154
Net interest income	204,751	343,083	(138,332)	(40)
Provision for loan losses	30,563	30,927	(364)	(1)
Net interest income after provision for loan losses	174,188	312,156	(137,968)	(44)
Total non-interest income	220,924	40,371	180,553	447
Total non-interest expense	154,505	108,340	46,165	43
Income tax benefit	(29,651)	(13,450)	(16,201)	(120)
Net earnings	\$ 270,258	\$ 257,637	\$ 12,621	5 %
Net earnings per share - diluted	\$ 3.35	\$ 3.72	(0.37)	(10)%
Dividends declared per common share	\$ 1.95	\$ 2.90	(0.95)	(33)%

### Condensed Statements of Operations Data (in thousands, except per share data)

	For the Year Ended December 31,			
	2004	2003	Increase (Decrease)	% Change
Interest income	\$ 755,616	\$ 385,716	\$ 369,900	96 %
Interest expense	412,533	209,009	203,524	97
Net interest income	343,083	176,707	166,376	94
Provision for loan losses	30,927	24,853	6,074	24
Net interest income after provision for loan losses	312,156	151,854	160,302	106
Total non-interest income	40,371	43,034	(2,663)	(6)
Total non-interest expense	108,340	47,306	61,034	129
Income tax benefit	(13,450)	(1,397)	(12,053)	(863)
Net earnings	\$ 257,637	\$ 148,979	\$ 108,658	73 %
Net earnings per share - diluted	\$ 3.72	\$ 2.88	0.84	29 %
Dividends declared per common share	\$ 2.90	\$ 2.05	0.85	41 %

#### Net Interest Income

Net interest income is primarily derived from interest income on mortgage assets which include CMO collateral, mortgages held-for-investment, mortgages held-for-sale, finance receivables and investment securities available-for-sale, or collectively, "mortgage assets," less interest expense from interest paid on borrowings on mortgage assets, which include CMO borrowings, reverse repurchase agreements and borrowings secured by investment securities available-for-sale. Net interest income also includes (1) amortization of acquisition costs on mortgages acquired from the mortgage operations, (2) accretion of loan discounts, which primarily represents the amount allocated to mortgage servicing rights when they are sold to third parties and mortgages are transferred to the long-term investment operations from the mortgage operations and retained for long-term investment, (3) amortization of CMO securitization expenses and, to a lesser extent, (4) amortization of CMO bond discounts.

The following table summarizes average balance, interest and weighted average yield on mortgage assets and borrowings on mortgage assets for the periods indicated (dollars in thousands):

For the year ended December 31,

	2005			2004			2003		
	Average Balance	Interest	Yield	Average Balance	Interest	Yield	Average Balance	Interest	Yield
<b>MORTGAGE ASSETS</b>									
Subordinated securities collateralized by mortgages	\$ 39,054	\$ 1,656	4.24%	\$ 27,937	\$ 3,764	13.47%	\$ 31,479	\$ 3,839	12.20%
Mortgages held as CMO collateral (1)	23,132,083	1,061,712	4.59%	14,283,347	618,771	4.33%	6,620,727	317,434	4.79%
Mortgages held-for-investment and held-for-sale	2,587,614	163,087	6.30%	1,837,347	105,742	5.76%	633,474	34,580	5.46%
Finance receivables	352,833	20,332	5.76%	510,899	25,018	4.90%	557,553	28,969	5.20%
Total mortgage assets\ interest income	\$ 26,111,584	\$ 1,246,787	4.77%	\$ 16,659,530	\$ 753,295	4.52%	\$ 7,843,233	\$ 384,822	4.91%
<b>BORROWINGS</b>									
CMO borrowings	\$ 22,721,309	\$ 919,732	4.05%	\$ 14,072,852	\$ 354,547	2.52%	\$ 6,445,968	\$ 174,199	2.70%
Reverse repurchase agreements	2,730,805	121,755	4.46%	2,175,728	57,837	2.66%	1,379,749	32,382	2.35%
Borrowings secured by investment securities (2)	-	-	0.00%	-	-	0.00%	2,709	2,316	85.49%
Total borrowings on mortgage assets\interest expense	\$ 25,452,114	\$ 1,041,487	4.09%	\$ 16,248,580	\$ 412,384	2.54%	\$ 7,828,426	\$ 208,897	2.67%
Net Interest Spread (3)			0.68%			1.98%			2.24%
Net Interest Margin (4)			0.79%			2.05%			2.24%
Net Interest Income on Mortgage Assets	\$ 205,300			\$ 340,911			\$ 175,925		
Less: Accretion of loan discounts (5)	(77,051)			(54,867)	(0.33)		(21,101)	(0.27)	
Adjusted by net cash (payments) receipts on derivatives (6)	22,595	0.09		(91,882)	(0.55)		(47,846)	(0.61)	
Adjusted Net Interest Margin (7)	\$ 150,844	0.58%		\$ 194,162	1.17%		\$ 106,978	1.36%	
Effect of amortization of loan premiums and securitization costs (8)	\$ 295,476	-1.13%		\$ 166,649	-1.00%		\$ 69,573	-0.89%	

- (1) Interest includes amortization of acquisition cost on mortgages acquired from the mortgage operations and accretion of loan discounts.
- (2) Payments and excess cash flows received from investment securities collateralizing these borrowings were used to pay down the outstanding borrowings. The payments were received from a collateral base that was in excess of the borrowings. Therefore, while the payment amounts remained relatively stable, the average balance of the borrowings continued to decline. These borrowings were paid off during the third quarter of 2003 and the yield for 2003 reflects discount and securitization costs that were recorded as interest expense upon repayment of the borrowings.
- (3) 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.
- (4) 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 mortgage assets.
- (5) Yield represents income from the accretion of loan discounts, as defined in (1), divided by total average mortgage assets.
- (6) Yield represents net cash (payments) receipts on derivatives divided by total average mortgage assets.
- (7) Adjusted net interest margin on mortgage assets is calculated by subtracting interest expense on total borrowings on mortgage assets, accretion of loan discounts and net cash (payments) receipts on derivatives from interest income on total mortgage assets and dividing by total average mortgage assets. Net cash (payments) receipts on derivatives are a component of realized gain (loss) on derivatives on the consolidated statements of operations. Adjusted net interest margins on mortgage assets is a non-GAAP financial measurement, however, the reconciliation provided in this table is intended to meet the requirements of Regulation G as promulgated by the SEC for the presentation of non-GAAP financial measurements. We believe that the presentation of adjusted net interest margin on mortgage assets is useful information for our investors as it more closely reflects the true economics of net interest margins on mortgage assets.
- (8) The amortization of loan premiums and CMO securitization costs are components of interest income and interest expense, respectively. Yield represents the cost of amortization of net loan premiums and CMO securitization costs divided by total average mortgage assets.

Decreases in net interest income were primarily due to a decline in net interest margins on mortgage assets primarily caused by the following:

- increase in one-month LIBOR rate underlying borrowings only partially offset by realized gain (loss) from derivative instruments;
- differences in interest rate adjustment periods;
- faster amortization of mortgage premium and CMO securitization cost;
- use of higher leverage lower net interest margin CMOs completed during since the second half of 2004; and
- an increasingly challenging competitive environment.

Net interest income for 2005 decreased 40% to \$204.7 million as compared to \$343.1 million for 2004. The year-over-year decrease in net interest income of \$138.3 million was primarily due to net interest margins on mortgage assets declining by 126 basis points to 0.79% for 2005 as compared to 2.05% for 2004. Net interest margin on mortgage assets declined as one-month LIBOR, which is the interest rate index used to price borrowing costs on CMO and reverse repurchase borrowings, rose approximately 200 basis points since 2004 while mortgage assets over the same period did not re-price upward as quickly. This resulted in an increase in interest expense of 154% to \$1.0 billion in 2005 compared to \$412.5 million in 2004. Adjusted net interest margins on mortgage assets, as defined in the yield table above, declined by 59 basis points to 0.58% during 2005 as compared to 1.17% during 2004. The decrease in adjusted net interest margins on mortgage assets was primarily due to (1) an increase in short-term interest rates, (2) an increase in the amortization of loan premiums, securitization costs and bond discounts as a result of higher than expected mortgage prepayments and, to a lesser extent, (3) higher leverage and lower net interest margins on certain CMOs completed during the second half of 2004.

During 2005, the Federal Reserve raised short-term interest rates, which effected movements in one-month LIBOR, a total of 200 basis points. This caused borrowing costs on adjustable rate CMO borrowings, which are tied to one-month LIBOR and re-price monthly without limitation, to rise at a faster pace than coupons on LIBOR ARMs securing CMO borrowings, which generally re-price every six months with limitation. LIBOR ARMs held in our long-term investment portfolio are subject to the following interest rate risks:

- interest rate adjustment limitations on mortgages held for long-term investment due to periodic and lifetime interest rate cap features as compared to borrowings which are not subject to adjustment limitations;
- mismatched interest rate re-pricing periods between mortgages held for long-term investment, which generally re-price every six months, and borrowings, which re-price every month in regards to CMO borrowings and daily in regards to reverse repurchase agreements; and
- uneven and unequal movements in the interest rate indices used to re-price mortgages held for long-term investment, which are generally indexed to one-, three- and six-month LIBOR and one-year LIBOR, and borrowings, which are generally indexed to one-month LIBOR.

Along with an increase in short-term interest rates, our expectation, based on past experience, was that we would see a corresponding decline in mortgage prepayment speeds. However, mortgage prepayment speeds continued at heightened levels during 2005. There is recent mortgage industry evidence that documents a substantial increase in home appreciation rates over the last three years which has been a significant factor affecting prepayment patterns of Alt-A borrowers. Borrowers appear more willing to use home equity to pay loan prepayment penalties in order to obtain lower monthly payments by refinancing into other mortgage products, such as interest-only and high loan-to-value mortgage products.

Actual prepayment speeds in excess of projected future prepayment rates resulted in a cumulative upward adjustment in both the amortization rate and amortization amount of loan premiums, securitization costs and bond discounts during 2005. As such, amortization of loan premiums and securitization expenses increased by 13 basis points to 1.13% of average mortgage assets during 2005 as compared to 1.00% of average mortgage assets during 2004. A substantial portion of our long-term mortgage investment portfolio consists of mortgages with prepayment penalty features that are primarily designed to help

minimize the rate of early mortgage prepayments. However, if mortgages do prepay, a prepayment penalty is charged which helps offset additional amortization of loan premiums and securitization costs. During 2005, prepayment penalties received from borrowers was recorded as interest income and increased 10 basis points to 16 basis points of mortgage assets as compared to 6 basis points of mortgage assets in 2004.

Because of the uncertainty surrounding our ability to raise capital in 2004 during the process of restating our consolidated financial statements, we utilized CMO structures during the second half of 2004 which allowed us to preserve existing capital through the use of higher leverage and lower net interest margins. Higher leverage CMOs were structured to require a lower level of initial capital investment than for CMOs completed prior to July 2004. Capital invested in higher leverage CMOs has been, and will continue to be, deposited into those specific CMO trusts from monthly excess cash flows on mortgages securing the CMOs until the required level of capital investment is attained. The use of higher leverage CMOs contributed to compressed net interest margins on total mortgage assets.

Additionally, the net interest margin continues to be impacted by the difficult competitive environment facing mortgage portfolio lenders. As a result, net interest margins continue to tighten on newly originated loans. Furthermore, a rise in short-term rates and decline in long term rates has resulted in a flattening of the yield curve, adding pressure to mortgage lending profitability.

During 2005, adjusted net interest margins on mortgage assets, which is a non-GAAP financial measurement as indicated in the yield table above, decreased by 59 basis points as compared to a decline of 126 basis points on net interest margin on mortgage assets. Adjusted net interest margin on mortgage assets did not decline as much as net interest margin on mortgage assets primarily due to a 64 basis point increase in realized gain (loss) from derivative instruments relative to total average mortgage assets. Lower derivative costs relative to total average mortgage assets partially offset the decline in adjusted net interest margins on mortgage assets which was caused by the factors described above.

Adjusted net interest margins were also affected by the following during 2005:

- our interest rate risk management policies do not allow 100% coverage of the principal amount outstanding on CMO borrowings at any given time; and
- actual mortgage prepayments and the corresponding repayment of CMO borrowings exceeded the pre-determined amortization schedule of the notional amount of derivative instruments.

Our interest rate risk management policies are formulated with the intent to offset the potential adverse effects of changing interest rates primarily associated with cash flows on adjustable rate CMO borrowings. However, as a result of the combination of the factors listed above, the interest rate spread differential between ARMs and adjustable rate CMO borrowings compressed, which compressed net interest margins on mortgage assets. By design, our current interest rate risk management program provides 20% to 25% coverage of the outstanding principal balance of our six month LIBOR ARMs and 85% to 98% coverage of the outstanding principal balance of intermediate, or hybrid, ARMs at the point in time that we securitize the mortgages.

*For the Year Ended December 31, 2004 compared to the Year Ended December 31, 2003*

Net interest income increased 94% to \$343.1 million for 2004 as compared to \$176.7 million for 2003. The year-over-year increase in net interest income of \$166.4 million was primarily due to a 114% increase in average mortgage assets to \$16.7 billion for 2004 as compared to \$7.8 billion for 2003 and the long-term investment operations acquired \$16.9 billion of mortgages from the mortgage operations in addition to \$458.5 million of multi-family mortgages originated by the long-term investment operations. Adjusted net interest margins on mortgage assets, as defined in the yield table above, declined by 19 basis points to 1.17% during 2004 as compared to 1.36% during 2003. The decrease in adjusted net interest margins on mortgage assets was primarily due to (1) an increase in short-term interest rates, (2) an increase in the amortization of loan premiums, securitization costs and bond discounts as a result of higher than expected mortgage prepayments and, to a lesser extent, (3) higher leverage and lower net interest margins on certain CMOs completed during the second half of 2004.

During 2004 the Federal Reserve raised short-term interest rates, which effected movements in one-month LIBOR, a total of 125 basis points. This caused borrowing costs on adjustable rate CMO borrowings, which are tied to one-month LIBOR and re-price monthly without limitation, to rise at a faster pace than coupons on LIBOR ARMs securing CMO borrowings,

which generally re-price every six months with limitation. LIBOR ARMs held in our long-term investment portfolio are subject to the following interest rate risks:

- interest rate adjustment limitations on mortgages held for long-term investment due to periodic and lifetime interest rate cap features as compared to borrowings which are not subject to adjustment limitations;
- mismatched interest rate re-pricing periods between mortgages held for long-term investment, which generally re-price every six months and borrowings, which re-price every month in regards to CMO borrowings and daily in regards to reverse repurchase agreements; and
- uneven and unequal movements in the interest rate indices used to re-price mortgages held for long-term investment, which are generally indexed to one-, three- and six-month LIBOR and one-year LIBOR, and borrowings, which are generally indexed to one-month LIBOR.

Along with an increase in short-term interest rates, our expectation, based on past experience, was that we would see a corresponding decline in mortgage prepayment rates. However, mortgage prepayment rates accelerated during the latter part of 2004. There is recent mortgage industry evidence that documents a substantial increase in home appreciation rates over the last three years has been a significant factor affecting prepayment patterns of Alt-A borrowers. Borrowers appeared more willing to use home equity to pay loan prepayment penalties in order to obtain lower monthly payments by refinancing into other mortgage products, such as interest-only and high loan-to-value mortgage products.

Actual prepayment rates in excess of projected future prepayment rates resulted in a cumulative upward adjustment in both the amortization rate and amortization amount of loan premiums, securitization costs and bond discounts during the fourth quarter of 2004. As such, amortization of loan premiums and securitization expenses increased by 11 basis points to 1.00% of average mortgage assets during 2004 as compared to 0.89% of average mortgage assets during 2003. A substantial portion of our long-term mortgage investment portfolio consists of mortgages with prepayment penalty features that are primarily designed to help minimize the rate of early mortgage prepayments. However, if mortgages do prepay, a prepayment penalty is charged which helps offset additional amortization of loan premiums and securitization costs. During 2004, prepayment penalties received from borrowers was recorded as interest income and increased the yield on average mortgage assets by 6 basis points. Therefore, prepayment penalty income offset the effect of increased amortization of loan premiums and securitization expenses due to higher than expected prepayments by approximately 45%.

Adjusted net interest margins were also affected by the following during 2004:

- our interest rate risk management policies do not allow 100% coverage of the principal amount outstanding on CMO borrowings at any given time; and
- actual mortgage prepayments and the corresponding repayment of CMO borrowings exceeded the pre-determined amortization schedule of the notional amount of derivative instruments.

Our interest rate risk management policies are formulated with the intent to offset the potential adverse effects of changing interest rates primarily associated with cash flows on adjustable rate CMO borrowings. However, as a result of the combination of the factors listed above, the interest rate spread differential between ARMs and adjustable rate CMO borrowings compressed, which compressed net interest margins on mortgage assets. By design, our current interest rate risk management program provides 20% to 25% coverage of the outstanding principal balance of our LIBOR ARMs and 75% to 85% coverage of the outstanding principal balance of intermediate, or hybrid, ARMs at the point in time that we securitize the mortgages.

Additionally, we primarily acquire a certain notional amount of interest rate swap agreements, which correspond to the balance of CMO borrowings at the time we securitize mortgages. The interest rate swap agreements are generally acquired with a pre-determined amortization schedule of the notional amount of the interest rate swap agreements and is based upon the past prepayment experience of our mortgages. However, actual prepayment of mortgages and the corresponding repayment of CMO borrowings exceeded the amortization schedule of the notional amount of the interest rate swap agreements, which resulted in greater net cash payments on derivatives than we originally anticipated. Even so, as interest rates rose during 2004, realized loss on derivative instruments declined by 6 basis points to 55 basis points of average mortgage assets during 2004 as compared to 61 basis points during 2003 as realized loss on derivative instruments relative to average mortgage assets declined. Realized loss on derivative instruments during 2004 were \$91.9 million on average mortgage assets of \$16.7 billion as compared to

\$47.8 million on average mortgage assets of \$7.8 billion during 2003. Realized loss on derivative instruments along with the change in fair value of derivatives comprises substantially all of the gain (loss) on derivative instruments on our statement of operations.

*Non-Interest Income*

*For the Year Ended December 31, 2005 compared to the Year Ended December 31, 2004*

Changes in Non-Interest Income  
(dollars in thousands)

	For the Year Ended December 31,			
	2005	2004	Increase (Decrease)	% Change
Realized gain (loss) from derivative instruments	\$ 22,595	\$ (91,881)	\$ 114,476	125 %
Change in fair value of derivative instruments	144,932	96,575	48,357	50
Gain on sale of loans	39,509	24,729	14,780	60
Other income	13,888	10,948	2,940	27
<b>Total non-interest income</b>	<b>\$ 220,924</b>	<b>\$ 40,371</b>	<b>\$ 180,553</b>	<b>447 %</b>

*Realized Gain (Loss) from Derivative Instruments.* Realized gain (loss) from derivative instruments increased to \$22.6 million during 2005 as compared to \$(91.9) million during 2004, or 9 basis points of total average mortgage assets during 2005 as compared to (55) basis points of total average mortgage assets during 2004. The increase in realized gain (loss) from derivatives is due to the 200 basis point increase in one-month LIBOR from the end of 2004, which has caused the floating rate payment received on swaps to increase above the fixed payment made. Realized gain (loss) from derivative instruments are recorded as current period expense or revenue on our consolidated financial statements and are included in the calculation of taxable income.

*Change in Fair Value of Derivative Instruments.* Change in fair value of derivative instruments increased to \$144.9 million during 2005 as compared to \$96.6 million during 2004. The increase in market valuation adjustment was the result of an increase in future expectations of short-term interest rates which took place during 2005 as a result of stronger than expected employment growth and rising inflationary expectations. We primarily enter into derivative contracts to offset changes in cash flows associated with CMO liabilities. In our consolidated financial statements, we record a market valuation adjustment for these derivatives, as well as other derivatives used by the mortgage operations to hedge our loan pipeline and mortgage loans held for sale, as current period expense or revenue. Changes in fair value of derivatives at IMH is not included as an addition or deduction for purposes of calculating estimated taxable income.

*Gain on Sale of Loans.* Gain on sale of loans increased to \$39.5 million during 2005 as compared to \$24.7 million during 2004. The increase of \$14.8 million is primarily due to a 64% increase in whole loan sales and a REMIC securitization as the mortgage operations sold \$8.7 billion of loans to third party investors and a REMIC during 2005 as compared to \$5.3 billion for the same period in 2004. Additionally, we use derivatives to protect the market value of mortgages from the point in time when we establish an interest rate lock commitment on a particular mortgage prior to its close until the eventual sale or securitization. Any changes in interest rates on mortgages that we have committed to acquire at a particular rate until we sell or securitize the mortgage generally results in an increase or decrease in the market value of the related derivative. For the year ended December 31, 2005, we recorded a \$25.6 million gain from the settlement of these derivatives as compared to a loss of \$(24.3) million for the year ended December 31, 2004. GAAP requires us to record our loans held-for-sale at the lower of cost or market (LOCOM) value. Market conditions at the end of 2005, such as widening of credit and bond spreads and an oversupply of mortgage inventory, resulted in the loans decreasing in value below cost resulting in us recording a \$4.5 million LOCOM adjustment. For 2005 and 2004, the gain on sale of loans was also reduced by provisions for repurchases of \$5.8 million and \$405 thousand, respectively.

Non-Interest Income

For the Year Ended December 31, 2004 compared to the Year Ended December 31, 2003

Changes in Non-Interest Income  
(dollars in thousands)

	For the Year Ended December 31,			
	2004	2003	Increase (Decrease)	% Change
Realized gain (loss) from derivative instruments	\$ (91,881)	\$ (47,847)	\$ (44,034)	(92)%
Change in fair value of derivative instruments	96,575	31,826	64,749	203
Gain on sale of loans	24,729	37,523	(12,794)	(34)
Other income	10,948	9,995	953	10
Equity in net earnings of Impac Funding Corporation	-	11,537	(11,537)	(100)
Total non-interest income	\$ 40,371	\$ 43,034	\$ (2,663)	(6)%

*Realized Gain (Loss) from Derivative Instruments.* Realized gain (loss) from derivative instruments increased to \$(91.9) million during 2004 as compared to \$(47.8) during 2003 primarily due to the increase in one month LIBOR. Total net cash payments on derivatives increased 92%, however, as interest rates rose during 2004, derivative costs declined by 6 basis points to (55) basis points of average mortgage assets during 2004 as compared to (61) basis points during 2003. Realized gain (loss) from derivative instruments are recorded as current period expense or revenue in our consolidated statement of operations and comprehensive earnings and are included in the calculation of taxable income.

*Change in Fair Value of Derivative Instruments.* The change in fair value of derivative instruments increased to \$96.6 million during 2004 as compared to \$31.8 million during 2003. The increase was a result of changes in future expectations of short-term rates which positively affected the value of our derivatives. We enter into derivative contracts to manage the various interest rate risks associated with cash flows on CMO and reverse repurchase borrowings. The change in fair value of derivative instruments is recorded in our consolidated statement of operations and comprehensive earnings but is excluded from the calculation of taxable income.

*Gain on Sale of Loans.* Gain on sale of loans decreased to \$24.7 million during 2004 as compared to \$37.5 million during 2003. The decrease in gain on sale is mainly attributed to a decrease in profitability on whole loan sales and REMIC securitizations.

Changes in Non-Interest Expense  
(dollars in thousands)

**For the Year Ended December 31,**

	2005	2004	Increase (Decrease)	% Change
Personnel expense	\$ 77,508	\$ 60,420	\$ 17,088	28 %
General and administrative and other expense	25,384	17,097	8,287	48
Professional services	9,496	4,374	5,122	117
Equipment expense	5,420	3,689	1,731	47
Occupancy expense	5,018	3,658	1,360	37
Data processing expense	4,387	3,608	779	22
<b>Total operating expense (1)</b>	<b>127,213</b>	<b>92,846</b>	<b>34,367</b>	<b>37</b>
Amortization of deferred charge	27,174	16,212	10,962	68
Amortization and impairment of mortgage servicing rights	2,006	2,063	(57)	(3)
Impairment on investment securities available-for-sale	-	1,120	(1,120)	(100)
(Gain) loss on sale of other real estate owned	(1,888)	(3,901)	2,013	52
<b>Total non-operating expense (2)</b>	<b>27,292</b>	<b>15,494</b>	<b>11,798</b>	<b>76</b>
<b>Total non-interest expense</b>	<b>\$ 154,505</b>	<b>\$ 108,340</b>	<b>\$ 46,165</b>	<b>43 %</b>

Changes in Non-Interest Expense  
(dollars in thousands)

**For the Year Ended December 31,**

	2004	2003	Increase (Decrease)	% Change
Personnel expense	\$ 60,420	\$ 25,250	\$ 35,170	139 %
General and administrative and other expense	17,097	7,660	9,437	123
Professional services	4,374	4,785	(411)	(9)
Equipment expense	3,689	1,608	2,081	129
Occupancy expense	3,658	1,560	2,098	134
Data processing expense	3,608	1,829	1,779	97
<b>Total operating expense (1)</b>	<b>92,846</b>	<b>42,692</b>	<b>50,154</b>	<b>117</b>
Amortization of deferred charge	16,212	5,658	10,554	187
Amortization and impairment of mortgage servicing rights	2,063	1,290	773	60
Impairment on investment securities available-for-sale	1,120	298	822	276
(Gain) loss on sale of other real estate owned	(3,901)	(2,632)	(1,269)	(48)
<b>Total non-operating expense (2)</b>	<b>15,494</b>	<b>4,614</b>	<b>10,880</b>	<b>236</b>
<b>Total non-interest expense</b>	<b>\$ 108,340</b>	<b>\$ 47,306</b>	<b>\$ 61,034</b>	<b>129 %</b>

- (1) Operating expenses are primarily related to the mortgage operations personnel, which fluctuates in conjunction with increases or decreases in mortgage acquisition and origination volumes.
- (2) Non-operating expenses generally relate to existing assets and liabilities and are generally not a function of increases or decreases in mortgage acquisition or origination volumes.



Total non-interest expense was \$154.5 million for 2005 as compared to \$108.3 million for 2004. The year-over-year increase in non-interest expense of \$46.2 million was primarily the result of the following:

- \$34.4 million increase in operating expenses and
- \$11.0 million increase in amortization of deferred charge

*Operating expenses.* Operating expenses from the mortgage operations are a component of the mortgage operations' net earnings and are reflected on the consolidated financial statements as equity in net earnings of Impac Funding Corporation. Operating expenses include personnel expense, general and administrative and other expense, professional services, equipment expense, occupancy expense and data processing expense.

Operating costs rose by \$34.4 million, or 37%, as the Company continued to upgrade and expand the staffs of primarily our Information Technology and Internal Audit departments. Although the mortgage operations acquisitions and originations remained substantially unchanged at \$22.3 billion for 2005 as compared to \$22.2 in 2004, we continued to hire personnel to support the current levels of production. Operating costs also increased during 2005 due to the expansion of our wholesale mortgage operations into the Midwest and East Coast including the hiring of mortgage professionals and the assumption of certain premises and operating leases. In addition, an increase in staffing caused an increase of \$8.3 million, or 48%, in general and administrative and other expense while occupancy expense increased to \$5.0 million, or 37%, during 2005 as compared to \$3.7 million during 2004. In order to accommodate expansion, we entered into premises leases for office space directly surrounding our main corporate facility in Newport Beach, California. The expansion of our operations within a geographically centralized area allows us to maintain our centralized operating approach.

*Amortization of deferred charge.* A deferred charge was recorded to eliminate the income tax effect resulting from gains on inter company mortgage sales, which primarily represent the amount allocated to MSRs when they are sold to third parties. The deferred charge is amortized to expense over the expected life of the mortgages. Amortization of deferred charge was \$27.2 million during 2005 as compared to \$16.2 million during 2004. The year-over-year increase in the amortization of the deferred charge was the result of a higher average balance of deferred charge in 2005 as compared 2004 as a result of \$16.9 billion in retentions of mortgages by the long term investment operations from the mortgage operations in 2004. Also, the increase in amortization was associated with the higher loan prepayments in 2005 as compared to 2004.

#### *Income Taxes*

Income tax benefit increased to \$29.7 million during 2005 as compared to \$13.5 million during 2004 primarily due to an increase in operating losses at IFC when profits on inter company loan sales are eliminated from IFC's net earnings. IFC is a taxable REIT subsidiary (TRS) and is therefore subject to corporate income taxes. For GAAP purposes, the Company records a deferred charge to eliminate the expense recognition of income taxes paid on inter company profits that result from the sale of mortgages from IFC to the long-term operations. The amortization of the deferred charge is recorded in other expense rather than income tax expense.

#### *For the Year Ended December 31, 2004 compared to the Year Ended December 31, 2003*

*Operating expenses.* Operating costs for 2003 include only six months of operating expenses from the mortgage operations that were consolidated on the consolidated financial statements as the mortgage operations were acquired by the Company on July 1, 2003. Therefore, if a full year of operating costs from the mortgage operations were recorded on the financial statements on a consolidated basis for 2003, the year-over-year percentage change in operating costs would be lower. Operating expenses from the mortgage operations during the first six months of 2003 are a component of the mortgage operations' net earnings and are reflected on the consolidated financial statements as equity in net earnings of Impac Funding Corporation. Operating expenses include personnel expense, general and administrative and other expense, professional services, equipment expense, occupancy expense and data processing expense.

Operating expense increased 117% to \$92.8 million during 2004 as compared to \$42.7 million for 2003 primarily due to (1) a 134% increase in originations and acquisitions from the mortgage operations during 2004 and (2) operating expenses for

2003 include the consolidation of operating expenses from the mortgage operations for only the last six months of 2003 as the mortgage operations were consolidated on July 1, 2003.

Operating costs rose by \$50.1 million, or 117%, primarily as acquisitions and originations from the mortgage operations increased 134% to \$22.2 billion for 2004 as compared to \$9.5 billion for 2003. The increase in mortgage acquisitions and originations resulted in the addition of personnel during 2004 which increased personnel expense by \$35.1 million, or 139%, to \$60.4 million during 2004 as compared to \$25.3 million during 2003. In addition, an increase in staffing caused an increase of \$9.4 million, or 123%, in general and administrative and other expense while occupancy expense increased to \$3.7 million, or 131%, during 2004 as compared to \$1.6 million during 2003. In order to accommodate expansion, we entered into premises leases for office space directly surrounding our main corporate facility in Newport Beach, California. The expansion of our operations within a geographically centralized area allows us to maintain our centralized operating approach as we are able to leverage technology and operational expertise from our main headquarters to the new facilities.

On a cost per loan basis, operating costs were lower during 2004 as compared to 2003 primarily as we acquired a larger percentage of mortgages on a bulk basis during 2004 as compared to the prior year. During 2004 the mortgage operations acquired \$8.5 billion, or 38% of total mortgage acquisitions and originations, of mortgages through bulk purchase transactions as compared to \$2.2 billion, or 23% of total mortgage acquisitions and originations, during 2003. Mortgages acquired on a bulk basis generally require less staffing and personnel-related costs than mortgages acquired on a flow basis. However, premiums paid for acquiring mortgages on a bulk basis are generally higher than premiums paid for the acquisition of a mortgage on a flow basis as the higher premium paid for bulk packages factors in operating costs incurred by the mortgage originator.

*Amortization of deferred charge.* A deferred charge was recorded to eliminate the income tax effect resulting from gains on inter company mortgage sales, which primarily represents the amount allocated to MSRs when MSRs are sold to third parties and mortgages are transferred from the mortgage operations to the long-term investment operations and retained for long-term investment. The deferred charge is amortized to expense over the expected life of the mortgages. Amortization of deferred charge was \$16.2 million during 2004 as compared to \$5.7 million during 2003. The year-over-year increase in the amortization of the deferred charge was the result of the acquisition of \$16.9 billion of mortgages by the long-term investment operations from the mortgage operations and the subsequent sale of MSRs to third parties during 2004 as compared to the acquisition of \$5.8 billion of mortgages by the long-term investment operations from the mortgage operations and the subsequent sale of MSRs to third parties during 2003.

#### *Income Taxes*

Income tax benefit increased to \$13.5 million during 2004 as compared to \$1.4 million during 2003 primarily due to an increase in operating losses at IFC when profits on inter company loan sales were eliminated from IFC's net earnings. IFC is a taxable REIT subsidiary (TRS) and is therefore subject to corporate income taxes. However, in California we file a combined tax return with IMH and IFC where certain inter company transactions are eliminated which can result in a net tax operating loss for IFC. We also, for GAAP purposes, recorded a deferred charge to eliminate the expense recognition of income taxes paid on inter company profits that resulted from the sale of mortgages from IFC to the long-term operations. The amortization of the deferred charge is recorded in other expense rather than income tax expense.

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

We operate three core businesses:

- the long-term investment operations;
- the mortgage operations; and
- the warehouse lending operations.

For the Year Ended December 31, 2005 compared to the Year Ended December 31, 2004

Condensed Statements of Operations Data  
(dollars in thousands)

	For the Year Ended December 31,			
	2005	2004	Increase (Decrease)	% Change
Net interest income	\$ 74,604	\$ 231,944	\$ (157,340)	(68)%
Provision for loan losses	30,563	24,851	5,712	23
Net interest income after provision for loan losses	44,041	207,093	(163,052)	(79)
Realized gain (loss) from derivative instruments	22,595	(91,881)	114,476	125
Change in fair value of derivative instruments	155,695	96,575	59,120	61
Other non-interest income	1,528	11,617	(10,089)	(87)
Total non-interest income	179,818	16,311	163,507	1002
Non-interest expense and income taxes	14,083	8,102	5,981	74
Net earnings	\$ 209,776	\$ 215,302	\$ (5,526)	(3)%

*Net interest income.* Net interest income decreased 68% to \$74.6 million for 2005 as compared to \$231.9 million for 2004 primarily due to a 153% increase in borrowing cost on mortgage assets as one-month LIBOR increased approximately 200 basis points in 2005. The long-term investment operations acquired \$12.2 billion of mortgages from the mortgage operations and originated \$798.5 million of multi-family mortgages. The acquisition and origination of mortgages by the long-term investment operations was primarily financed by the securitization of \$14.0 billion of CMOs. The adjusted net interest margin on mortgages held as CMO collateral declined 52 basis points to 0.39% during 2005 as compared to 0.91% during 2004. The decline in adjusted net interest margin was primarily due to (1) an increase in short-term interest rates, (2) an increase in the amortization of loan premiums, securitization costs and bond discounts as a result of higher than expected mortgage prepayments and, to a lesser extent, (3) higher leverage and lower net interest margins on certain CMOs completed during the second half of 2005, as previously discussed. Adjusted net interest margin on mortgages held as CMO collateral is calculated by subtracting interest expense on CMO borrowings, accretion of loan discounts and cost of derivatives from interest income on mortgages held as CMO collateral and dividing by average mortgages held as CMO collateral in the yield table above.

*Non-interest income.* Non-interest income for our long-term investment operations is primarily derived from realized gain (loss) from derivative instruments, change in fair value of derivative instruments, gain (loss) on loans held-for-sale, gain (loss) on sale of securities, loan servicing income and other fee income. During 2005, non-interest income rose by \$163.5 million to \$179.8 million as compared to \$16.3 million during 2004 primarily due to increases of \$114.5 million in realized gain (loss) from derivative instruments and \$59.1 million in change in fair value of derivative instruments. The increase in realized gain (loss) from derivative instruments is primarily associated with the increase in one-month LIBOR and the change in fair value of derivative instruments is primarily attributable to an increase in future expectations of higher one-month LIBOR rates positively affecting the value of derivatives.

On January 1, 2006, we elected to change IMCC from a qualified REIT subsidiary to a taxable REIT subsidiary which is consistent with the remaining mortgage operations. We have also changed the name of IMCC to Impac Commercial Capital Corporation ("ICCC"). The loan portfolio remains as part of the REIT assets while the commercial origination operations, ICC, will be subject to state and federal income taxes beginning in 2006.

Condensed Statements of Operations Data  
(dollars in thousands)

	For the Year Ended December 31,			
	2004	2003	Increase (Decrease)	% Change
Net interest income	\$ 231,944	\$ 130,529	\$ 101,415	78 %
Provision for loan losses	24,851	22,368	2,483	11
Net interest income after provision for loan losses	207,093	108,161	98,932	91
Realized loss from derivative instruments	(91,881)	(47,847)	(44,034)	(92)
Change in fair value of derivative instruments	96,575	31,826	64,749	203
Other non-interest income	11,617	17,615	(5,998)	(34)
Total non-interest income	16,311	1,594	14,717	923
Non-interest expense and income taxes	8,102	4,332	3,770	87
Net earnings	\$ 215,302	\$ 105,423	\$ 109,879	104 %

*Net interest income.* Net interest income increased 78% to \$231.9 million for 2004 as compared to \$130.5 million for 2003, primarily due to an increase in total average mortgage assets as the long-term investment operations acquired \$16.9 billion of mortgages from the mortgage operations and originated \$458.5 million of multi-family mortgages. The acquisition and origination of mortgages by the long-term investment operations was primarily financed by the securitization of \$17.7 billion of CMOs. The adjusted net interest margin on mortgages held as CMO collateral declined 30 basis points to 0.82% during 2004 as compared to 1.12% during 2003. The decline in adjusted net interest margin was primarily due to (1) an increase in short-term interest rates, (2) an increase in the amortization of loan premiums, securitization costs and bond discounts as a result of higher than expected mortgage prepayments and, to a lesser extent and (3) higher leverage and lower net interest margins on certain CMOs completed during the second half of 2004, as previously discussed. Adjusted net interest margin on mortgages held as CMO collateral is calculated by subtracting interest expense on CMO borrowings, accretion of loan discounts and cost of derivatives from interest income on mortgages held as CMO collateral and dividing by average mortgages held as CMO collateral in the yield table above.

*Non-interest income.* Non-interest income rose by \$14.7 million to \$16.3 million during 2004 as compared to \$1.6 million for 2003, which was primarily due to a \$64.8 million increase in the change in fair value of derivative instruments from an increase in future expectations of higher one-month LIBOR rates. Realized loss on derivative instruments decreased to \$91.9 million during 2004 as compared to a loss of \$47.8 million during 2003.

*Mortgage Operations*

For the Year Ended December 31, 2005 compared to the Year Ended December 31, 2004

Condensed Statements of Operations Data  
(dollars in thousands)

	For the Year Ended December 31,			
	2005	2004	Increase (Decrease)	% Change
Net interest income	\$ 3,824	\$ 14,744	\$ (10,920)	(74)%
Non-interest income	120,020	130,563	(10,543)	(8)
Non-interest expense and income taxes	108,876	102,363	6,513	6
Net earnings	\$ 14,968	\$ 42,944	\$ (27,976)	(65)%

The mortgage operation generates income by securitizing and selling mortgages to permanent investors, including the long-term investment operations and to a lesser extent, earns revenue from fees associated with mortgage servicing rights, master servicing agreements and interest income earned on mortgages held for sale.

Net earnings for the mortgage operations were \$14.9 million during 2005 as compared to \$42.9 million during 2004. The decrease in net earnings was primarily due to decreases of \$10.9 million in net interest income and \$10.5 million in non-interest income, offset by an increase in non-interest expense and income taxes of \$6.5 million.

Net interest income dropped 74% during 2005 to \$3.8 million as compared to \$14.7 million for 2004. Although interest income on mortgage assets increased 106% to \$127.0 million as compared to \$61.7 million for 2004, borrowing costs, which are tied to one-month LIBOR, increased approximately 200 basis points which caused borrowing costs to increase faster than the adjustments on our assets and resulted in an overall decrease in net interest income.

Non-interest income decreased 8% during 2005 primarily due to a \$15.3 million decrease in gain (loss) on sale of loans. Lower volumes of mortgages sold to the long-term investment operations and third party investors resulted in a decrease in gain (loss) on sale of loans. The mortgage operations sold \$20.9 billion to the long-term investment operations and third party investors in 2005, 6% less than the \$22.2 billion sold in 2004. Gain (loss) on sale of loans includes the difference between the price at which we acquire or originate mortgages and the price we receive upon the sale or securitization of mortgages plus or minus direct mortgage origination revenue and costs, i.e. loan and underwriting fees, commissions, appraisal review fees and document processing expenses. Gain on sale of loans acquired or originated by the mortgage operations also includes a premium for the sale of mortgage servicing rights upon the sale or securitization of mortgages including REMICs and CMOs. In order to minimize risks associated with the accumulation of our mortgages, we seek to securitize or sell mortgages monthly thereby reducing our exposure to interest rate risk and price volatility during the accumulation period of mortgages. Additionally, as required by GAAP, the company recorded loans held-for-sale at the lower of cost or market resulting in a \$4.5 million write down as current market conditions, such as the widening of credit and bond spreads and a lack of demand for mortgage product forced the loans to drop in value at year end.

Additionally, net earnings decreased as non-interest expense and income taxes increased \$6.5 million as operating expenses increased 39% to \$103.6 in 2005. Mortgage acquisitions and originations remained substantially unchanged from period to period however personnel expenses increased 19% to \$56.2 million in 2005 as compared to \$47.1 for 2004, as a result of increasing staff levels as needed by higher production levels starting in 2004 as well as an increase in infrastructure costs in information technology and internal audit required for compliance to Sarbanes-Oxley regulations. Also included in non-interest expense are legal and professional fees which increased 197% to \$10.4 million as compared to \$3.5 million for 2004, business promotion expenses which increased 159% to \$7.5 million as compared to \$2.9 million for 2004 and general and administrative expenses which increased to \$11.4 million as compared to \$8.7 million for 2004. Operating expenses are partially offset when netted against income taxes as the mortgage operations recorded a tax benefit of \$3.3 million for 2005 as compared to a tax expense of \$20.9 in 2004 million primarily due to an increase in operating losses at IFC.

*For the Year Ended December 31, 2004 compared to the Year Ended December 31, 2003*

Condensed Statements of Operations Data  
(dollars in thousands)

	<b>For the Year Ended December 31,</b>			
	2004	2003	Increase (Decrease)	% Change
Net interest income	\$ 14,744	\$ 8,262	\$ 6,482	78 %
Non-interest income	130,563	55,723	74,840	134
Non-interest expense and income taxes	102,363	47,096	55,267	117
Net earnings	\$ 42,944	\$ 16,889	\$ 26,055	154 %

The mortgage operations generate income by securitizing and selling mortgages to permanent investors, including the long-term investment operations and, to a lesser extent, it earns revenue from fees associated with mortgage servicing rights, master servicing agreements and interest income earned on mortgages held for sale. Net earnings from the mortgage operations for 2004 include twelve months of results of operations, however, prior to IMH's purchase of all of the outstanding shares of common stock of IFC, thereby causing the consolidation of IFC's financial statements into IMH's financial statements, its results of operations were reflected on a consolidated basis for the period January 1, 2003 to June 30, 2003.

Net earnings from the mortgage operations increased by \$26.0 million to \$42.9 million during 2004 as compared to net earnings of \$16.9 million during the consolidation period. For a full year comparison, net earnings for the mortgage operations were \$42.9 million during 2004 as compared to \$35.4 million on a non-consolidated basis during 2003. The increase in net earnings was primarily due to an increase of \$73.8 million in non-interest income, which was partially offset by a \$54.2 million increase in non-interest expense.

Non-interest income increased 129% during 2004 primarily due to a higher volume of mortgages sold to the long-term investment operations and third party investors due a higher volume of mortgages that were acquired and originated during 2004 as compared to 2003. As a result of an increase in gain on sale of loans, non-interest income increased to \$131.0 million during 2004 as compared to \$57.2 million during 2003. Gain on sale of loans includes the difference between the price at which we acquire or originate mortgages and the price we receive upon the sale or securitization of mortgages plus or minus direct mortgage origination revenue and costs, i.e. loan and underwriting fees, commissions, appraisal review fees and document processing expenses. Gain on sale of loans acquired or originated by the mortgage operations also includes a premium for the sale of mortgage servicing rights upon the sale or securitization of mortgages, including REMICs and CMOs. Substantially all mortgages sold or securitized during 2004 and 2003 were done so on a servicing released basis, which resulted in substantially all cash gains. In order to minimize risks associated with the accumulation of our mortgages, we seek to securitize or sell mortgages monthly thereby reducing our exposure to interest rate risk and price volatility during the accumulation period of mortgages.

Partially offsetting the increase in non-interest income was an increase in non-interest expense, which increased 112% to \$102.8 million during 2004 as compared to \$48.6 million for 2003, as mortgage acquisitions and originations rose by 134% to \$22.2 billion for 2004 as compared to \$9.5 billion for 2003. The increase in mortgage acquisitions and originations resulted in the addition of personnel by the mortgage operations and a corresponding increase in operating costs. In order to accommodate expansion, we entered into premises leases for office space directly surrounding our main corporate facility in Newport Beach, California. The expansion of our operations within a geographically centralized area allows us to maintain our centralized operating approach as we are able to leverage technology and operational expertise from our main headquarters to the new facilities.

#### *Warehouse Lending Operations*

*For the Year Ended December 31, 2005 compared to the Year Ended December 31, 2004*

#### Condensed Statements of Operations Data (dollars in thousands)

	<b>For the Year Ended December 31,</b>			
	<b>2005</b>	<b>2004</b>	<b>Increase (Decrease)</b>	<b>% Change</b>
Net interest income	\$ 55,725	\$ 45,822	\$ 9,903	22 %
Provision for loan losses	-	6,076	(6,076)	(100)
Non-interest income	7,760	10,592	(2,832)	(27)
Non-interest expense and income taxes	7,542	6,899	643	9
<b>Net earnings</b>	<b>\$ 55,943</b>	<b>\$ 43,439</b>	<b>\$ 12,504</b>	<b>29 %</b>

The warehouse lending operations primarily generate net earnings from net interest income earned from the difference between its cost of borrowings and the interest earned on warehouse advances and, to a lesser extent, fees from warehouse lending transactions. The warehouse lending operations provide warehouse financing to affiliated companies, including the mortgage operations and long-term investment operations and to approved, non-affiliated clients some of which are correspondents of the mortgage operations.

Net earnings from the warehouse lending operations were \$55.9 million for 2005 as compared to \$43.4 million for 2004. The increase in net earnings of \$12.5 million was primarily due to a \$10.0 million increase in net interest income to \$55.7 million during 2005 as compared to \$45.8 million during 2004. Net interest income rose for 2005 as one-month LIBOR rates increased approximately 200 basis points resulting in higher interest earnings on warehouse advances to affiliated

companies. Additionally, net interest income rose 22% on year-over-year basis as total average finance receivables rose 22% to \$2.8 billion during 2005 as compared to \$2.3 billion during 2004.

Net earnings were negatively impacted during 2004 as the warehouse lending operations added \$6.1 million to loan loss provisions during 2004 as fraudulent warehouse advances were discovered in 2004 which were determined to be impaired. By year-end 2004, the warehouse lending operations had a specific allowance for loan losses of \$10.7 million for impaired warehouse advances. For calculation of estimated taxable income, deductions for permanently impaired mortgages were taken as a deduction to estimated taxable income for 2004.

*For the Year Ended December 31, 2004 compared to the Year Ended December 31, 2003*

Condensed Statements of Operations Data  
(dollars in thousands)

	<b>For the Year Ended December 31,</b>			
	2004	2003	Increase (Decrease)	% Change
Net interest income	\$ 45,822	\$ 28,950	\$ 16,872	58 %
Provision for loan losses	6,076	2,485	3,591	145
Non-interest income	10,592	6,016	4,576	76
Non-interest expense and income taxes	6,899	5,012	1,887	38
Net earnings	\$ 43,439	\$ 27,469	\$ 15,970	58 %

The warehouse lending operations primarily generate net earnings from net interest income earned from the difference between its cost of borrowings and the interest earned on warehouse advances and, to a lesser extent, fees from warehouse lending transactions. The warehouse lending operations provide warehouse financing to affiliated companies, including the mortgage operations and long-term investment operations and to approved non-affiliated clients some of which are correspondents of the mortgage operations.

Net earnings from the warehouse lending operations were \$43.4 million for 2004 as compared to \$27.5 million for 2003. The increase in net earnings of \$15.9 million was primarily due to a \$16.8 million increase in net interest income to \$45.8 million during 2004 as compared to \$29.0 million during 2003. Net interest income rose 58% on year-over-year basis as total average finance receivables rose 64% to \$2.3 billion during 2004 as compared to \$1.4 billion during 2003.

Net earnings were negatively impacted during 2004 as the warehouse lending operations added \$6.1 million to loan loss provisions during 2004 as fraudulent warehouse advances were discovered in 2004 which were determined to be impaired. By year-end 2004, the warehouse lending operations had a specific allowance for loan losses of \$10.7 million for impaired warehouse advances. For calculation of estimated taxable income, deductions for permanently impaired mortgages were taken as a deduction to estimated taxable income for 2004.

Refer to Note I. "Segment Reporting" in the notes to consolidated financial statements for financial results of the operating segments and see Item 1. Business for additional detail regarding the operating structure.

### Liquidity and Capital Resources

We recognize the need to have funds available for our operating businesses and our customers' demands for obtaining short-term warehouse financing until the settlement or sale of mortgages with us or with other investors. It is our policy to have adequate liquidity at all times to cover normal cyclical swings in funding availability and mortgage demand and to allow us to meet abnormal and unexpected funding requirements. We plan to meet liquidity through normal operations with the goal of avoiding unplanned sales of assets or emergency borrowing of funds. Toward this goal, our asset/liability committee, or "ALCO," is responsible for monitoring our liquidity position and funding needs.

ALCO participants include senior executives of the mortgage operations and warehouse lending operations. ALCO meets on a weekly basis to review current and projected sources and uses of funds. ALCO monitors the composition of the balance sheet for changes in the liquidity of our assets. Our primary liquidity consists of cash and cash equivalents; short-term securities available for sale and maturing mortgages, or "liquid assets."

We believe that current cash balances, short-term investments, currently available financing facilities, capital raising capabilities and excess cash flows generated from our long-term mortgage portfolio will adequately provide for projected funding needs and limited asset growth. Refer to Item 1.A "Business—Risk Factors" for additional information regarding risks that could adversely affect our liquidity.

Our operating businesses primarily use available funds as follows:

- acquisition and origination of mortgages by the mortgage and long-term investment operations;
- long-term investment in mortgages by the long-term investment operations;
- provide short-term warehouse advances by the warehouse lending operations;
- pay interest on debt;
- distribute common and preferred stock dividends; and
- pay operating and non-operating expenses.

*Acquisition and origination of mortgages by the mortgage and long-term investment operations.* During 2005, the mortgage operations acquired \$22.3 billion of primarily Alt-A mortgages, of which \$12.2 billion were acquired by the long-term investment operations from IFC for long-term investment. Capital invested in mortgages is outstanding until we sell or securitize mortgages, which is one of the reasons we attempt to sell or securitize mortgages between 15 to 45 days of acquisition or origination. Initial capital invested in mortgages includes premiums paid when mortgages are acquired and originated and our capital investment, or "haircut," required upon financing, which is generally determined by the type of collateral provided. The mortgage operations acquired and originated mortgages at a weighted average price of 101.7 during, which were financed with warehouse borrowings from the warehouse lending operations at a haircut generally between 2% to 10% of the outstanding principal balance of the mortgages. In addition, IMCC originated \$798.5 million of multi-family mortgages at a weighted average price of 100.1 which were initially financed with short-term reverse repurchase financing from the warehouse lending operations at a haircut of generally 3% of the outstanding principal balance of the mortgages.

*Long-term investment in mortgages by the long-term investment operations.* The long-term investment operations acquire primarily Alt-A mortgages from the mortgage operations and finance them with reverse repurchase borrowings from the warehouse lending operations at substantially the same terms as the mortgage operations. When the long-term investment operations finance mortgages with long-term CMO borrowings, short-term reverse repurchase financing is repaid. Then, depending on credit ratings from national credit rating agencies on our CMOs, we are generally required to provide an over-collateralization, or "OC", of 0.35% to 1% of the principal balance of mortgages securing CMO financing as compared to a haircut of 2% to 10% of the principal balance of mortgages securing short-term reverse repurchase financing. Our total capital investment in CMOs generally ranges from approximately 2% to 5% of the principal balance of mortgages securing CMO borrowings which includes premiums paid upon acquisition of mortgages from the mortgage operations, costs paid for completion of CMOs, costs to acquire derivatives and OC required to achieve desired credit ratings. Multi-family mortgages are financed on a long-term basis with CMO borrowings at substantially the same rates and terms as Alt-A mortgages. Multi-family loans generally have a 3% haircut on reverse repurchase lines and initial over collateralization target of 2.75% to 3.37%

*Provide short-term warehouse advances by the warehouse lending operations.* We utilize committed and uncommitted reverse repurchase facilities with various lenders to provide short-term warehouse financing to affiliates and non-affiliated clients of the warehouse lending operations. The warehouse lending operations provide short-term financing to the mortgage operations and non-affiliated clients from the closing of mortgages to their sale or other settlement with investors. The warehouse lending operations generally finance between 90% and 98% of the fair market value of the principal balance of mortgages, which equates to a haircut requirement of between 10% and 2%, respectively, at one-month LIBOR, plus a spread. The mortgage operations have uncommitted warehouse line agreements to obtain financing from the warehouse lending operations at one-month LIBOR plus a spread during the period that the mortgage operation accumulate mortgages until the mortgages are securitized or sold. As of December 31, 2005, the mortgage operations had \$2.0 billion of warehouse advances outstanding with the warehouse lending operations. In addition, as of December 31, 2005, the warehouse lending operations had \$691.5 million of approved warehouse lines available to non-affiliated clients, of which \$350.2 million was outstanding.

Our ability to meet liquidity requirements and the financing needs of our customers is subject to the renewal of our credit and repurchase facilities or obtaining other sources of financing, if required, including additional debt or equity from time to



time. Any decision our lenders or investors make to provide available financing to us in the future will depend upon a number of factors, including:

- our compliance with the terms of our existing credit arrangements;
- our financial performance;
- industry and market trends in our various businesses;
- the general availability of, and rates applicable to, financing and investments;
- our lenders or investors resources and policies concerning loans and investments; and
- the relative attractiveness of alternative investment or lending opportunities.

*Pay common and preferred stock dividends and trust preferred payments.* We paid common stock dividends of \$147.4 million and preferred stock dividends of \$14.5 million during 2005, which we generated from our operating activities. We are required to distribute a minimum of 90% of our taxable income to our stockholders in order to maintain our REIT status, exclusive of the application of any tax loss carry forwards that may be used to offset current period taxable income. Because we pay dividends based on taxable income, dividends may be more or less than net earnings. We paid total regular cash dividends of \$1.95 per common share in 2005 which met taxable income distribution requirements for the year. We also paid interest of \$5.4 million attributable to the junior subordinated debt issued by the Company in connection with our trust preferred offerings. See "Issuance of Preferred Stock" for a discussion of the terms of our outstanding series of preferred stock and "Note U—Trust Preferred Securities" in the accompanying notes to the consolidated financial statements.

A portion of dividends paid to IMH's stockholders came from dividend distributions from the mortgage operations, our taxable REIT subsidiary, to IMH. During 2005, the mortgage operations provided a dividend distribution of \$32.9 million to IMH of which approximately \$22.8 million was attributable to prior period undistributed taxable income. Because the mortgage operations may seek to retain earnings to fund the acquisition and origination of mortgages or to expand the mortgage operations, the board of directors of our taxable REIT subsidiary may decide that the mortgage operations should cease making dividend distributions in the future. This could reduce the amount of taxable income that would be distributed to IMH stockholders in the form of dividend payment amounts.

Our operating businesses are primarily funded as follows:

- CMO borrowings and reverse repurchase agreements;
- excess cash flows from our long-term mortgage portfolio;
- sale and securitization of mortgages;
- cash proceeds from the issuance of common and preferred stock;
- cash proceeds from the issuance of trust preferred securities; and
- cash proceeds from the exercise of stock options.

*Reverse repurchase agreements and CMO borrowings.* We use reverse repurchase agreements to fund substantially all financing to affiliates and non-affiliated clients and for the acquisition and origination of Alt-A and multi-family mortgages. As we accumulate mortgages, we finance the acquisition of mortgages primarily through borrowings on reverse repurchase facilities with third party lenders. We primarily use uncommitted and committed facilities with major investment banks to finance substantially all warehouse financing, as needed. During 2005 the warehouse facilities amounted to \$4.3 billion, of which \$2.4 billion was outstanding at December 31, 2005. The warehouse facilities provide us with a higher aggregate credit limit to fund the acquisition and origination of mortgages at terms comparable to those we have received in the past. These warehouse facilities may have certain covenant tests which we continue to satisfy. From time to time, we may also receive additional uncommitted interim financing from our lenders in excess of our permanent borrowing limits to finance mortgages during the accumulation phase and prior to securitizations or whole loan sales.

From time to time, we may also utilize term reverse repurchase financing provided to us by underwriters who underwrite some of our securitizations. The term reverse repurchase financing funds mortgages that are specifically allocated to securitization transactions, which allows us to reduce overall borrowings outstanding on reverse repurchase agreements with other lenders during the period immediately prior to the settlement of the securitization. Terms and interest rates on the term reverse repurchase facilities are generally lower than on other reverse repurchase agreements. Term reverse repurchase financing are generally repaid within 30 days from the date funds are advanced.

We expect to continue to use short-term reverse repurchase facilities to fund the acquisition of mortgages. If we cannot renew or replace maturing borrowings, we may have to sell, on a whole loan basis, the mortgages securing these facilities, which, depending upon market conditions may result in substantial losses. Additionally, if for any reason the market value of our mortgages securing reverse repurchase facilities decline, our lenders may require us to provide them with additional equity or collateral to secure our borrowings, which may require us to sell mortgages at substantial losses.

In order to mitigate the liquidity risk associated with reverse repurchase agreements, we attempt to sell or securitize our mortgages between 15 to 45 days from acquisition or origination. Although securitizing mortgages more frequently adds operating and securitization costs, we believe the added cost is offset as liquidity is provided more frequently with less interest rate and price volatility, as the accumulation and holding period of mortgages is shortened. When we have accumulated a sufficient amount of mortgages, we seek to issue CMOs and convert short-term advances under reverse repurchase agreements to long-term CMO borrowings. The use of CMO borrowings provides the following benefits:

- allows us to use long term financing for the duration of the CMO asset secured by the underlying mortgages; and
- eliminates margin calls on the borrowings that are converted from reverse repurchase agreements to CMO borrowings as well as associated derivatives used to manage interest rate risks on CMO borrowings.

During 2005, we completed \$14.0 billion of CMOs to provide long-term financing for the retention of \$12.2 billion of primarily Alt-A mortgages and the origination of \$798.5 million of multi-family mortgages. Because of the credit profile, historical loss performance and prepayment characteristics of our Alt-A mortgages, we have been able to borrow a higher percentage against the principal balance of mortgages held as CMO collateral, which means that we have to provide less initial capital upon completion of CMOs. Capital investment in the CMOs is established at the time CMOs are issued at levels sufficient to achieve desired credit ratings on the securities from credit rating agencies.

*Excess cash flows from our long-term mortgage portfolio.* We receive excess cash flows on mortgages held as CMO collateral after distributions are made to investors on CMO borrowings to the extent cash or other collateral required to maintain desired credit ratings on the CMOs is fulfilled and can be used to provide funding for some of the long-term investment operations' activities. Excess cash flows represent the difference between principal and interest payments on the underlying mortgages, adjusted by the following:

- servicing and master servicing fees paid;
- premiums paid to mortgage insurers;
- cash payments / receipts on derivatives;
- interest paid on CMO borrowings;
- pro-rata early principal prepayments paid on CMO borrowings;
- OC requirements;
- actual losses, net of any gains incurred upon disposition of other real estate owned or acquired in settlement of defaulted mortgages;
- unpaid interest shortfall;
- basis risk shortfall;

- bond writedowns reinstated; and
- residual cashflow.

*Sale and securitization of mortgages.* We sell and securitize loans in the following ways:

- When the mortgage operations accumulate a sufficient amount of mortgages that are intended to be deposited into a CMO, it sells the mortgages to the long-term investment operations;
- When selling mortgages on a whole loan basis, the mortgage operations will accumulate mortgages and enter into sales transactions with third party investors on a monthly basis; and
- When the mortgage operations enter into a Real Estate Mortgage Investment Company (REMIC) securitization it accumulates mortgages and sells these loans periodically.

The mortgage operations sold \$12.2 billion of mortgages to the long-term investment operations during 2005 and sold \$8.7 billion of mortgages to third party investors and through REMICs. The mortgage operations sold mortgage servicing rights on all mortgages sold during 2005. The sale of mortgage servicing rights generated substantially all cash, which was used to acquire and originate additional mortgage assets.

Since we rely significantly upon sales and securitizations to generate cash proceeds to repay borrowings and to create credit availability, any disruption in our ability to complete sales and securitizations may require us to utilize other sources of financing, which, if available at all, may be on less favorable terms. In addition, delays in closing sales and securitizations of our mortgages increase our risk by exposing us to credit and interest rate risk for this extended period of time.

*Issuance of Common and Preferred Stock* We filed with the SEC a shelf registration statement that allows us to sell up to \$1.0 billion of securities, including common stock, preferred stock, debt securities and warrants. By issuing new shares periodically throughout the year, we believe that we were able to utilize new capital more efficiently and profitably.

On September 30, 2005, the Company entered into a common stock sales agreement with Brinson Patrick Securities Corporation (Brinson Patrick) for the sale of up to 7.5 million shares of its common stock from time to time through Brinson Patrick as sales agent. As of December 31, 2005, we sold 363,700 shares of common stock and received net proceeds of \$4.2 million. Brinson Patrick received a commission of 3% of the gross sales price per share of the shares of common stock sold pursuant to the sales agreement, which amounted to an aggregate commission of \$131,000.

On September 30, 2005, the Company also entered into a Preferred Stock sales agreement with Brinson Patrick, for the sale of up to 800,000 shares of its 9.125% Series C Cumulative Redeemable Preferred Stock (Series C Preferred Stock) from time to time through Brinson Patrick as sales agent. As of December 31, 2005, we sold 71,200 shares of Series C Preferred Stock and received net proceeds of approximately \$1.7 million. Brinson Patrick received a commission of 3% of the gross sales price per share of the shares of preferred stock sold pursuant to the sales agreement, which amounted to an aggregate commission of \$51,000.

In May of 2004, we completed the sale of 2.0 million shares of 9.375% Series B Cumulative Redeemable Preferred Stock, par value \$0.01 per share, liquidation preference \$25.00 per share, or "series B preferred stock." Dividends on the series B preferred stock are payable quarterly in arrears on or before March 31, June 30, September 30 and December 31 of each year. The shares of series B preferred stock have no stated maturity, are not subject to any sinking fund or mandatory redemption and are not convertible into any other securities. Holders of shares of series B preferred stock generally have no voting rights, but will have limited voting rights if the Company fails to pay dividends for six or more quarters and in certain other events. The Company may not redeem the series B preferred stock until May 29, 2009 except in limited circumstance to preserve the Company's status as a real estate investment trust. On or after May 29, 2009, the Company may, at its option, redeem the series B preferred stock in whole or in part, at any time and from time to time, for cash at \$25.00 per share, plus accrued and unpaid dividends (whether or not declared), if any, to and including the redemption date.

In November and December, 2004, we completed the sale of an aggregate of 4.3 million shares of 9.125% Series C Cumulative Redeemable Preferred Stock, par value \$0.01 per share, liquidation preference \$25.00 per share, or "series C preferred stock." Dividends on the series C preferred stock are payable quarterly in arrears on or before March 31, June 30, September 30 and December 31 of each year. The shares of series C preferred stock have no stated maturity, are not subject to any sinking fund or mandatory redemption and are not convertible into any other securities. Holders of shares of series C preferred stock generally have no voting rights, but will have limited voting rights if the Company fails to pay dividends for six

or more quarters and in certain other events. The Company may not redeem the series C preferred stock until November 23, 2009 except in limited circumstances to preserve the Company's status as a real estate investment trust. On or after November 23, 2009, the Company may, at its option, redeem the series C preferred stock in whole or in part, at any time and from time to time, for cash at \$25.00 per share, plus accrued and unpaid dividends (whether or not declared), if any, to and including the redemption date. See Note U to the consolidated financial statements for a further description of the trust preferred securities.

*Cash proceeds from the issuance of trust preferred securities* During 2005, the Company formed four wholly-owned trust subsidiaries (Trusts) for the purpose of issuing an aggregate of \$99.2 million of trust preferred securities (the Trust Preferred Securities). The proceeds from the sale thereof were invested in junior subordinated debt issued by the Company. All proceeds from the sale of the Trust Preferred Securities and the common securities issued by the Trusts are invested in junior subordinated notes (Notes), which are the sole assets of the Trusts. The Trusts pay dividends on the Trust Preferred Securities at the same rate as paid by the Company on the Notes held by the Trusts. The Company received net proceeds of \$93.2 million from the issuance of the trust preferred securities.

*Cash proceeds from the issuance of stock options* During 2005, the Company received \$6.4 million from the issuance of common stock associated with the exercise of stock options.

*Operating Activities* – Net cash (used in) provided by operating activities was \$(812.8) million for 2005 as compared to \$(179.4) million for 2004 and \$166.2 million for 2003. For 2005, the purchase of mortgages, net of loan sales, of \$1.4 billion and the decrease in restricted cash used for CMO pre-fundings of \$252.7 million were primarily used in operating activities. Funds used in operating activities during 2005 were partially offset by net earnings of \$270.3 million. Funds used in operating activities during 2004 were partially offset by net earnings of \$257.6 million. In 2003, operating activities provided loan sales net of loan purchases of \$88.3 million and net earnings of \$149.0 million.

*Investing Activities* – Net cash used in investing activities was \$2.9 billion for 2005 as compared to \$12.6 billion for 2004 and \$4.0 billion for 2003. For 2005, 2004 and 2003, net cash of \$3.1 billion, \$12.8 billion and \$4.1 billion, respectively, was used in investing activities to acquire mortgages, net of principal repayments, for long-term investment.

*Financing Activities* – Net cash provided by financing activities was \$3.6 billion for 2005 as compared to \$13.0 billion for 2004 and \$3.9 billion for 2003. For 2005, 2004 and 2003, net cash flows of \$2.7 billion, \$12.7 billion and \$3.4 billion, respectively, were provided by financing activities as a result of CMO financing, net of principal repayments.

#### *Inflation*

The consolidated financial statements and corresponding notes to the consolidated financial statements have been prepared in accordance with GAAP, which require the measurement of financial position and operating results in terms of historical dollars without considering the changes in the relative purchasing power of money over time due to inflation. The impact of inflation is reflected in the increased costs of our operations during each of 2005, 2004 and 2003. Unlike industrial companies, nearly all of our assets and liabilities are monetary in nature. As a result, interest rates have a greater impact on our performance than do the effects of general levels of inflation. Inflation affects our operations primarily through its effect on interest rates, since interest rates normally increase during periods of high inflation and decrease during periods of low inflation. During periods of increasing interest rates, demand for mortgages and a borrower's ability to qualify for mortgage financing in a purchase transaction may be adversely affected. During periods of decreasing interest rates, borrowers may prepay their mortgages, which in turn may adversely affect our yield and subsequently the value of our portfolio of mortgage assets.

## Contractual Obligations

As of December 31, 2005, we had the following contractual obligations (in thousands):

	Payments Due by Period				
	Total	Less than one year	One to Three Years	Three to Five Years	More than Five Years
CMO Borrowings (1)	\$ 24,037,633	\$ 9,733,417	\$ 9,173,319	\$ 3,330,895	\$ 1,800,002
Reverse repurchase agreements	2,430,075	2,430,075	-	-	-
Rate-locked mortgage pipeline	1,291,826	1,291,826	-	-	-
Trust preferred securities	96,250	-	-	-	96,250
Premises operating lease agreements	77,812	7,641	17,468	13,566	39,137
<b>Total Contractual Obligations</b>	<b>\$ 27,933,596</b>	<b>\$ 13,462,959</b>	<b>\$ 9,190,787</b>	<b>\$ 3,344,461</b>	<b>\$ 1,935,389</b>

- (1) Payments on CMO borrowings are based on anticipated receipts of principal on underlying mortgage loan collateral using expected prepayment rates. If actual mortgage prepayment rates differ from our estimates, the payment amounts will vary from the reported amounts.

For additional information regarding our commitments refer to "Note H—CMO Borrowings" and "Note N—Commitments and Contingencies" in the accompanying notes to the consolidated financial statements.

### RATIO OF EARNINGS TO FIXED CHARGES AND RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

The following table displays our ratio of earnings to fixed charges and ratio of earnings to combined fixed charges and preferred stock dividends (1)(2):

	For the year ended December 31,				
	2005	2004	2003	2002	2001
Ratio of earnings to fixed charges	1.23x	1.59x	1.70x	1.33x	-(4)
Ratio of earnings to combined fixed charges and preferred stock dividends	1.21x	1.58x	1.70x (3)	1.33x (3)	-- (4)

- (1) Earnings used in computing the ratio of earnings to fixed charges consist of net earnings before income taxes plus fixed charges. Fixed charges include interest expense on debt and the portion of rental expense deemed to represent the interest factor.
- (2) Financial information for the years ended December 31, 2003 to 2001 reflects accounting restatements and reclassifications for prior periods. In addition, prior to the consolidation of IFC on July 1, 2003, the method used to calculate the ratio of earnings to fixed charges and preferred stock dividends reflects the consolidated net earnings of IMH less net earnings of IFC plus dividend distributions from IFC to IMH.
- (3) No preferred stock dividends were paid during this period as we did not have any preferred stock outstanding.
- (4) Earnings were insufficient to cover fixed charges. The amount of the deficiency for the year ended December 31, 2001 was \$7.5 million.

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

### General Overview

Although we manage credit, prepayment and liquidity risk in the normal course of business, we consider interest rate risk to be a significant market risk, which could potentially have the largest material impact on our financial condition and results of operations. Since a significant portion of our revenues and earnings are derived from net interest income, we strive to manage our interest-earning assets and interest-bearing liabilities to generate what we believe to be an appropriate contribution from net interest income. When interest rates fluctuate, profitability can be adversely affected by changes in the fair market value of our assets and liabilities and by the interest spread earned on interest-earning assets and interest-bearing liabilities. We derive income from the differential spread between interest earned on interest-earning assets and interest paid on interest-bearing liabilities. Any change in interest rates affects income received and income paid from assets and liabilities in varying and typically in unequal amounts. Changing interest rates may compress or widen our interest rate margins and affect overall earnings.

Interest rate risk management is the responsibility of ALCO, which reports results of interest rate risk analysis to the board of directors on a quarterly basis. ALCO establishes policies that monitor and coordinate sources, uses and pricing of funds. ALCO also attempts to reduce the volatility in net interest income by managing the relationship of interest rate sensitive assets to interest rate sensitive liabilities. In addition, various modeling techniques are used to value interest sensitive mortgage-backed securities, including interest-only securities. The value of investment securities available-for-sale is determined using a discounted cash flow model using prepayment rate, discount rate and credit loss assumptions. Our investment securities portfolio is available-for-sale, which requires us to perform market valuations of the securities in order to properly record the portfolio. We continually monitor the interest rates of our investment securities portfolio as compared to prevalent interest rates in the market. We do not currently maintain a securities trading portfolio and are not exposed to market risk as it relates to trading activities.

### Changes in Interest Rates

ALCO follows interest rate risk management policies intended to limit our exposure to changes in interest rates primarily associated with cash flows on our adjustable rate borrowings. Our primary objective is to limit our exposure to the variability in future cash flows attributable to the variability of one-month LIBOR, which is the underlying index of our adjustable rate borrowings. We also monitor on an ongoing basis the prepayment risks that arise in fluctuating interest rate environments. Our interest rate risk management policies are formulated with the intent to substantially offset the potential adverse effects of changing interest rates on cash flows on adjustable rate borrowings.

We primarily acquire for long-term investment ARMs and hybrid ARMs and, to a lesser extent, FRMs. ARMs are generally subject to periodic and lifetime interest rate caps. This means that the interest rate of each ARM is limited to upwards or downwards movements on its periodic interest rate adjustment date, generally six months, or over the life of the mortgage. Periodic caps limit the maximum interest rate change, which can occur on any interest rate change date to generally a maximum of 1% per semiannual adjustment. Also, each ARM has a maximum lifetime interest rate cap. Generally, borrowings are not subject to the same periodic or lifetime interest rate limitations. During a period of rapidly increasing or decreasing interest rates, financing costs could increase or decrease at a faster rate than the periodic interest rate adjustments on mortgages would allow, which could affect net interest income. In addition, if market rates were to exceed the maximum interest rate limits of our ARMs, borrowing costs could increase while interest rates on ARMs would remain constant. We also acquire hybrid ARMs that have initial fixed interest rate periods generally ranging from two to seven years which subsequently convert to ARMs. During a rapidly increasing or decreasing interest rate environment financing costs would increase or decrease more rapidly than would interest rates on mortgages, which would remain fixed until their next interest rate adjustment date. In order to provide protection against potential resulting basis risk shortfall on the related liabilities, we purchase derivatives.

We measure the sensitivity of our net interest income to changes in interest rates affecting interest sensitive assets and liabilities using various simulations. These simulations take into consideration changes that may occur in investment and financing strategies, the forward yield curve, interest rate risk management strategies, mortgage prepayment speeds and the volume of mortgage acquisitions and originations. As part of various interest rate simulations, we calculate the effect of potential changes in interest rates on our interest-earning assets and interest-bearing liabilities and their affect on overall earnings. The simulations assume instantaneous and parallel shifts in interest rates. First, we estimate net interest income along

with net cash flows on derivatives for the next twelve months using balance sheet data and the notional amount of derivatives as of December 31, 2005 and 12-month projections of the following primary drivers affecting net interest income:

- future interest rates using forward yield curves, which are considered market estimates of future interest rates;
- mortgage acquisition and originations;
- mortgage prepayment rate assumptions; and
- forward swap rates.

We refer to the 12-month projection of net interest income along with the 12-month projection of net cash flows on derivatives as the "base case." For financial reporting purposes, net cash flows on derivative instruments are included in realized gain (loss) on derivative instruments on the consolidated financial statements. However, for purposes of interest rate risk analysis we include net cash flows on derivatives in our base case simulations as we acquire derivatives to offset the effect that changes in interest rates have on variable borrowing costs, such as CMO and reverse repurchase borrowings. We believe that including net cash flows on derivatives in our interest rate risk analysis presents a more useful simulation of the effect of changing interest rates on net cash flows generated by our long-term mortgage portfolio.

Once the base case has been established, we "shock" the base case with instantaneous and parallel shifts in interest rates in 100 basis point increments upward and downward. Calculations are made for each of the defined instantaneous and parallel shifts in interest rates over or under the forward yield curve used to determine the base case and include any associated changes in projected mortgage prepayment rates caused by changes in interest rates. The results of each 100 basis point change in interest rates are then compared against the base case to determine the estimated dollar and percentage change to base case. The simulations consider the affect of interest rate changes on interest sensitive assets and liabilities as well as derivatives. The simulations also consider the impact that instantaneous and parallel shift in interest rates have on prepayment rates and the resulting affect of accelerating or decelerating amortization of premium and securitization costs.

In the following table, the down 100 basis point scenario as of December 31, 2005 represents our projection of the net change from base case net interest income, which is derived from assumptions as previously discussed, if market interest rates were to immediately decline by 100 basis points. This means that we reduce interest rates at all data points along our projected forward yield curve by 100 basis points and recalculate our projection of net interest income over the next 12 months. In addition, based on changes in interest rates, or changes in our forward yield curve, our model adjusts mortgage prepayment rates and recalculates amortization of acquisition and securitization costs and net cash receipts or payments on derivatives as part of the calculation of net interest income. Thus, if a 100 basis point decline occurred the projected volatility to net interest income is positively impacted through our use of derivatives.

Over the past year, the interest rate risk profile shifted from modestly asset sensitive to modestly liability sensitive. This occurred as part of a deliberate and long-term optimization strategy as mortgages having marginally longer duration than that of CMO borrowings were added to our balance sheet during 2005. Other factors contributing to the shift in the interest rate risk profile include the increase in the overall level of interest rates, the flattening of the yield curve and slower expected prepayment behavior. However, since our estimates are based upon numerous assumptions, actual sensitivity to interest rate changes could vary if actual experience differs from the assumptions used.

The following table estimates the financial impact to base case, including net cash flow from derivatives, from various instantaneous and parallel shifts in interest rates based on both our on-balance sheet structure and off-balance sheet structure,

which refers to the notional amount of derivatives that are not recorded on our balance sheet as of December 31, 2005 and 2004 (dollar amounts in millions):

	Changes in base case as of December 31, 2005 (1)				
	Excluding net cash flow on derivatives		Net cash flow on derivatives	Including net cash flow on derivatives	
	\$	(%)	\$	\$	(%)
<b>Instantaneous and Parallel Change in Interest Rates (2)</b>					
Up 300 basis points, or 3% (3)	(394.0)	1,340	367.0	(27.0)	(21)
Up 200 basis points, or 2%	(263.2)	895	244.6	(18.5)	(14)
Up 100 basis points, or 1%	(129.9)	442	122.3	(7.6)	(6)
Down 100 basis points or 1%	125.8	(428)	(122.3)	3.4	3
Down 200 basis points or 2%	251.8	(856)	(244.6)	7.1	6
Down 300 basis points or 3%	379.3	1,290	(366.6)	12.6	10

	Changes in base case as of December 31, 2004 (1)				
	Excluding net cash flow on derivatives		Net cash flow on derivatives	Including net cash flow on derivatives	
	\$	(%)	\$	\$	(%)
<b>Instantaneous and Parallel Change in Interest Rates (2)</b>					
Up 300 basis points, or 3% (3)	(380.1)	(132)	328.3	(51.8)	(18)
Up 200 basis points, or 2%	(258.3)	(90)	218.9	(39.4)	(14)
Up 100 basis points, or 1%	(123.2)	(43)	109.4	(13.8)	(5)
Down 100 basis points or 1%	114.9	40	(109.4)	5.5	2

- (1) The dollar and percentage changes represent base case for the next twelve months versus the change in base case using various instantaneous and parallel interest rate change simulations, excluding the effect of amortization of loan discounts to base case.
- (2) Instantaneous and parallel interest rate changes over and under the projected forward yield curve.
- (3) This simulation was added to our analysis as it is relevant in light of the interest rate environment as of December 31, 2004 and 2005 and the projected forward yield curves for 2004 and 2005.

The use of derivatives to manage risk associated with changes in interest rates is an integral part of our strategy. The amount of cash payments or cash receipts on derivatives is determined by (1) the notional amount of the derivative and (2) current interest rate levels in relation to the various strikes or coupons of derivatives during a particular time period. As of December 30, 2005 and December 31, 2004, we had notional balances of interest rate swaps, caps, and floors of \$20.2 billion and \$15.1 billion, respectively, with fair values of \$248.2 million and \$92.5 million, respectively. By using derivatives, we attempt to minimize the effect of both upward and downward interest rate changes on our long-term mortgage portfolio. Our goal is to minimize significant changes to base case net interest income, including net cash flows from derivatives, as interest rates change. We primarily acquire swaps to essentially convert our adjustable rate CMO borrowings into fixed rate borrowings. For instance, we receive one-month LIBOR on swaps, which offsets interest expense on adjustable rate CMO borrowings, and we pay a fixed interest rate.

The following table presents the extent to which changes in interest rates and changes in the volume of interest rate sensitive assets and interest rate sensitive liabilities have affected interest income and interest expense during the periods indicated. Information is provided on mortgage assets and borrowings on mortgage assets, only, with respect to the following:

- changes attributable to changes in volume (changes in volume multiplied by prior rate);
- changes attributable to changes in rate (changes in rate multiplied by prior volume);
- changes in interest due to both rate and volume; and
- net change.



**Year Ended December 31, 2005 over 2004**

	<b>Volume</b>	<b>Rate</b>	<b>Rate/Volume</b>	<b>Net Change</b>
	<b>(in thousands)</b>			
<b>Increase (decrease) in:</b>				
Subordinated securities collateralized by mortgages	\$ 1,497	\$ (2,579)	\$ (1,026)	\$ (2,108)
Mortgages held as CMO collateral	383,337	36,804	22,800	442,941
Mortgages held-for-investment and held-for-sale	43,179	10,059	4,107	57,345
Finance receivables	(7,740)	4,422	(1,368)	(4,686)
Change in interest income on mortgage assets	420,273	48,706	24,513	493,492
CMO borrowings	217,886	215,106	132,193	565,185
Reverse repurchase agreements	14,756	39,169	9,993	63,918
Change in interest expense on borrowings on mortgage assets	232,642	254,275	142,186	629,103
Change in net interest income on mortgage assets	\$ 187,631	\$ (205,569)	\$ (117,673)	\$ (135,611)

**Year Ended December 31, 2004 over 2003**

	<b>Volume</b>	<b>Rate</b>	<b>Rate/Volume</b>	<b>Net Change</b>
	<b>(in thousands)</b>			
<b>Increase (decrease) in:</b>				
Subordinated securities collateralized by mortgages	\$ (432)	\$ 402	\$ (45)	\$ (75)
Mortgages held as CMO collateral	367,388	(30,616)	(35,435)	301,337
Mortgages held-for-investment and held-for-sale	65,717	1,877	3,568	71,162
Finance receivables	(2,424)	(1,666)	139	(3,951)
Change in interest income on mortgage assets	430,249	(30,003)	(31,773)	368,473
CMO borrowings	206,112	(11,801)	(13,963)	180,348
Reverse repurchase agreements	18,681	4,296	2,478	25,455
Borrowings secured by investment securities	(2,316)	-	-	(2,316)
Change in interest expense on borrowings on mortgage assets	222,477	(7,505)	(11,485)	203,487
Change in net interest income on mortgage assets	\$ 207,772	\$ (22,498)	\$ (20,288)	\$ 164,986

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The information required by this Item 8 is incorporated by reference to Impac Mortgage Holdings, Inc.'s Consolidated Financial Statements and Independent Auditors' Report beginning at page F-1 of this Form 10-K.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A. CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

Disclosure controls and procedures are controls and other procedures of the Company that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Securities Exchange Act of 1934 (the "Exchange Act") 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 of December 31, 2005, our CEO and CFO, with the participation of other management of the Company, evaluated the effectiveness of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) or 15(d)-15(e) promulgated under the Exchange Act, and based upon that evaluation, our CEO and CFO concluded that these disclosure

controls and procedures were effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

## **Management's Report on Internal Control over Financial Reporting**

### **Introduction**

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Section 13a-15(f) of the Securities Exchange Act of 1934, as amended). Internal control over financial reporting is a process designed by, or under the supervision of, the Company's CEO and CFO to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for external reporting purposes in conformity with U.S. generally accepted accounting principles and include those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and disposition of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined effective could provide only reasonable, not absolute, assurance with respect to financial statement preparation and presentation.

### **Management's Assessment**

As of December 31, 2005, management conducted an assessment of the effectiveness of the Company's internal control over financial reporting based on the framework established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on the criteria established by COSO, management concluded that the Company's internal control over financial reporting was effective as of December 31, 2005.

### **Auditor Reports**

Our assessment of the effectiveness of internal control over financial reporting as of December 31, 2005 has been audited by Ernst & Young LLP, the independent registered public accounting firm that also audited our consolidated financial statements. Ernst & Young LLP's report on management's assessment of our internal control over financial reporting appears on page 73 hereof and is incorporated by reference herein.

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

During the quarter ended December 31, 2005, the Company completed its remediation efforts with respect to the two material weaknesses in Internal Control Over Financial Reporting that were previously reported as of December 31, 2004. These remediation efforts are discussed below under "Remediation Efforts Related to the Material Weaknesses in Internal Control Over Financial Reporting" section below.

#### *Remediation Efforts Related to the Material Weakness in Internal Control over Financial Reporting*

##### **Material Weakness #1**

As of December 31, 2004, the Company's internal control over financial reporting intended to ensure the proper accounting and reporting for certain complex transactions and financial reporting matters were not designed or operating effectively. Based on the assessment of our internal control over financial reporting as of December 31, 2005 as discussed above under "Management's Report on Internal Control over Financial Reporting", this material weakness has been remediated as of December 31, 2005 by implementing the following:

Prior to fourth quarter 2005:

- we appointed an Executive Vice President, Chief Accounting Officer;
- we hired a Tax Manager to lead the Company's federal and state income tax functions;

- we hired an additional Assistant Controller to improve the monthly close process and hired additional technical accounting staff;
- we established controls to review the Company's systems and processes related to financial reporting and accounting and enhanced our documentation of critical accounting policies;
- we enhanced our documentation of critical accounting policies;
- we conducted internal audits of high risk process areas; and
- we began the implementation of the processes completed in the quarter ended December 31, 2005 as noted below.

During the quarter ended December 31, 2005, the Company completed its remediation process by implementing the following, which have materially affected, or are reasonably likely to materially affect the Company's internal control over financial reporting:

- we further expanded our technical resources by hiring a VP of Technical Accounting and a third Assistant Controller. In all, we added six Certified Public Accountants with experience from large accounting firms (i.e. the "Big Four") in connection with our remediation efforts;
- we reorganized, expanded and reengineered the Company's accounting and finance departments; including Technical Accounting, Financial Reporting, Tax Accounting and Financial Planning and Budgeting groups;
- we completed the establishment of our Internal Audit Department that performs risk assessment and monitoring of our systems of internal controls and of our formal policies and procedures throughout our organization; and
- we established an Enterprise Risk Management group including the hiring a SVP of Enterprise Risk Management to lead corporate risk assessment and manage credit and market risk.

#### Material Weakness #2

As of December 31, 2004, the Company's internal control over financial reporting intended to ensure adequate access and change control over end-user computing spreadsheets was not designed properly. In addition, the information technology general controls related to access and program changes were deficient, resulting in a potential lack of reliability and integrity of the financial information which was used in these spreadsheets. Based on the assessment of our internal control over financial reporting as of December 31, 2005 as discussed above under "Management's Report on Internal Control over Financial Reporting", this material weakness has been remediated by implementing the following:

Prior to fourth quarter 2005:

- we evaluated and developed an implementation plan for an automated end-user computing tool to ensure proper access and data integrity.

During the quarter ended December 31, 2005, the Company completed its remediation process by implementing the following, which have materially affected, or are reasonably likely to materially affect the Company's internal control over financial reporting:

- we analyzed all of the end-user computing spreadsheets identified by the business processes that have a material impact on the financial statements;
- we conducted a baseline review of the critical end-user computing spreadsheets to validate the methodology underlying the spreadsheet's calculations, individual formulas and source data;
- we established a central repository for all critical end-user spreadsheets and set up independent validation of each subsequent iteration of the spreadsheets to test the accuracy of any modifications;
- we conducted a systematic review of user entitlements for all critical applications systems, significantly strengthened the change control process and established procedures for periodic entitlement reviews; and
- we improved documentation of our policies and procedures for change control and established an Information Technology self-assessment review of this area.

We believe we have remediated the material weaknesses identified as of December 31, 2004, which supports our conclusion that the Company's internal control over financial reporting was effective as of December 31, 2005.

**Report of Independent Registered Public Accounting Firm  
on Internal Control over Financial Reporting**

The Board of Directors and Shareholders  
Impac Mortgage Holdings, Inc.

We have audited management's assessment, included in the accompanying *Management's Report on Internal Control over Financial Reporting*, that Impac Mortgage Holdings, Inc. (the Company) maintained effective internal control over financial reporting as of December 31, 2005, based on criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Impac Mortgage Holdings, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that Impac Mortgage Holdings, Inc. maintained effective internal control over financial reporting as of December 31, 2005, is fairly stated, in all material respects, based on the COSO criteria. Also, in our opinion, Impac Mortgage Holdings, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2005, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the 2005 consolidated financial statements of Impac Mortgage Holdings, Inc. and our report dated March 7, 2006, expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Los Angeles, California  
March 7, 2006

## **ITEM 9B. OTHER INFORMATION**

On January 31, 2006, the Impac Companies Deferred Compensation Plan was amended and restated effective as of January 1, 2005 to, generally, address Section 409A of the Internal Revenue Code, include dividend equivalent rights, refine the definition of commissions, how to make change elections under the plan, and revise change of control to 35% beneficial ownership. On January 31, 2006, the Impac Companies Deferred Compensation Plan was terminated due to market conditions and lack of participation. Employees who hold a position of at least Vice President and perform functions as an officer and are deemed highly compensated were eligible to participate in the Deferred Compensation Plan. Participants were permitted to defer up to 50% of their annual salary and their entire bonus or commissions on a yearly basis and to designate investments based on investment choices provided to them. The Company does not consider the termination of the Deferred Compensation Plan to be material to the Company so as to require disclosure of such information in response to Item 1.02 of Form 8-K. However, to the extent that the information reported is considered material, then the Company hereby includes such information.

## **PART III**

### **ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT**

The information required by this Item 10 is hereby incorporated by reference to Impac Mortgage Holdings, Inc.'s definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of Impac Mortgage Holdings, Inc.'s 2005 fiscal year.

### **ITEM 11. EXECUTIVE COMPENSATION**

The information required by this Item 11 is hereby incorporated by reference to Impac Mortgage Holdings, Inc.'s definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of Impac Mortgage Holdings, Inc.'s 2005 fiscal year.

### **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The information required by this Item 12 is hereby incorporated by reference to Impac Mortgage Holdings, Inc.'s definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of Impac Mortgage Holdings, Inc.'s 2005 fiscal year.

### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

The information required by this Item 13 is hereby incorporated by reference to Impac Mortgage Holdings, Inc.'s definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of Impac Mortgage Holdings, Inc.'s 2005 fiscal year.

### **ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information required by this Item 14 is hereby incorporated by reference to Impac Mortgage Holdings, Inc.'s definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of Impac Mortgage Holdings, Inc.'s 2005 fiscal year.

## **PART IV**

### **ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

(a)(3) Exhibits

The exhibits listed on the accompanying Exhibit Index are incorporated by reference into this Item 15 of this Annual Report on Form 10-K.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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, in the City of Newport Beach, State of California, on the 15th day of March 2006.

### IMPAC MORTGAGE HOLDINGS, INC.

by /s/ JOSEPH R. TOMKINSON

\_\_\_\_\_  
Joseph R. Tomkinson  
*Chairman of the Board  
and Chief Executive Officer*

Pursuant to the requirements of the Securities Act of 1934, this report has been signed by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ JOSEPH R. TOMKINSON _____ Joseph R. Tomkinson	Chairman of the Board, Chief Executive Officer and Director (Principal Executive Officer)	March 15, 2006
/s/ RICHARD J. JOHNSON _____ Richard J. Johnson	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	March 15, 2006
/s/ WILLIAM S. ASHMORE _____ William S. Ashmore	President and Director	March 15, 2006
/s/ GRETCHEN D. VERDUGO _____ Gretchen D. Verdugo	Executive Vice President and Chief Accounting Officer (Principal Accounting Officer)	March 15, 2006
/s/ JAMES WALSH _____ James Walsh	Director	March 15, 2006
/s/ FRANK P. FILIPPS _____ Frank P. Filippis	Director	March 15, 2006
/s/ STEPHAN R. PEERS _____ Stephan R. Peers	Director	March 15, 2006
/s/ WILLIAM E. ROSE _____ William E. Rose	Director	March 15, 2006
/s/ LEIGH J. ABRAMS _____ Leigh J. Abrams	Director	March 15, 2006

## Exhibit Index

Exhibit Number	Description
3.1	Charter of the Registrant (incorporated by reference to the corresponding exhibit number to the Registrant's Registration Statement on Form S-11, as amended (File No. 33-96670), filed with the Securities and Exchange Commission on November 8, 1995).
3.1(a)	Certificate of Correction of the Registrant (incorporated by reference to exhibit 3.1(a) of the Registrant's 10-K for the year ended December 31, 1998).
3.1(b)	Articles of Amendment of the Registrant (incorporated by reference to exhibit 3.1(b) of the Registrant's 10-K for the year ended December 31, 1998).
3.1(c)	Articles of Amendment for change of name to Charter of the Registrant (incorporated by reference to exhibit number 3.1(a) of the Registrant's Current Report on Form 8-K/A Amendment No. 1, filed February 12, 1998).
3.1(d)	Articles Supplementary and Certificate of Correction for Series A Junior Participating Preferred Stock of the Registrant (incorporated by reference to exhibit 3.1(d) of the Registrant's 10-K for the year ended December 31, 1998).
3.1(e)	Articles Supplementary for Series B 10.5% Cumulative Convertible Preferred Stock of the Registrant (incorporated by reference to exhibit 3.1b of the Registrant's Current Report on Form 8-K, filed December 23, 1998).
3.1(f)	Articles Supplementary for Series C 10.5% Cumulative Convertible Preferred Stock of the Registrant (incorporated by reference to the corresponding exhibit number of the Registrant's Annual Report on Form 10-K for the period ending December 31, 1999).
3.1(g)	Certificate of Correction for Series C Preferred Stock of the Registrant (incorporated by reference to the corresponding exhibit number of the Registrant's Annual Report on Form 10-K for the period ending December 31, 1999).
3.1(h)	Articles Supplementary, filed with the State Department of Assessments and Taxation of Maryland on February 24, 2000, reclassifying Series B Preferred Stock of the Registrant.
3.1(i)	Articles Supplementary, filed with the State Department of Assessments and Taxation of Maryland on July 12, 2002, reclassifying Series C Preferred Stock of the Registrant (incorporated by reference to exhibit 9 of the Registrant's Form 8-A/A, Amendment No. 2, filed July 30, 2002).
3.1(j)	Articles of Amendment, filed with the State Department of Assessments and Taxation of Maryland on July 16, 2002, increasing authorized shares of Common Stock of the Registrant (incorporated by reference to exhibit 10 of the Registrant's Form 8-A/A, Amendment No. 2, filed July 30, 2002).
3.1(k)	Articles of Amendment, filed with the State Department of Assessments and Taxation of Maryland on June 22, 2004, amending and restating Article VII of the Registrant's Charter (incorporated by reference to exhibit 7 of the Registrant's Form 8-A/A, Amendment No. 1, filed June 30, 2004).
3.1(l)	Articles Supplementary designating the Company's 9.375% Series B Cumulative Redeemable Preferred Stock, liquidation preference \$25.00 per share, par value \$0.01 per share, filed with the State Department of Assessments and Taxation of Maryland on May 26, 2004 (incorporated by reference to exhibit 3.8 of the Registrant's Form 8-A/A, Amendment No. 1, filed June 30, 2004).
3.1(m)	Articles Supplementary designating the Company's 9.125% Series C Cumulative Redeemable Preferred Stock, liquidation preference \$25.00 per share, par value \$0.01 per share, filed with the State Department of Assessments and Taxation of Maryland on November 18, 2004 (incorporated by reference to exhibit 3.10 of the Registrant's Form 8-A filed November 19, 2004).
3.2	Bylaws of the Registrant, as amended and restated (incorporated by reference to the corresponding exhibit number of the Registrant's Quarterly Report on Form 10-Q for the period ending March 31, 1998).

- 3.2(a) Amendment to Bylaws of the Registrant (incorporated by reference to exhibit 3.2(a) of the Registrant's Registration Statement of Form S-3 (File No. 333-111517) filed with the Securities and Exchange Commission on December 23, 2003).
- 3.2(b) Second Amendment to Bylaws of the Registrant (incorporated by reference to Exhibit 3.2(b) of the Registrant's Form 8-K, filed with the Securities and Exchange Commission on April 1, 2005).
- 4.1 Form of Stock Certificate of the Company (incorporated by reference to the corresponding exhibit number to the Registrant's Registration Statement on Form S-11, as amended (File No. 33-96670), filed with the Securities and Exchange Commission on September 7, 1995).
- 4.2 Rights Agreement between the Registrant and BankBoston, N.A. (incorporated by reference to exhibit 4.2 of the Registrant's Registration Statement on Form 8-A as filed with the Securities and Exchange Commission on October 14, 1998).
- 4.2(a) Amendment No. 1 to Rights Agreement between the Registrant and BankBoston, N.A. (incorporated by reference to exhibit 4.2(a) of the Registrant's Registration Statement on Form 8-A/A as filed with the Securities and Exchange Commission on December 23, 1998).
- 4.3 Specimen Certificate representing the 9.375% Series B Cumulative Redeemable Preferred Stock (incorporated by reference to Exhibit 4.1 of the Registrant's Form 8-A, filed with the Securities and Exchange Commission on May 27, 2004).
- 4.4 Specimen Certificate representing the 9.125% Series C Cumulative Redeemable Preferred Stock (incorporated by reference to Exhibit 4.1 of the Registrant's Form 8-A, filed with the Securities and Exchange Commission on November 19, 2004).
- 4.5 Amended and Restated Junior Subordinated Indenture between Impac Mortgage Holdings, Inc. and JPMorgan Chase Bank, N.A. dated September 16, 2005 (incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission on September 20, 2005).
- 4.6 Junior Subordinated Indenture between Impac Mortgage Holdings, Inc. and Wilmington Trust Company dated April 22, 2005 (incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission on April 27, 2005).
- 4.7 Junior Subordinated Indenture between Impac Mortgage Holdings, Inc. and JPMorgan Chase Bank, National Association, dated May 20, 2005 (incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission on May 25, 2005).
- 4.8 Indenture between Impac Mortgage Holdings, Inc. and Wilmington Trust Company, as trustee, dated October 18, 2005.
- 10.1\* 1995 Stock Option, Deferred Stock and Restricted Stock Plan, as amended and restated (incorporated by reference to exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q for the period ending March 31, 1998).
- 10.2(a) Form of 2002 Indemnification Agreement between the Registrant and its Directors and Officers (incorporated by reference to exhibit 10.1(a) of the Registrant's Quarterly Report on Form 10-Q for the period ended September 30, 2004).
- 10.2(b) Schedule of each officer and director that is a party to an Indemnification Agreement (incorporated by reference to exhibit 10.1(b) of the Registrant's Quarterly Report on Form 10-Q for the period ended September 30, 2004).
- 10.3 Form of Loan Purchase and Administrative Services Agreement between the Registrant and Impac Funding Corporation (incorporated by reference to exhibit 10.9 to the Registrant's Registration Statement on Form S-11, as amended (File No. 33-96670), filed with the Securities and Exchange Commission on September 7, 1995).



- 10.4 Servicing Agreement effective November 11, 1995 between the Registrant and Impac Funding Corporation (incorporated by reference to exhibit 10.14 to the Registrant's Registration Statement on Form S-11, as amended (File No. 333-04011), filed with the Securities and Exchange Commission on May 17, 1996).
- 10.5 Lease dated June 1, 1998 regarding 1401 Dove Street, Newport Beach California (incorporated by reference to exhibit 10.17 of the Registrant's 10-K for the year ended December 31, 1998).
- 10.5(a) Second Amendment to Lease dated October 1, 1999 between The Realty Associates Fund V, L.P., the Registrant and Impac Funding Corporation regarding 1401 Dove Street, Newport Beach California (incorporated by reference to exhibit number 10.4(d) of the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2000).
- 10.6 Office Lease, First Amendment to Office Lease, and Assignment, Assumption and Consent to Assignment of Lease with Property California OB One Corporation and Assignment to Impac Funding Corporation regarding 15050 Avenue of Science Suite 210 San Diego California. (incorporated by reference to exhibit number 10.10 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2001).
- 10.7 Lease dated March 4, 2005 regarding 19500 Jamboree Road, Newport Beach California (incorporated by reference to exhibit 10.8 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2004).
- 10.8\* Impac Mortgage Holdings, Inc. 2001 Stock Option Plan, Deferred Stock and Restricted Stock Plan (incorporated by reference to Appendix A of Registrant's Definitive Proxy Statement filed with the SEC on April 30, 2001).
- 10.8(a)\* Amendment to Impac Mortgage Holdings, Inc. 2001 Stock Option Plan, Deferred Stock and Restricted Stock Plan (incorporated by reference to exhibit 4.1(a) of the Registrant's Form S-8 filed with the SEC on March 1, 2002).
- 10.8(b)\* Amendment No. 2 to Impac Mortgage Holdings, Inc. 2001 Stock Option Plan, Deferred Stock and Restricted Stock Plan (incorporated by reference to exhibit 10.10(b) of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2003).
- 10.8(c)\* Form of Stock Option Agreement for 2001 Stock Option, Deferred Stock and Restricted Stock Plan (incorporated by reference to exhibit 10.2 of the Registrant's Quarterly Report on Form 10-Q for the period ended September 30, 2004).
- 10.8(d)\* Form of Restricted Stock Agreement (incorporated by reference to exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission on September 2, 2005).
- 10.9\* The Impac Companies 2006 Amended and Restated Deferred Compensation Plan.
- 10.10\* Employment Agreement, made as of April 1, 2003, between Impac Funding Corporation and Joseph R. Tomkinson (incorporated by reference to exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed July 15, 2003).
- 10.10(a)\* Amendment to Employment Agreement, dated September 9, 2004, between Impac Funding Corporation and Joseph R. Tomkinson (incorporated by reference to exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed September 15, 2004).
- 10.11\* Employment Agreement, made as of April 1, 2003, between Impac Funding Corporation and William S. Ashmore (incorporated by reference to exhibit 10.2 of the Registrant's Current Report on Form 8-K, filed July 15, 2003).
- 10.11(a)\* Amendment to Employment Agreement, dated September 9, 2004, between Impac Funding Corporation and William S. Ashmore (incorporated by reference to exhibit 10.2 of the Registrant's Current Report on Form 8-K, filed September 15, 2004).

- 10.12\* Employment Agreement, made as of April 1, 2003, between Impac Funding Corporation and Richard J. Johnson (incorporated by reference to exhibit 10.3 of the Registrant's Current Report on Form 8-K, filed July 15, 2003).
- 10.12(a)\* Amendment to Employment Agreement, dated September 9, 2004, between Impac Funding Corporation and Richard J. Johnson (incorporated by reference to exhibit 10.3 of the Registrant's Current Report on Form 8-K, filed September 15, 2004).
- 10.13\* Guaranty, dated April 1, 2003, granted by Impac Mortgage Holdings, Inc. in favor of Joseph R. Tomkinson (incorporated by reference to exhibit 10.4 of the Registrant's Current Report on Form 8-K, filed July 15, 2003).
- 10.14\* Guaranty, dated April 1, 2003, granted by Impac Mortgage Holdings, Inc. in favor of William S. Ashmore (incorporated by reference to exhibit 10.5 of the Registrant's Current Report on Form 8-K, filed July 15, 2003).
- 10.15\* Guaranty, dated April 1, 2003, granted by Impac Mortgage Holdings, Inc. in favor of Richard J. Johnson (incorporated by reference to exhibit 10.6 of the Registrant's Current Report on Form 8-K, filed July 15, 2003).
- 10.16 Underwriting Agreement, dated May 7, 2004, by and among Impac Mortgage Holdings, Inc., UBS Securities LLC, RBC Capital Markets Corporation and Roth Capital Partners LLC (incorporated by reference to exhibit 1.1 of the Registrant's Current Report on Form 8-K filed May 10, 2004).
- 10.17 Equity Distribution Agreement, dated May 12, 2004, between Impac Mortgage Holdings, Inc. and UBS Securities LLC (incorporated by reference to exhibit 1.1 of the Registrant's Current Report on Form 8-K filed May 13, 2004).
- 10.18 Underwriting Agreement, dated May 25, 2004, by and between Impac Mortgage Holdings, Inc., and Bear, Stearns & Co. Inc., Stifel, Nicolaus & Company, Incorporated, JMP Securities LLC, RBC Dain Rauscher Inc., Advest, Inc., and Flagstone Securities, LLC (incorporated by reference to exhibit 1.1 of the Registrant's Current Report on Form 8-K filed May 27, 2004).
- 10.19 Underwriting Agreement, dated May 25, 2004, by and between Impac Mortgage Holdings, Inc., and Bear, Stearns & Co. Inc., Stifel, Nicolaus & Company, Incorporated, JMP Securities LLC, RBC Dain Rauscher Inc., Advest, Inc., and Flagstone Securities, LLC (incorporated by reference to exhibit 1.1 of the Registrant's Current Report on Form 8-K filed May 27, 2004).
- 10.20 Underwriting Agreement, dated November 18, 2004, by and between Impac Mortgage Holdings, Inc., and Bear, Stearns & Co. Inc., Stifel, Nicolaus & Company, Incorporated, and RBC Dain Rauscher Inc. (incorporated by reference to exhibit 1.1 of the Registrant's Current Report on Form 8-K filed November 19, 2004).
- 10.21 Underwriting Agreement, dated November 18, 2004, by and between Impac Mortgage Holdings, Inc., and UBS Securities LLC, Bear, Stearns & Co. Inc., Deutsche Bank Securities Inc., and JMP Securities LLC (incorporated by reference to exhibit 1.1 of the Registrant's Current Report on Form 8-K filed November 19, 2004).
- 10.22\* Employment Agreement between Impac Funding Corporation and Gretchen Verdugo executed August 12, 2005 and effective as of February 1, 2005 (incorporated by reference to exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q/A for the period ended June 30, 2005).
- 10.22(a)\* Addendum dated January 4, 2005 to Employment Agreement between Impac Funding Corporation and Gretchen Verdugo (incorporated by reference to exhibit 10.1 of the Registrant's Current Report on Form 8-K filed January 10, 2006).
- 10.23\* Guaranty, effective February 1, 2005, granted by Impac Mortgage Holdings, Inc. in favor of Gretchen D. Verdugo (incorporated by reference to exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q/A for the period ended June 30, 2005).

- 10.24 Second Amended and Restated Trust Agreement among Impac Mortgage Holdings, Inc., JPMorgan Chase Bank, N.A., Chase Manhattan Bank USA, N.A., and the Administrative Trustees named therein, dated September 16, 2005 (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report Form 8-K, filed with the Securities and Exchange Commission September 20, 2005).
- 10.25 Amended and Restated Trust Agreement among Impac Mortgage Holdings, Inc., Wilmington Trust Company, and the Administrative Trustees named therein, dated April 22, 2005 (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission April 27, 2005).
- 10.26 Amended and Restated Trust Agreement among Impac Mortgage Holdings, Inc., JPMorgan Chase Bank, National Association, as Property Trustee, Chase Bank USA, National Association, as Delaware Trustee, and the Administrative Trustees named therein, dated May 20, 2005 (incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission May 25, 2005).
- 10.27 Common Stock Sales Agreement, dated September 30, 2005, by and between Impac Mortgage Holdings, Inc., and Brinson Patrick Securities Corporation (incorporated by reference to Exhibit 1.1(a) of the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission October 3, 2005).
- 10.28 Preferred Stock Sales Agreement, dated September 30, 2005, by and between Impac Mortgage Holdings, Inc. and Brinson Patrick Securities Corporation (incorporated by reference to Exhibit 1.1(b) of the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission October 3, 2005).
- 10.29 Amended and Restated Declaration of Trust among Impac Mortgage Holdings, Inc., Wilmington Trust Company, as Delaware and Institutional Trustee, and the Administrative Trustees named therein, dated October 18, 2005.
- 12.1 Computation of Ratio of Earnings to Fixed Charges and Preferred Dividends.
- 21.1 Subsidiaries of the Registrant (incorporated by reference to exhibit 21.1 of the Registrant's Quarterly Report on Form 10-Q for the period ended June 30, 2003).
- 23.1 Consent of Ernst & Young LLP.
- 23.2 Consent of KPMG LLP.
- 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.\*\*

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\* Denotes a management or compensatory plan or arrangement required to be filed as an exhibit pursuant to Item 601 of Regulation S-K

\*\* 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.

# CONSOLIDATED FINANCIAL STATEMENTS

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## Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders  
Impac Mortgage Holdings, Inc.

We have audited the accompanying consolidated balance sheet of Impac Mortgage Holdings, Inc. and subsidiaries (the Company) as of December 31, 2005, and the related consolidated statements of operations and comprehensive earnings, changes in stockholders' equity, and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Impac Mortgage Holdings, Inc. and subsidiaries at December 31, 2005, and the consolidated results of their operations and their cash flows for the year then ended, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Impac Mortgage Holdings, Inc. internal control over financial reporting as of December 31, 2005, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 7, 2006 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Los Angeles, California  
March 7, 2006

**Report of Independent Registered Public Accounting Firm**

Board of Directors and Shareholders  
Impac Mortgage Holdings, Inc.:

We have audited the accompanying consolidated balance sheet of Impac Mortgage Holdings, Inc. and subsidiaries as of December 31, 2004 and the related consolidated statements of operations and comprehensive earnings, changes in stockholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2004. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Impac Mortgage Holdings, Inc. and subsidiaries as of December 31, 2004, and the results of their operations and their cash flows for each of the years in the two-year period ended December 31, 2004, in conformity with U.S. generally accepted accounting principles.

/s/ KPMG LLP

Los Angeles, California  
May 13, 2005

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS  
(in thousands)

	At December 31,	
	2005	2004
<b>ASSETS</b>		
Cash and cash equivalents	\$ 146,621	\$ 324,351
Restricted cash	698	253,360
CMO collateral	24,494,290	21,308,906
Finance receivables	350,217	471,820
Mortgages held-for-investment	160,070	586,686
Allowance for loan losses	(78,514)	(63,955)
Mortgages held-for-sale	2,052,694	587,745
Accrued interest receivable	123,565	97,617
Derivatives	250,368	95,388
Other assets	220,370	153,849
<b>Total assets</b>	<b>\$ 27,720,379</b>	<b>\$ 23,815,767</b>
<b>LIABILITIES</b>		
CMO borrowings	\$ 23,990,430	\$ 21,206,373
Reverse repurchase agreements	2,430,075	1,527,558
Trust preferred securities	96,750	-
Other liabilities	36,177	37,761
<b>Total liabilities</b>	<b>26,553,432</b>	<b>22,771,692</b>
<b>Commitments and contingencies</b>		
<b>STOCKHOLDERS' EQUITY</b>		
Series-A junior participating preferred stock, \$0.01 par value; 2,500,000 shares authorized; none issued and outstanding as of December 31, 2005 and 2004, respectively	-	-
Series-B 9.375% cumulative redeemable preferred stock, \$0.01 par value; liquidation value \$50,000; 2,000,000 shares authorized, 2,000,000 shares issued and outstanding as of December 31, 2005 and 2004, respectively	20	20
Series-C 9.125% cumulative redeemable preferred stock, \$0.01 par value; liquidation value \$109,280; 5,500,000 shares authorized; 4,371,200 shares and 4,300,000 issued and outstanding as of December 31, 2005 and 2004, respectively	44	43
Common stock, \$0.01 par value; 200,000,000 shares authorized; 76,112,963 and 75,153,926 shares issued and outstanding as of December 31, 2005 and 2004, respectively	761	752
Additional paid-in capital	1,167,059	1,152,861
Accumulated other comprehensive income	1,305	979
Net accumulated deficit:		
Cumulative dividends declared	(675,373)	(513,453)
Retained earnings	673,131	402,873
<b>Net accumulated deficit</b>	<b>(2,242)</b>	<b>(110,580)</b>
<b>Total stockholders' equity</b>	<b>1,166,947</b>	<b>1,044,075</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 27,720,379</b>	<b>\$ 23,815,767</b>

See accompanying notes to consolidated financial statements.

**CONSOLIDATED STATEMENTS OF OPERATIONS  
AND COMPREHENSIVE EARNINGS**

(in thousands, except per share data)

	For the year ended December 31,		
	2005	2004	2003
<b>INTEREST INCOME:</b>			
Mortgage assets	\$ 1,246,787	\$ 753,295	\$ 384,822
Other	5,173	2,321	894
Total interest income	1,251,960	755,616	385,716
<b>INTEREST EXPENSE:</b>			
CMO borrowings	919,731	354,547	174,199
Reverse repurchase agreements	121,756	57,837	32,382
Other borrowings	5,722	149	2,428
Total interest expense	1,047,209	412,533	209,009
Net interest income	204,751	343,083	176,707
Provision for loan losses	30,563	30,927	24,853
Net interest income after provision for loan losses	174,188	312,156	151,854
<b>NON-INTEREST INCOME:</b>			
Realized gain (loss) from derivative instruments	22,595	(91,881)	(47,847)
Change in fair value of derivative instruments	144,932	96,575	31,826
Gain on sale of loans	39,509	24,729	37,523
Other income	13,888	10,948	9,995
Equity in net earnings of Impac Funding Corporation	-	-	11,537
Total non-interest income	220,924	40,371	43,034
<b>NON-INTEREST EXPENSE:</b>			
Personnel expense	77,508	60,420	25,250
General and administrative and other expense	25,384	17,097	7,660
Amortization of deferred charge	27,174	16,212	5,658
Professional services	9,496	4,374	4,785
Equipment expense	5,420	3,689	1,608
Occupancy expense	5,018	3,658	1,560
Data processing expense	4,387	3,608	1,829
Amortization and impairment of mortgage servicing rights	2,006	2,063	1,290
Impairment on investment securities available-for-sale	-	1,120	298
Gain on sale of other real estate owned	(1,888)	(3,901)	(2,632)
Total non-interest expense	154,505	108,340	47,306
Net earnings before income taxes	240,607	244,187	147,582
Income tax benefit	(29,651)	(13,450)	(1,397)
Net earnings	270,258	257,637	148,979
Cash dividends on cumulative redeemable preferred stock	(14,530)	(3,750)	-
Net earnings available to common stockholders	\$ 255,728	\$ 253,887	\$ 148,979

See accompanying notes to consolidated financial statements.



**For the year ended December 31,**

	<b>2005</b>	<b>2004</b>	<b>2003</b>
Net earnings	\$ 270,258	\$ 257,637	\$ 148,979
Net unrealized gains (losses) on securities:			
Unrealized holding gains arising during year	186	71	2,272
Reclassification of gains (losses) included in net earnings	140	(3,448)	(6,387)
Net unrealized gains (losses)	326	(3,377)	(4,115)
Comprehensive earnings	\$ 270,584	\$ 254,260	\$ 144,864
Net earnings per share:			
Basic	\$ 3.38	\$ 3.79	\$ 2.94
Diluted	\$ 3.35	\$ 3.72	\$ 2.88
Dividends declared per common share	\$ 1.95	\$ 2.90	\$ 2.05

See accompanying notes to consolidated financial statements.

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY

(in thousands)

	Number of Preferred Shares Outstanding	Preferred Stock	Number of Common Shares Outstanding	Common Stock	Additional Paid-In Capital	Accumulated Other Comprehensive Income	Cumulative Dividends Declared	Retained Earnings	Total Stockholders' Equity
Balance, December 31, 2002	-	\$ -	45,320,517	\$ 453	\$ 479,298	\$ 8,471	\$ (200,954)	\$ (3,743)	\$ 283,525
Dividends declared (\$2.05 per common share)	--	--	--	--	--	--	(106,077)	--	(106,077)
Common stock offering	-	-	5,750,000	58	76,692	-	-	-	76,750
Proceeds from exercise of stock options	-	-	520,978	5	4,549	-	-	-	4,554
Sale of stock via equity distribution agreement	-	-	4,769,186	48	68,998	-	-	-	69,046
Issuance of shares for the purchase of IFC	-	-	7,687	-	125	-	-	-	125
Net earnings, 2003	-	-	-	-	-	-	-	148,979	148,979
Other comprehensive loss	-	-	-	-	-	(4,115)	-	-	(4,115)
Balance, December 31, 2003	-	-	56,368,368	564	629,662	4,356	(307,031)	145,236	472,787
Dividends declared (\$2.90 per common share)	--	--	--	--	--	--	(202,672)	--	(202,672)
Dividends declared on preferred shares	-	-	-	-	-	-	(3,750)	-	(3,750)
Series B and C preferred stock offering	6,300,000	63	-	-	152,186	-	-	-	152,249
Common stock offering	-	-	11,787,500	118	232,474	-	-	-	232,592
Proceeds and tax benefit from exercise of stock options	-	-	345,893	3	4,934	-	-	-	4,937
Sale of stock via equity distribution agreement	-	-	6,652,165	67	133,605	-	-	-	133,672
Net earnings, 2004	-	-	-	-	-	-	-	257,637	257,637
Other comprehensive loss	-	-	-	-	-	(3,377)	-	-	(3,377)
Balance, December 31, 2004	6,300,000	63	75,153,926	752	1,152,861	979	(513,453)	402,873	1,044,075
Dividends declared (\$1.95 per common share)	--	--	--	--	--	--	(147,390)	--	(147,390)
Dividends declared on preferred shares	-	-	-	-	-	-	(14,530)	-	(14,530)
Proceeds and tax benefit from exercise of stock options	-	-	595,337	6	8,446	-	-	-	8,452
Sale of stock via equity distribution agreement	71,200	1	363,700	3	5,752	-	-	-	5,756
Net earnings, 2005	-	-	-	-	-	-	-	270,258	270,258
Other comprehensive income	-	-	-	-	-	326	-	-	326
Balance, December 31, 2005	6,371,200	\$ 64	76,112,963	\$ 761	\$ 1,167,059	\$ 1,305	\$ (675,373)	\$ 673,131	\$ 1,166,947

See accompanying notes to consolidated financial statement

CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

For the year ended December 31,

	2005	2004	2003
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net earnings	\$ 270,258	\$ 257,637	\$ 148,979
Adjustments to reconcile net earnings to net cash (used in) provided by operating activities:			
Equity in net earnings of Impac Funding Corporation	-	-	(11,537)
Provision for loan losses	30,563	30,927	24,853
Amortization of deferred charge, net	27,174	(18,181)	(8,076)
Amortization of premiums, securitization costs and debt issuance costs	292,982	166,649	69,573
Gain on sale of other real estate owned	(1,888)	(3,901)	(2,632)
Gain on sale of loans	(39,509)	(25,134)	(39,022)
Change in fair value of derivative instruments	(144,932)	(96,575)	(31,826)
Purchase of mortgages held-for-sale	(22,310,603)	(22,213,104)	(5,960,645)
Sale and principal reductions on mortgages held-for-sale	20,875,235	22,037,869	6,048,976
Net change in deferred taxes	(6,832)	(3,061)	18,903
Gain on sale of investment securities available-for-sale	(49)	(5,474)	(9,078)
Depreciation and amortization	4,610	3,471	1,524
Amortization and impairment of mortgage servicing rights	2,006	2,063	1,290
Net change in accrued interest receivable	(25,948)	(58,270)	(12,128)
Net change in investment in and advances to IFC	-	-	(21,319)
Impairment of investment securities available-for-sale	-	1,120	298
Net change in restricted cash	252,662	(253,038)	(241)
Net change in other assets and liabilities	(38,571)	(2,370)	(51,702)
Net cash (used in) provided by operating activities	(812,842)	(179,372)	166,190
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Net change in CMO collateral	(3,513,890)	(12,827,524)	(3,529,784)
Net change in finance receivables	121,603	158,210	33,991
Purchase of premises and equipment	(7,998)	(6,312)	(1,816)
Cash received from acquisition of Impac Funding Corporation	-	-	23,510
Net change in mortgages held-for-investment	420,069	56,261	(595,860)
Sale of investment securities available-for-sale	5,861	4,510	12,632
Purchase of investment securities available-for-sale	(36,781)	(3,920)	(15,252)
Net change in mortgage servicing rights	(735)	(887)	(5,620)
Purchase of investments for deferred compensation plan	(3,492)	(2,563)	(2,206)
Dividends from Impac Funding Corporation	-	-	11,385
Net principal reductions on investment securities available-for-sale	16,663	6,837	12,717
Proceeds from the sale of other real estate owned	52,367	38,688	33,877
Net cash used in investing activities	(2,946,333)	(12,576,700)	(4,022,426)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Net change in reverse repurchase agreements	902,517	(41,249)	400,778
Proceeds from CMO borrowings	13,330,941	17,644,706	5,925,794
Repayment of CMO borrowings	(10,601,576)	(4,963,984)	(2,480,966)
Issuance of trust preferred securities	99,244	-	-
Common stock dividends paid	(147,390)	(202,672)	(127,831)
Preferred stock dividends paid	(14,530)	(3,750)	-
Proceeds from sale of common stock	4,234	232,592	69,046
Proceeds from sale of common stock via equity distribution agreement	-	133,672	76,750
Proceeds from sale of cumulative redeemable preferred stock	1,625	152,249	-
Proceeds from exercise of stock options	6,380	3,706	4,554
Net cash provided by financing activities	3,581,445	12,955,270	3,868,125
Net change in cash and cash equivalents	(177,730)	199,198	11,889
Cash and cash equivalents at beginning of year	324,351	125,153	113,264
Cash and cash equivalents at end of year	\$ 146,621	\$ 324,351	\$ 125,153

	2005	2004	2003
<b>SUPPLEMENTARY INFORMATION:</b>			
Interest paid	\$ 980,434	\$ 368,123	\$ 193,494
Taxes paid	18,198	26,720	17,885

**NON-CASH TRANSACTIONS:**

Accumulated other comprehensive gain (loss)	\$ 326	\$ (3,377)	\$ (4,115)
Transfer of mortgages to other real estate owned	5,501	4,215	5,776
Transfer of CMO Collateral to other real estate owned	73,052	32,630	30,394
Transfer of finance receivables to other real estate owned	-	-	91

The following table presents the acquisition of the assets and liabilities of Impac Funding Corporation as of July 1, 2003 (in thousands):

<b>ASSETS ACQUIRED</b>		
Cash and cash equivalents		\$ 24,135
Mortgages held-for-sale		451,465
Accrued interest receivable		565
Other assets		91,962
		<hr/>
Total assets		\$ 568,127
		<hr/>
<b>LIABILITIES ASSUMED</b>		
Warehouse borrowings		\$ 447,951
Other liabilities		66,971
Deferred revenue		52,371
		<hr/>
Total liabilities		567,293
Total stockholders' equity		834
		<hr/>
Total liabilities and stockholders' equity		\$ 568,127
		<hr/>
Net Assets Acquired:		
Investment in Impac Funding Corporation		\$ 84
Cash paid for common stock		625
Shares issued for common stock		125
		<hr/>
		\$ 834
		<hr/>

See accompanying notes to consolidated financial statements.

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

**Note A—Summary of Business and Significant Accounting Policies**

**1. Business**

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

We are a mortgage real estate investment trust (REIT) that is a nationwide acquirer, originator, seller and securitizer of non-conforming Alt-A mortgages (Alt-A mortgages). Alt-A mortgages are primarily first lien mortgages made to borrowers whose credit is generally within typical Fannie Mae and Freddie Mac guidelines, but have loan characteristics that make them non-conforming under those guidelines. Some of the principal differences between mortgages purchased by Fannie Mae and Freddie Mac and Alt-A mortgages are as follows:

- credit and income histories of the mortgagor;
- documentation required for approval of the mortgagor; and
- loan balances in excess of maximum Fannie Mae and Freddie Mac lending limits.

Alt-A mortgages may not have certain documentation or verifications that are required by Fannie Mae and Freddie Mac and, therefore, in making our credit decisions, we are more reliant upon the borrower's credit score and the adequacy of the underlying collateral. We believe that Alt-A mortgages provide an attractive net earnings profile by producing higher yields without commensurately higher credit losses than other types of mortgages.

We operate three core businesses:

- long-term investment operations that are conducted by IMH, IMH Assets and IMCC;
- mortgage operations that are conducted by IFC, ISAC; and
- warehouse lending operations that are conducted by IWLG.

The long-term investment operations generate earnings primarily from net interest income earned on mortgages held for long-term investment (long-term mortgage portfolio). The long-term mortgage portfolio as reported on our consolidated balance sheets consist of mortgages held as collateralized mortgage obligations (CMO) and mortgages held-for-investment. Investments in Alt-A mortgages and multi-family mortgages are initially financed with short-term borrowings under reverse repurchase agreements, which are subsequently converted to long-term financing in the form of CMO financing. Cash flow from the long-term mortgage portfolio and proceeds from the sale of capital stock also finance the acquisition of new Alt-A and multi-family mortgages.

The mortgage operations acquire, originate, sell and securitize primarily Alt-A adjustable rate mortgages (ARMs) and fixed rate mortgages (FRMs) and, to a lesser extent, sub-prime mortgages (B/C mortgages) from correspondents, mortgage brokers and retail customers. Correspondents originate and close mortgages under their mortgage programs and then sell the closed loans to the mortgage operations on a flow (loan-by-loan) basis or through bulk sale commitments. Correspondents include savings and loan associations, commercial banks and mortgage bankers. The mortgage operations generate income by securitizing and selling mortgages to permanent investors, including the long-term investment operations. This business also earns revenue from fees associated with mortgage servicing rights, master servicing agreements and interest income earned on mortgages held-for-sale. The mortgage operations use facilities provided by the warehouse lending operations to finance the acquisition and origination of mortgages.

The Company securitizes mortgages in the form of CMOs and real estate mortgage investment conduits (REMICs). The typical CMO securitization is designed so that the transferee (securitization trust) is not a qualifying special purpose entity (QSPE) and thus as the sole residual interest holder, the Company consolidates such variable interest entity (VIE). Amounts consolidated are classified as CMO collateral and CMO borrowings in the consolidated balance sheets. Generally, the typical REMIC securitization qualifies for sales accounting treatment and the securitization trust is a QSPE and thus not consolidated by the Company. In the event that a REMIC securitization trust does not meet sale accounting and QSPE criteria, the securitization is treated as a secured borrowing and consolidation is assessed pursuant to FIN 46R.

In January 2006, we combined our Alt-A wholesale and subprime product offerings under one platform. Our subprime products previously marketed under Novelle Financial Services, Inc., are now offered by our Alt-A wholesale operations, Impac Lending Group (ILG), a division of IFC.

The warehouse lending operations provide repurchase financing to mortgage loan originators, including the mortgage operations, by funding mortgages from their closing date until sale to pre-approved investors. This business earns fees from each transaction as well as net interest income from the difference between its cost of borrowings and the interest earned on repurchase advances.

## 2. Financial Statement Presentation

### *Principles of Consolidation*

The financial condition and results of operations have been presented in the consolidated financial statements for the three-year period ended December 31, 2005 and include the financial results of IMH, IMH Assets, IWLG, IMCC and IFC (together with its wholly-owned subsidiaries Novelle and ISAC).

On July 1, 2003, IMH purchased 100% of the outstanding shares of common stock of IFC. The purchase of IFC's common stock combined with IMH's ownership of 100% of IFC's preferred stock resulted in the consolidation of IFC from July 1, 2003 through December 31, 2003. Prior to July 1, 2003, IFC was a non-consolidated subsidiary of IMH and 99% of the net earnings of IFC were reflected in IMH's financial statements as "Equity in net earnings (loss) of IFC."

The accompanying consolidated financial statements include accounts of IMH and other entities in which the Company has a controlling financial interest. The usual condition for a controlling financial interest is ownership of a majority of the voting interests of an entity. However, a controlling financial interest may also exist in entities, such as special purpose entities (SPEs), through arrangements that do not involve voting interests.

There are two different accounting frameworks applicable to SPEs, depending on the nature of the entity and the Company's relation to that entity; the QSPE framework under Statement of Financial Accounting Standards No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities" (SFAS 140) and the VIE framework under the Financial Accounting Standards Board (FASB) Interpretation No. 46 (revised December 2003), "Consolidation of Variable Interest Entities" (FIN 46R).

The QSPE framework is applicable when an entity transfers (sells) financial assets to an SPE meeting certain criteria. These criteria are designed to ensure that the activities of the SPE are essentially predetermined in their entirety at the inception of the vehicle and that the transferor cannot exercise control over the entity, its assets or activities. Entities meeting these criteria are not consolidated by the Company. For further details, refer to Note 8—Mortgages Held-for-Sale.

When the SPE does not meet the QSPE criteria, consolidation is assessed pursuant to FIN 46R. A VIE is defined as an entity that (1) lacks enough equity investment at risk to permit the entity to finance its activities without additional subordinated financial support from other parties, (2) has equity owners who are unable to make decisions and/or (3) has equity owners that do not absorb or receive the entity's losses and returns. QSPEs are excluded from the scope of FIN 46R.

FIN 46R requires a variable interest holder (counterparty to a VIE) to consolidate the VIE if that party will absorb a majority of the expected losses of the VIE, receive a majority of the residual returns of the VIE, or both. This party is considered

the primary beneficiary of the entity. The determination of whether the Company meets the criteria to be considered the primary beneficiary of a VIE requires an evaluation of all transactions (such as investments, liquidity commitments, derivatives and fee arrangements) with the entity.

Prior to the Company's adoption of FIN 46R, the decision of whether or not to consolidate an SPE depended on the applicable accounting principles for non-QSPEs, including a determination regarding the nature and amount of the investments made by third parties in the SPE. Consideration was given to, among other factors, whether a third party had a substantial equity investment in the SPE; which party had voting rights, if any; who made decisions about the assets in the SPE; and who was at risk of loss. The SPE was consolidated if the Company retained or acquired control over the risks and rewards of the assets in the SPE.

Investments in other companies in which the Company has significant influence over operating and financing decisions and holds more than a 20% voting interest, are accounted for in accordance with the equity method of accounting. Prior to July 1, 2003, IMH was entitled to 99% of the earnings or losses of IFC through its ownership of all of the non-voting preferred stock of IFC. Therefore, the Company has accounted for its 99% interest in IFC under the equity method for periods prior to July 1, 2003.

#### *Inter-Company Eliminations*

All significant inter-company balances and transactions have been eliminated in consolidation or under the equity method of accounting regarding transactions involving the mortgage operations prior to its consolidation.

#### *Use of Estimates in the Preparation of Financial Statements*

The accompanying consolidated financial statements of IMH and our subsidiaries (as defined above) have been prepared in accordance with accounting principles generally accepted in the United States of America (GAAP). In the opinion of management, all adjustments, consisting of normal recurring adjustments, considered necessary for a fair presentation have been included. 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. Actual results could differ from those estimates.

#### *Reclassifications*

Certain amounts in the 2004 and 2003 consolidated financial statements have been reclassified to conform with the current year presentation.

### **3. Cash and Cash Equivalents**

For purposes of the consolidated statements of cash flows, cash and cash equivalents consist of cash and money market mutual funds. Investments with maturities of three months or less at date of acquisition are considered to be cash equivalents.

### **4. Restricted Cash**

Restricted cash primarily consists of cash deposits in a CMO securitization trust that will be used to finance the remaining mortgage loan collateral that will be deposited into the trust within 15 to 30 days of the issuance of the CMO. In addition, restricted cash includes money market accounts held in the Company's deferred compensation plan and escrow accounts related to the Company's master servicing activities.

## 5. CMO Collateral and Mortgages Held-for-Investment

The long-term investment operations invest in primarily Alt-A ARMs, FRMs secured by first liens on single-family residential real estate properties acquired and originated by the mortgage operations, multi-family residential real estate properties originated by IMCC and, to a lesser extent, fixed rate second trust deeds secured by single-family residential real estate properties to be held for long-term investment. After accumulating a pool of mortgages of generally between \$200.0 million and \$2.5 billion, mortgages held-for-investment on our financial statements are securitized as CMOs and the mortgages are deposited in a trust and at that time we record the mortgages as CMO collateral. CMO collateral is recorded in IMH Assets, a special purpose financing subsidiary which is used to issue CMO financing. The typical CMO securitization is designed such that the securitization trust is not a QSPE and thus as the sole residual interest holder the Company consolidates the securitization trust. Generally, this is achieved by including terms in the securitization agreements that give the Company the ability to unilaterally cause the securitization trust to return specific mortgages, other than through a clean-up call.

In 2005, we completed the ISAC REMIC 2005-2 securitization which was treated as a sale for tax purposes but treated as a secured borrowing for GAAP purposes and consolidated in the financial statements due to the retention of a residual interest. The associated collateral and borrowings have been included in the CMOs for reporting purposes. Reference to "CMO collateral" or "CMO borrowings" or "CMO" includes the REMIC 2005-2 securitization collateral and or borrowings.

CMO collateral and mortgages held-for-investment are recorded at cost, net of premiums and discounts. Premiums and discounts are amortized to interest income over the estimated lives of the mortgages using the interest method as an adjustment to the yield of the mortgages. Management utilizes an estimate of the prepayment rate of the mortgages to forecast the remaining average life of the mortgages.

Mortgages held-for-investment are continually evaluated for collectibility and, if appropriate, the mortgage is placed on non-accrual status when the mortgage is 90 days past due, and previously accrued interest is reversed from income. CMO collateral is not placed on non-accrued status as the sub-servicer remits the interest payments to the Company regardless of the delinquency status of the underlying mortgage loan.

In accordance with Statement of Financial Accounting Standard No. 91, "Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases" ("SFAS 91"), we amortize the mortgage premiums, securitization costs, bond discounts, deferred gains/losses to interest income over the estimated lives of the mortgages as an adjustment to yield of the mortgages. Amortization calculations include certain loan information including the interest rate, loan maturity, principal balance and certain assumptions including expected prepayment rates. We estimate prepayments on a collateral-specific basis and consider actual prepayment activity for the collateral pool. We also consider the current interest rate environment and the forward market curve projections.

## 6. Finance Receivables

Finance receivables represent transactions with customers involving residential real estate lending. As a warehouse lender, the warehouse lending operations are a secured creditor of the mortgage bankers and brokers to which it extends credit and is subject to the risks inherent in that status, including the risk of borrower fraud, default and bankruptcy. Any claim of the warehouse lending operations as a secured lender in a bankruptcy proceeding may be subject to adjustment and delay. Finance receivables represent warehouse lines of credit with affiliates and repurchase facilities with mortgage bankers that are primarily collateralized by mortgages on single-family residential real estate. Terms of non-affiliated repurchase facilities, including the maximum facility amount and interest rate, are determined based upon the financial strength, historical performance and other qualifications of the borrower. The facilities have maturities that range from on-demand to one year. Finance receivables are stated at the principal balance outstanding. Interest income is recorded on the accrual basis.

At the end of the first quarter of 2004, we discovered that one client of the warehouse lending operations and certain of its officers had perpetrated a fraud pursuant to which they defrauded the warehouse lending operations into making advances pursuant to a repurchase facility. As of the date the fraud was discovered, an aggregate of \$12.6 million of fraudulent advances were outstanding. We immediately terminated the facility and have been cooperating with federal investigators in their ongoing investigation of the defrauding parties.



We retained an independent consultant to investigate the matter. The investigator reported that no principals of the warehouse lending operations had knowingly participated in the fraud. As a result of the fraud, during 2004 we established a specific allowance for loan losses in the amount of \$8.0 million to provide for anticipated losses on the fraudulent advances as we have deemed this amount to be non-collectible. Based on available information, we believe we will be able to recover the remaining \$4.6 million of related advances over time. To the extent that we believe that the actual losses will exceed the \$8.0 million allowance, we will make an additional allowance for loan losses when, or if, we determine it is appropriate to do so as events and circumstances dictate. During 2005, no amounts were recovered or written off and the ending allowance balance as of December, 31, 2005 remained at \$8.0 million. We believe that this specific allowance is adequate to provide for anticipated loan losses based on currently available information.

During the year ended December 31, 2004, we terminated a warehouse lending client that sold mortgages to third party investors that were pledged as collateral to our warehouse lending operations, whereby, the sales proceeds from these loans were wired by the third party investor directly to our customer without the customer repaying their borrowings to us. The warehouse lending operations contacted the investors who purchased these loans to notify them of our interest in these loans. As a result of the termination of this client, we seized the remaining available loans that were secured as collateral in settlement of a portion of these borrowings. In certain cases, investors have released their interest in loans securing our advances previously purchased by them and we are pursuing legal action on any remaining loans securing our advances in order to perfect our ownership interest in these loans. As a result, during 2004 management provided for a specific write-down of \$2.7 million on these advances. During 2005, no amounts were recovered or written off and the ending allowance balance as of December, 31, 2005 remained at \$2.7 million. We believe that this specific allowance is adequate to provide for anticipated loan losses based on currently available information.

During the year ended December 31, 2005, we had no specific write-downs on warehouse lending advances. Management believes that the aggregate specific allowance of \$10.7 million, which is included in the allowance for loan losses, is adequate to provide for future losses based on currently available information.

## **7. Allowance for Loan Losses**

An allowance is maintained for losses on mortgages held-for-investment, mortgages held as CMO collateral and finance receivables collectively "loans provided for" at an amount that management believes provides for losses inherent in those loan portfolios. We have implemented a methodology designed to analyze the performance of various loan portfolios, based upon the relatively homogeneous nature within these loan portfolios. The allowance for losses is also analyzed using the following factors:

- management's judgment of the net loss potential of mortgages in the long-term mortgage portfolio based on prior loan loss experience;
- changes in the nature and volume of the long-term mortgage portfolio;
- value of the collateral;
- expected losses as derived from rating agencies analyses;
- delinquency trends; and
- current economic conditions that may affect the borrowers' ability to pay.

In evaluating the adequacy of the allowance for loan losses, 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 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 allowance for loan losses. Management also recognizes that there are qualitative factors that must be taken into consideration when evaluating and measuring inherent loss in our 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 and industry statistics.

Additions to the allowance are provided through a charge to earnings. Specific valuation allowances may be established for loans that are deemed impaired, if default by the borrower is deemed probable and if the fair value of the loan or the collateral is estimated to be less than the gross carrying value of the loan. Actual losses on loans are recorded as a reduction to the allowance through charge-offs. Subsequent recoveries of amounts previously charged off are credited to the allowance.

Mortgages held-for-investment are placed on non-accrual status when the mortgage is 90 days past due. For loans on non-accrual status, cash receipts are applied and interest income is recognized on a cash basis. For all other impaired loans, cash receipts are applied to principal and interest in accordance with the contractual terms of the loan and interest income is recognized on the accrual basis. Generally, a loan may be returned to accrual status when all delinquent principal and interest are brought current in accordance with the terms of the loan agreement. Loans are charged off when foreclosure of the property is complete and the property is transferred to Real estate owned at its estimated net realizable value.

## **8. Mortgages Held-for-Sale**

Mortgages held-for-sale consists primarily of Alt-A mortgages, which are secured by one-to-four family properties, located throughout the United States. The mortgage operations acquire and originate mortgages generally with the intent to sell them in the secondary market (primarily in REMIC securitizations and on a whole loan basis) or to the long-term investment operations. Mortgages held-for-sale are carried at the lower of aggregate cost net of purchase discounts or premiums and deferred fees, or market value. We determine the fair value of mortgages held-for-sale using current secondary market prices for loans with similar coupons, maturities and credit quality.

SFAS 140 requires that a transfer of financial assets in which we surrender control over the assets be accounted for as a sale to the extent that consideration other than beneficial interests in the transferred assets is received in exchange. SFAS 140 requires a "true sale" analysis of the treatment of the transfer under law as if the Company was a debtor under the bankruptcy code. A "true sale" legal analysis includes several legally relevant factors, such as the nature and level of recourse to the transferor and the nature of retained servicing rights. Once the legal isolation test has been met under SFAS 140, other factors concerning the nature and extent of the transferor's control over the transferred assets are taken into account in order to determine whether de-recognition of assets is warranted, including whether the SPE has complied with rules concerning QSPEs.

A legal opinion regarding legal isolation for each securitization has been obtained by the Company. The "true sale" opinion provides reasonable assurance the purchased assets would not be characterized as the property of the transferring Company's receivership or conservatorship estate in the event of insolvency and also states the transferor would not be required to substantively consolidate the assets and liabilities of the SPE with those of the transferor upon such event.

The REMIC securitization process involves the sale of the loans to one of our wholly-owned bankruptcy remote special-purpose entities which then sells the loans to a separate, transaction-specific securitization trust in exchange for cash and certain trust interests that we retain. The securitization trust issues and sells undivided interests to third party investors that entitle the investors to specified cash flows generated from the securitized loans. These undivided interests are usually represented by certificates with varying interest rates, and are secured by the payments on the loans acquired by the trust, and commonly include senior and subordinated classes. The senior class securities are usually rated "AAA" by at least two of the major independent rating agencies and have priority over the subordinated classes in the receipt of payments. We have no obligation to provide funding support to either the third party investors or the securitization trusts. The third party investors or the securitization trusts generally have no recourse to our assets or us and have no ability to require us to repurchase their securities other than standard representations and warranties. We do make certain representations and warranties concerning the loans, such as lien status or mortgage insurance coverage, and if we are found to have breached a representation or warranty we may be required to repurchase the loan from the securitization trust. We do not guarantee any certificates issued by the securitization trusts. Generally, the securitization trusts represent QSPEs and meet the requirements for sale treatment under SFAS 140, and are therefore not consolidated for financial reporting purposes. In the event that a REMIC securitization trust does not meet sale accounting and QSPE criteria, the securitization is treated as a secured borrowing and consolidation is assessed pursuant to FIN 46R.

In addition to the cash the securitization trust pays to the Company for the loans, we may retain certain interests in the securitization trust as part of the trust's payment to us for the loans. These retained interests may include subordinated classes of securities, interest-only securities, residual securities and master servicing rights. These retained interests are accounted for as investment securities available-for-sale in other assets in the consolidated balance sheets. Transaction costs associated with the securitizations are recognized as a component of the gain or loss at the time of sale.

When the Company securitizes mortgage loans, the carrying value of the mortgages sold is allocated between the loans sold and the retained interests based on their relative fair values. Our recognition of gain or loss on the sale of loans from REMIC securitizations is accounted for in accordance with SFAS 140 and represents the difference between the cash proceeds and the allocated cost of the loans sold and interests retained. At the closing of each securitization, mortgages held-for-sale are removed from the consolidated balance sheets and cash received and any portion of the mortgages retained from the securitizations (retained interests) are added to the consolidated balance sheet.

Retained interests are amortized over the expected repayment life of the underlying loans. The Company evaluates quarterly the carrying value of its retained interest in light of the actual repayment experience of the underlying loans and makes adjustments to reduce the carrying value, if appropriate. Amortization of the retained interest is included in interest income in the consolidated statement of operations and comprehensive earnings.

## 9. Derivative Instruments

Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities," (SFAS 133), subsequently amended by SFAS 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities," establishes accounting and reporting standards for derivative instruments, including a number of derivative instruments embedded in other contracts, and for hedging activities. It requires that an entity recognizes all derivatives as either assets or liabilities in the balance sheet and measure those instruments at fair value. If specific conditions are met, a derivative may be specifically designated as (1) a hedge of the exposure to changes in the fair value of a recognized asset or liability or an unrecognized firm commitment; (2) a hedge of the exposure to variable cash flows of a forecasted transaction; or (3) a hedge of the foreign currency exposure of a net investment in a foreign operation, an unrecognized firm commitment, an available-for-sale security or a foreign-currency-denominated forecasted transaction. For derivatives that are not designated as a hedging instrument, any change in fair value is recorded as an expense or income in the current period. The maximum length of time we mitigate interest rate risk using derivative instruments is currently 5 years.

### *Loan Commitments*

We enter into commitments to make loans whereby the interest rate on the loan is set prior to funding. We enter commitments on an individual loan basis, referred to as an Interest Rate Lock Commitment (IRLC), and on a bulk purchase basis, referred to as bulk purchase commitments (collectively referred to as "loan commitments"). These loan commitments are considered to be derivatives and are recorded at fair value in the consolidated balance sheets. The change in fair value of derivative instruments are recorded in the consolidated statements of operations and comprehensive earnings. Subsequent to the April 1, 2004 issuance of Staff Accounting Bulletin No. 105 "Application of Accounting Principles to Loan Commitments," (SAB 105), when measuring the fair value of interest rate lock commitments, the amount of the expected servicing rights is not included in the valuation. The fair value is calculated and adjusted using an anticipated fallout factor for loan commitments that are not expected to be funded.

Unlike most other derivative instruments, there is no active market for the loan commitments that can be used to determine their fair value. Consequently, we have developed a method for estimating the fair value of our loan commitments. The fair value of the loan commitments are determined by calculating the change in market value from the point of commitment date to the measurement date based upon changes in interest rates during the period, adjusted for an anticipated fallout factor for loan commitments that are not expected to fund. Under this fair value methodology, the loan commitment has zero value on day one and all future value is the result of changes in interest rates, exclusive of any inherent servicing value.

### *Forward Sale Commitments*

The policy of recognizing the fair value of the loan commitments has the effect of recognizing a gain or loss on the related mortgage loans based on changes in the interest rate environment before the mortgage loans are funded and sold. As such, loan commitments expose us to interest rate risk. We mitigate such risk by entering into forward sale commitments, such as mandatory commitments on U.S. Treasury bonds and mortgage-backed securities, call options and put options. These forward sale commitments are treated as derivatives under the provisions of SFAS 133, with the change in fair value of derivative instruments reported as such in the consolidated statement of operations.

The fair value of our forward sale commitments are generally based on market prices provided by dealers, which make markets in these financial instruments.

### *Interest Rate Swaps, Caps, and Floors*

Our 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 CMO and short-term borrowings under reverse repurchase agreements. We also monitor on an ongoing basis the prepayment risks that arise in fluctuating interest rate environments. Our interest rate risk management policies are formulated with the intent to offset the potential adverse effects of changing interest rates on CMO and reverse repurchase borrowings.

To mitigate exposure to the effect of changing interest rates on cash flows on CMO and reverse repurchase borrowings, we purchase 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). The swaps, caps and floors are treated as derivatives under the provisions of SFAS 133, with changes in fair value of derivative instruments reported as such in the consolidated statements of operations. Cash paid or received on swaps, caps and floors is recorded as a current period expense or income as realized gain (loss) on derivative instruments in the consolidated statements of operations.

The fair value of our interest rate swaps, caps, floors and other derivative transactions are generally based on market prices provided by dealers, which make markets in these financial instruments.

### *Credit Risk*

The Company's exposure to credit risk on derivative instruments is limited to the cost of replacing contracts should the counterparty fail. The Company seeks to minimize credit risk through the use of credit approval and review processes, the selection of only the most creditworthy counterparties, continuing review and monitoring of all counterparties, exposure reduction techniques and thorough legal scrutiny of agreements.

## **10. CMO Borrowings**

The decision to issue CMOs is based on our current and future investment needs, market conditions and other factors. CMOs, which are primarily secured by Alt-A mortgages on single-family and multi-family residential real properties, are issued as a means of financing our long-term mortgage portfolio. CMOs are carried at their outstanding principal balances, including securitization costs and accrued interest on such obligations. For accounting purposes, mortgages financed through the issuance of CMOs are treated as assets and the CMOs are treated as debt when the CMO qualifies as a secured borrowing arrangement.

In 2005, we completed the ISAC REMIC 2005-2 securitization which was treated as a sale for tax purposes but treated as a secured borrowing for GAAP purposes and consolidated in the financial statements. The associated collateral and borrowings have been included in the CMOs for reporting purposes. Reference to "CMO collateral" or "CMO borrowings" or "CMO" includes the REMIC 2005-2 securitization collateral and related borrowings.

Each issuance of a CMO is fully payable from the principal and interest payments on the underlying mortgages collateralizing such debt. CMOs typically are structured as one-month London Interbank Offered Rate (LIBOR) "floaters" and

fixed rate securities with interest payable to certificate holders monthly. The maturity of each class of CMO is directly affected by the rate of principal prepayments on the related CMO collateral. Each CMO series is also subject to redemption according to specific terms of the respective indentures. As a result, the actual maturity of any class of a CMO series is likely to occur earlier than the stated maturities of the underlying mortgages.

When we issue CMOs for financing purposes, we generally seek an investment grade rating for our CMOs by nationally recognized rating agencies. To secure such ratings, it is often necessary to incorporate certain structural features that provide for credit enhancement. This can include the pledge of collateral in excess of the principal amount of the securities to be issued, a bond guaranty insurance policy for some or all of the issued securities, or additional forms of mortgage insurance. The need for additional collateral or other credit enhancements depends upon factors such as the type of collateral provided, the interest rates paid, the geographic concentration of the mortgaged property securing the collateral and other criteria established by the rating agencies. The pledge of additional collateral reduces our capacity to raise additional funds through short-term secured borrowings or additional CMOs and diminishes the potential expansion of our long-term mortgage portfolio. Our total loss exposure is limited to the net economic investment in the CMOs at any point in time.

#### **11. Gain on Sale of Mortgage Servicing Rights**

The sub-servicing of mortgage servicing rights created in our CMO and REMIC securitizations are generally sold to third parties concurrent with the securitization of the mortgages. We believe that the sale of sub-servicing is consistent with the accounting for the sale of servicing, therefore, the sales of mortgage servicing rights are recognized in accordance with AICPA Statement of Position 01-6, "Accounting by Certain Entities (Including Entities with Trade Receivables) that Lend to or Finance the Activities with Others" (SOP 01-6) and Emerging Issues Task Force No. 95-5, "Determination of What Risks and Rewards, If any, Can be Retained and Whether Any Unresolved Contingencies May Exist in a Sale of Mortgage Loan Servicing Rights" when the following conditions have been met: (1) title has passed, (2) substantially all risks and rewards of ownership have irrevocably passed to the buyer and (3) any protection provisions retained by the seller are minor and can be reasonably estimated. The Company believes that based on the terms and conditions of the related sales agreements all of the above conditions have been met.

The gains or losses on sale of mortgage servicing rights to third parties, where the underlying mortgage is in a CMO securitization, are accounted for in accordance with the provisions in SOP 01-6. Under SOP 01-6, for sales of mortgage servicing rights with the loans being retained, the carrying value of the loan is allocated between the loan basis and the mortgage servicing rights basis consistent with the relative fair value method prescribed in SFAS 140. As a result, only a nominal gain is realized from the sale of mortgage servicing rights and a discount is recorded on the mortgages retained as CMO collateral and mortgages held-for-investment. The discount is amortized to interest income over the estimated life of the mortgages using the interest method as an adjustment to the yield of the mortgages. Management utilizes an estimate of the prepayment rate of the mortgages to forecast the remaining average life of the mortgages.

The gains or losses on sale of mortgage servicing rights to third parties in REMIC securitizations are accounted for in accordance with SFAS 140 and SOP 01-6 and recorded in gain loss on the consolidated statement of operations. Since the sale of the mortgage servicing rights to third parties generally occurs concurrently with the REMIC securitization, the carrying value of the securitized mortgage loans is allocated between the mortgages sold, mortgage servicing rights to be sold, and retained interests (master servicing rights) based on their relative fair values. A gain or loss on sale of mortgage servicing rights is based upon the difference between its sales price and associated relative fair value and is recorded as gain on sale of loans in the consolidated statement of operations and comprehensive earnings.

#### **12. Master Servicing Rights**

Generally, master servicing rights are retained when the sub-servicing of mortgage servicing rights are sold and the corresponding mortgages are retained in CMO securitization. In addition, master servicing rights are generally retained when the sub-servicing of mortgage servicing rights are sold and the corresponding mortgages are sold in REMIC securitizations. The retained master servicing rights are recorded as a separate retained asset in accordance with SFAS 140 in the REMIC securitizations, while in the CMO securitizations such rights remain as part of the retained mortgage loans.

Master servicing rights retained in REMIC securitizations are recorded in other assets in the consolidated balance sheets. The Company records master servicing rights arising from the transfer of mortgages to the securitization trusts utilizing the relative fair value allocation method based upon an estimate of what a third party would pay for the master servicing rights. The master servicing rights are amortized in proportion to and over the estimated period of net servicing income. The Company subsequently evaluates and measures the master servicing rights for impairment using a discounted cash flows valuation model to estimate the fair value. The valuation model incorporates assumptions relating to market discount rates, float values, prepayment speeds, master servicing fees and default rates. An impairment loss is recognized for master servicing rights that have an unamortized balance in excess of the estimated fair value. Master servicing rights retained in CMO securitizations remain as part of the mortgage loan balance and are accounted for as part of such loan.

The servicing fee income associated with the master servicing rights is reported in other income in the consolidated statements of operations. Also reported in other income is any sub-servicing expense incurred during the period prior to the securitization. The amortization and impairment of mortgage servicing rights are classified separately in the consolidated statements of operations.

Master servicing fees are generally 0.03% per annum on the declining principal balances of the mortgages serviced. The value of master servicing fees is subject to prepayment and interest rate risks on the transferred financial assets. The carrying value of master servicing rights was \$2.5 million and \$3.5 million as of December 31, 2005 and 2004, respectively.

As of December 31, 2005, we master serviced mortgages for others of approximately \$4.9 billion that were primarily mortgages collateralizing REMIC securitizations. Related fiduciary funds are held in trust for investors in non-interest bearing accounts. We may also be required to advance funds or we may cause our loan servicers to advance funds to cover interest payments not received from borrowers depending on the status of their mortgages.

### **13. Investment Securities**

Investment securities are classified as available-for-sale and are included in other assets on our consolidated balance sheets. Available-for-sale securities are reported at fair value with unrealized gains and losses as other comprehensive earnings. Gains and losses realized on the sale of available-for-sale investment securities and declines in value judged to be other-than-temporary are based on the specific identification method and reported in current earnings. Premiums or discounts obtained on investment securities are accreted or amortized to interest income over the estimated life of the investment securities using the effective interest method. Investment securities may be subject to credit, interest rate and/or prepayment risk.

### **14. Income Taxes**

We operate so as to qualify as a REIT under the requirements of the Internal Revenue Code (the Code). Requirements for qualification as a REIT include 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. A REIT must distribute at least 90% of its taxable income to its stockholders of which 85% must be distributed within the taxable year in order to avoid the imposition of an excise tax. The remaining balance may extend until timely filing of our tax return in the subsequent taxable year. Qualifying distributions of taxable income are deductible by a REIT in computing taxable income. If in any tax year IMH should not qualify as a REIT, we would be taxed as a corporation and distributions to stockholders would not be deductible in computing taxable income. If IMH were to fail to qualify as a REIT in any tax year, we would not be permitted to qualify for that year and the succeeding four years.

IFC is a taxable REIT subsidiary (TRS) and is therefore subject to corporate income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax base. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

In accordance with Accounting Research Bulletin No. 51, "Consolidated Financial Statements," the Company records a deferred charge to eliminate the expense recognition of income taxes paid on inter-company profits that result from the sale of mortgages from IFC to IMH. The deferred charge is included in other assets in the consolidated balance sheets. The deferred charge is amortized as non-interest expense in the consolidated statements of operations over the estimated life of the mortgages retained in the long-term mortgage portfolio.

## 15. Net Earnings per Share

Basic net earnings per share are computed on the basis of the weighted average number of shares outstanding for the year divided into net earnings available to common stockholders for the year. Diluted net earnings per share are computed on the basis of the weighted average number of shares and dilutive common equivalent shares outstanding for the year divided by net earnings available to common stockholders for the year.

## 16. Stock Options

Stock options and awards may be granted to the members of the board of directors, officers and key employees. The exercise price for any qualified incentive stock options (ISOs), non-qualified stock options (NQSOs) granted under our stock option plans may not be less than 100% (or 110% in the case of ISOs granted to an employee who is deemed to own in excess of 10% of the outstanding common stock) of the fair market value of the shares of common stock at the time the NQSO or ISO is granted.

In December 2002 the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation—Transition and Disclosure" (SFAS 148), an amendment of FASB Statement No. 123, "Accounting for Stock-Based Compensation," (SFAS 123). SFAS 148 amends FASB 123 to provide alternative methods of transition for a voluntary change to the fair value method of accounting for stock-based employee compensation. In addition, SFAS 148 amends the disclosure requirements of SFAS 123 to require prominent disclosures in both annual and interim financial statements. On January 1, 2003, IMH adopted the disclosure requirements of SFAS 148. This statement establishes financial accounting standards for stock-based employee compensation plans. SFAS 123 permits management to choose either a fair value based method or the Accounting Principals Board Opinion No. 25 "Accounting For Stock Issued to Employees" (APB 25) intrinsic value based method of accounting for its stock-based compensation arrangements. SFAS 123 requires pro forma disclosures of net earnings (loss) computed as if the fair value based method had been applied in financial statements of companies that continue to follow current practice in accounting for such arrangements under APB 25. SFAS 123 applies to all stock-based employee compensation plans in which an employer grants shares of its stock or other equity instruments to employees except for employee stock ownership plans. SFAS 123 also applies to plans in which the employer incurs liabilities to employees in amounts based on the price of the employer's stock, i.e., stock option plans, stock purchase plans, restricted stock plans and stock appreciation rights. The statement also specifies the accounting for transactions in which a company issues stock options or other equity instruments for services provided by non-employees or to acquire goods or services from outside suppliers or vendors.

The Company applies APB 25 in accounting for stock-based awards to employees. No compensation cost has been recognized for stock-based awards to employees as the stock option exercise price is equal to the fair market value of the underlying common stock as of the stock option grant date. Summarized below are the pro forma effects on net earnings and

earnings per share data, as if the Company had elected to use the fair value approach prescribed by SFAS 123 to account for its employee stock-based compensation plans:

	<b>For the year ended December 31,</b>		
	<b>2005</b>	<b>2004</b>	<b>2003</b>
Net earnings available to common stockholders	\$ 255,728	\$ 253,887	\$ 148,979
Less: Total stock-based employee compensation expense using the fair value method	(2,420)	(1,705)	(1,158)
<b>Pro forma net earnings</b>	<b>\$ 253,308</b>	<b>\$ 252,182</b>	<b>\$ 147,821</b>
Net earnings per share as reported:			
Basic	\$ 3.38	\$ 3.79	\$ 2.94
Diluted	\$ 3.35	\$ 3.72	\$ 2.88
Pro forma net earnings per share:			
Basic	\$ 3.35	\$ 3.77	\$ 2.91
Diluted	\$ 3.34	\$ 3.71	\$ 2.85

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

	<b>For the year ended December 31,</b>		
	<b>2005</b>	<b>2004</b>	<b>2003</b>
Risk-free interest rate	3.90%-4.26%	2.16%-4.50%	1.56%-4.18%
Expected lives (in years)	3	3 - 4	3
Expected volatility	34.75%	42.26%	28.83%
Expected dividend yield	10.00%	10.00%	10.00%
Fair value per share	\$ 1.79	\$ 3.71	\$ 1.09

During the periods in which the mortgage operations were accounted for under the equity method, grants of stock options by IMH to IFC employees were not accounted for under APB 25 but were accounted for at fair value consistent with the provisions specified under SFAS 123. See New Accounting Pronouncements in Note A.19.

## 17. Recent Accounting Pronouncements

In December 2004, the FASB issued SFAS No. 123 (revised 2004), "Share-Based Payment" ("SFAS 123(R)"), which amends SFAS 123, "Accounting for Stock-Based Compensation", supercedes APB Opinion No. 25, "Accounting for Stock Issued to Employees", and amends SFAS 95, "Statement of Cash Flows." SFAS 123(R) requires companies to measure all employee stock-based compensation awards using a fair value method and record such expense in its consolidated financial statements. In addition, the adoption of SFAS 123(R) requires additional accounting and disclosure related to the income tax and cash flow effects resulting from share-based payment arrangements. SFAS 123(R) is effective beginning as of the first annual reporting period beginning after June 15, 2005. The Company will be applying the modified prospective method of transition. As permitted by SFAS 123, the Company currently accounts for share-based payments to employees using the intrinsic value method and, as such, generally recognizes no compensation cost for employee stock options. Accordingly, the adoption of SFAS 123(R)'s fair value method will not have a significant impact on the Company's result of operations, or its overall financial position. The future impact of adoption of SFAS 123(R) cannot be predicted at this time because it will depend on levels of share-based payments granted in the future. However, if the Company had adopted SFAS 123(R) in prior periods, the impact of that standard would have approximated the impact of SFAS 123 as described in the disclosure of pro forma net income and earnings per share in Note A.15 to the Company's consolidated financial statements. SFAS 123(R) also requires the benefits of tax deductions in excess of recognized compensation cost to be reported as a financing cash flow, rather than as an operating cash flow as required under current literature. This requirement will reduce net operating cash flows and increase net financing cash flows in periods after adoption.



**Note B—Mortgages Held-for-Sale**

Mortgages held-for-sale for the periods indicated consists of the following:

	At December 31,	
	2005	2004
Mortgages held-for-sale	\$ 2,027,194	\$ 576,777
Change in fair value of mortgages held-for-sale	(4,465)	-
Net premiums on mortgages held-for-sale	29,965	10,968
Total mortgages held-for-sale	\$ 2,052,694	\$ 587,745

The provision for loan repurchases and gains and losses on repurchases are recorded against the gain on mortgages held-for-sale. Included in other liabilities as of December 31, 2005 and 2004, was a liability for mortgage repurchases of \$10.4 million and \$2.2 million, respectively. The liability for mortgage repurchases is maintained for the purpose of purchasing previously sold mortgages for various reasons, including early payment defaults or breach of representations or warranties, which may be subsequently sold at a loss. In determining the adequacy of the liability for mortgage repurchases, management considers such factors as specific requests for repurchase, known problem loans, underlying collateral values, recent sales activity of similar loans and other appropriate information. In the opinion of management, the potential exposure related to these representations and warranties will not have a material adverse effect on our financial condition and results of operations.

During 2005, 2004 and 2003, the provision for loan repurchases was \$5.8 million, \$405 thousand and \$1.5 million respectively. The loss (gain) on sale of repurchased mortgages for 2005, 2004, and 2003 was \$1.8 million, (\$549) thousand and (\$902) thousand, respectively.

**Note C—CMO Collateral**

CMO collateral for the periods indicated consists of the following:

	At December 31,	
	2005	2004
Mortgages secured by single-family residential real estate	\$ 23,021,760	\$ 20,428,144
Mortgages secured by multi-family residential real estate	1,195,541	604,934
Net unamortized premiums on mortgages	276,989	275,828
Total CMO collateral	\$ 24,494,290	\$ 21,308,906

**Note D—Mortgages Held-for-Investment**

Mortgages held-for-investment for the periods indicated consists of the following:

	At December 31,	
	2005	2004
Mortgages secured by single-family residential real estate	\$ 5,183	\$ 497,756
Mortgages secured by multi-family residential real estate	153,583	77,809
Net unamortized premiums on mortgages	1,304	11,121
Total mortgages held-for-investment	\$ 160,070	\$ 586,686

As of December 31, 2005 and 2004, there were \$2.3 million and \$14.9 million, respectively, of mortgages held-for-investment, which were not accruing interest due to the delinquent nature of the mortgages.

#### Note E—Allowance for Loan Losses

The allowance for loan loss is comprised of the following:

	At December 31,	
	2005	2004
CMO collateral and mortgages held-for-investment	\$ 55,007	\$ 53,272
Specific reserve for finance receivables	10,683	10,683
Specific reserve for estimated hurricane losses	12,824	-
Total allowance for loan losses	\$ 78,514	\$ 63,955

Activity for allowance for loan losses was as follows:

	For the year ended December 31,		
	2005	2004	2003
Beginning balance	\$ 63,955	\$ 38,596	\$ 26,602
Provision for loan losses (1)	30,563	30,927	24,853
Charge-offs, net of recoveries	(16,004)	(5,568)	(12,859)
Total allowance for loan losses	\$ 78,514	\$ 63,955	\$ 38,596

- (1) For the year ended December 31, 2005, the Company reviewed the properties in areas affected by hurricanes Katrina, Rita and Wilma and recorded a specific reserve of \$12.8 million for the estimated loss exposure for 886 properties securing a total unpaid principal balance of \$183.7 million in the affected areas. The amount of the provision may be adjusted in the future as more information becomes available. The provision for loan losses for the year ended December 31, 2004 includes a specific impairment on warehouse advances of \$10.7 million.

#### Note F—Other Assets

Other assets consist of the following for the periods presented:

	At December 31,	
	2005	2004
Deferred charge (Note K)	\$ 47,406	\$ 48,211
Prepaid and other assets	34,422	35,423
Investment securities available-for-sale	40,227	25,427
Cash margin balances	16,567	7,902
Investments for deferred compensation plan	8,041	4,189
Real estate owned	46,351	18,277
Premises and equipment, net	12,312	9,092
Deferred income taxes (Note K)	12,160	5,328
Investment in Impac Capital Trust (Note U)	2,884	-
Total other assets	\$ 220,370	\$ 153,849

The amortized cost and estimated fair value of investment securities available-for-sale for the periods indicated are presented as follows:

	Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Estimated Fair Value
<b>As of December 31, 2005:</b>				
Subordinated securities secured by mortgages	\$ 39,775	\$ 963	\$ (511)	\$ 40,227
Restricted investments (1)	7,187	854	-	8,041
	<u>\$ 46,962</u>	<u>\$ 1,817</u>	<u>\$ (511)</u>	<u>\$ 48,268</u>
<b>As of December 31, 2004:</b>				
Subordinated securities secured by mortgages	\$ 24,851	\$ 905	\$ (329)	\$ 25,427
Restricted investments (1)	3,786	403	-	4,189
	<u>\$ 28,637</u>	<u>\$ 1,308</u>	<u>\$ (329)</u>	<u>\$ 29,616</u>

(1) Investments related to the Company's deferred compensation program are classified as available-for-sale.

As of December 31, 2005, no investment securities available-for-sale were placed on deposit (pledged) with third parties compared to \$15.3 million as of December 31, 2004. The securities are pledged as collateral for margin calls on derivative instruments if necessary, depending on the change in the fair value of the derivative instruments. Gross realized gains from the sale of investment securities available-for-sale were \$49 thousand and \$5.1 million for the years ended December 31, 2005 and 2004, respectively. During the year ended December 31, 2005 and 2004, we received none and \$389 thousand, respectively, of recoveries on investment securities available-for-sale that were written-off in prior periods.

Real estate owned, which consists of residential real estate acquired in satisfaction of loans, is carried at the lower of cost or estimated fair value less estimated selling costs. Adjustments to the loan carrying value required at the time of foreclosure are charged off against the allowance for loan losses. Losses or gains from the ultimate disposition of real estate owned are recorded as (gain) loss on sale of other real estate owned in the consolidated statement of operations.

Premises and equipment are stated at cost, less accumulated depreciation or amortization. Depreciation on premises and equipment is recorded using the straight-line method over the estimated useful lives of individual assets, typically, three to twenty years. Premises and equipment consisted of the following for the periods indicated:

	At December 31,	
	2005	2004
Premises and equipment	\$ 32,242	\$ 24,250
Less: Accumulated depreciation	(19,930)	(15,158)
<b>Total premises and equipment</b>	<u>\$ 12,312</u>	<u>\$ 9,092</u>

## Note G—Reverse Repurchase Agreements

We enter into reverse repurchase agreements with major brokerage firms to finance our warehouse lending operations and to fund the purchase of mortgages. Reverse repurchase agreements consist of uncommitted lines, which may be withdrawn at any time by the lender, and committed lines. A reverse repurchase agreement, although structured as a sale and repurchase obligation, acts as a financing vehicle under which we effectively pledge mortgages as collateral to secure a short-term loan. Generally, the other party to the agreement makes the loan in an amount equal to a percentage of the market value of the pledged collateral. At the maturity of the reverse repurchase agreement, we are required to repay the loan and correspondingly receive our collateral. Under reverse repurchase agreements, we retain the beneficial ownership, including the right to distributions on the collateral and the right to vote on matters as to which certificate holders vote. Upon payment default, the lending party may liquidate the collateral. Our borrowing agreements require us to pledge cash, additional mortgages or additional assets in the event the market value of existing collateral declines. We may be required to sell assets to reduce our borrowings to the extent that cash reserves are insufficient to cover such deficiencies in collateral. As of December 31, 2005, the warehouse lending operations had a total of \$4.3 billion of reverse repurchase facilities. Committed facilities comprised of \$125 million of the total available facilities, with uncommitted facilities totaling \$4.175 billion. As of December 31, 2005 and 2004, reverse repurchase agreements include accrued interest payable of \$12.1 million and \$5.2 million, respectively.

The following tables present certain information on reverse repurchase agreements for the periods indicated:

	<b>Maximum Borrowing Capacity</b>	<b>Rate Range</b>	<b>Range of Allowable Advance Rates (%)</b>	<b>Balance Outstanding</b>	<b>Maturity Date</b>
<b>December 31, 2005</b>					
Short-term borrowings (indexed to one month LIBOR):					
Repurchase agreement 1	\$ 500,000	0.75-1.50%	90 - 97	\$ 154,163	No Expiration
Repurchase agreement 2	700,000	0.88-1.50%	93 - 98	436,909	December 8, 2006
Repurchase agreement 3	400,000	0.93-1.13%	95.5 - 99	223,079	March 15, 2006
Repurchase agreement 4	1,200,000	0.70-1.00%	70 - 98	1,145,075	No Expiration
Repurchase agreement 5	1,500,000	0.93%	90 - 98	441,675	March 29, 2006
Repurchase agreement 6	29,174	0.40%	80	29,174	No Expiration
<b>Total short-term borrowings</b>	<b>\$ 4,329,174</b>			<b>\$ 2,430,075</b>	

	<b>Maximum Borrowing Capacity</b>	<b>Rate Range</b>	<b>Range of Allowable Advance Rates (%)</b>	<b>Balance Outstanding</b>
<b>December 31, 2004</b>				
Short-term borrowings (indexed to one month LIBOR):				
Repurchase agreement 1	\$ 250,000	0.75-1.50%	90 - 97	\$ 62,480
Repurchase agreement 2	700,000	0.88-1.50%	93 - 98	485,041
Repurchase agreement 3	700,000	0.93-1.13%	95.5 - 99	212,996
Repurchase agreement 4	1,200,000	0.70-1.00%	70 - 98	539,233
Repurchase agreement 5	500,000	0.93%	90 - 98	227,808
<b>Total short-term borrowings</b>	<b>\$ 3,350,000</b>			<b>\$ 1,527,558</b>

The following table presents certain information on reverse repurchase agreements for the periods indicated:

	For the year ended December 31,	
	2005	2004
Maximum month-end outstanding balance during period	\$ 3,963,788	\$ 2,253,540
Average balance outstanding for period	2,730,805	2,175,728
Underlying collateral (mortgage loans)	2,603,917	1,629,486
Weighted average rate for period	4.46%	2.66%

#### Note H—CMO Borrowings

The following table presents CMOs issued and outstanding for the periods indicated and certain interest rate information on CMOs by year of issuance for the periods indicated (dollars in millions):

Year of Issuance	Original Issuance Amount	CMOs Outstanding as of		Range of (%):		
		12/31/2005	12/31/2004	Fixed Interest Rates	Interest Rate Margins over One-Month LIBOR (1)	Interest Rate Margins after Adjustment Date (2)
2002	\$ 3,876.1	\$ 219.8	\$ 1,237.3	5.25 - 12.00	0.27 - 2.75	0.54 - 3.68
2003	5,966.1	1,723.0	3,615.8	4.34 - 12.75	0.27 - 3.00	0.54 - 4.50
2004	17,710.7	10,191.9	16,407.5	3.58 - 5.56	0.25 - 2.50	0.50 - 3.75
2005	13,387.7	11,902.9	-	-	0.24 - 2.90	0.48 - 4.35
Subtotal CMO borrowings		24,037.6	21,260.6			
Accrued interest expense		18.1	12.9			
Unamortized securitization costs		(65.3)	(67.1)			
Total CMO Borrowings		\$ 23,990.4	\$ 21,206.4			

(1) One-month LIBOR was 4.39% as of December 31, 2005.

(2) Interest rate margins are generally adjusted when the unpaid principal balance is reduced to less than 10-20% of the original issuance amount.

Expected principal maturity of the CMO borrowings, which is based on expected prepayment rates, is as follows (dollars in millions):

	Payments Due by Period				
	Total	Less Than One Year	One to Three Years	Three to Five Years	More Than Five Years
CMO borrowings	\$ 24,037.6	\$ 9,733.4	\$ 9,173.3	\$ 3,330.9	\$ 1,800.0

#### Note I—Segment Reporting

Management internally reviews and analyzes its operating segments as follows:

- long-term investment operations that are conducted by IMH, IMH Assets and IMCC invest primarily in Alt-A ARMs and, to a lesser extent, Alt-A FRMs acquired from the mortgage operations and multi-family mortgages;

- warehouse lending operations that are conducted by IWLG provide warehouse and repurchase financing to affiliated companies and to approved mortgage bankers and brokers, some of which are clients of the mortgage operations, to finance mortgages; and
- mortgage operations that are conducted by IFC and its wholly-owned subsidiaries ISAC and Novelle, the operations of which were combined with IFC, acquire and originate primarily ARMs and FRMs and, to a lesser extent, B/C mortgages from its network of third party correspondents, mortgage brokers and retail customers.

The accounting policies of the operating segments are the same as those described in the summary of significant accounting policies except for the elimination of inter-company profits and the related tax effect that result from the sale of mortgages from the mortgage operations to the long-term investment operations. Rent expense related to the facilities are allocated among the operating segments based on square footage. Personnel, legal and marketing costs are allocated among the operating segments based upon their estimated usage.

The following table presents reporting segments as of and for the year ended December 31, 2005:

<b>Balance Sheet Items as of December 31, 2005:</b>	<b>Long-Term Investment Operations</b>	<b>Warehouse Lending Operations</b>	<b>Mortgage Operations (IFC)</b>	<b>Inter- Company (1)</b>	<b>Consolidated</b>
Cash and cash equivalents	\$ 105,292	\$ 32,353	\$ 63,596	\$ (54,620)	\$ 146,621
CMO collateral and mortgages held-for-investment	24,784,954	-	-	(130,594)	24,654,360
Allowance for loan losses	(67,831)	(10,683)	-	-	(78,514)
Mortgages held-for-sale	-	-	2,052,694	-	2,052,694
Finance receivables	-	2,488,364	-	(2,138,147)	350,217
Other assets	202,571	109,787	80,531	202,112	595,001
<b>Total assets</b>	<b>25,024,986</b>	<b>2,619,821</b>	<b>2,196,821</b>	<b>(2,121,249)</b>	<b>27,720,379</b>
Total liabilities	24,026,788	2,401,443	2,096,280	(1,971,079)	26,553,432
Total stockholders' equity	998,198	218,378	100,541	(150,170)	1,166,947

**Statement of Operations Items for the  
year ended December 31, 2005:**

Net interest income	\$ 74,604	\$ 55,725	\$ 3,824	\$ 70,598	\$ 204,751
Provision for loan losses	30,563	-	-	-	30,563
Realized gain (loss) from derivatives	22,595	-	-	-	22,595
Change in fair value of derivatives	155,695	-	(10,763)	-	144,932
Other non-interest income	1,528	7,760	130,783	(86,674)	53,397
Non-interest expense and income taxes	14,083	7,542	108,876	(5,647)	124,854
<b>Net earnings</b>	<b>\$ 209,776</b>	<b>\$ 55,943</b>	<b>\$ 14,968</b>	<b>\$ (10,429)</b>	<b>\$ 270,258</b>

(1) Statement of operations items are net of adjustments on inter-company sales transactions.

The following table presents reporting segments as of and for the year ended December 31, 2004:

<b>Balance Sheet Items as of December 31, 2004:</b>	<b>Long-Term Investment Operations</b>	<b>Warehouse Lending Operations</b>	<b>Mortgage Operations (IFC)</b>	<b>Inter- Company (1)</b>	<b>Consolidated</b>
Cash and cash equivalents	\$ 272,908	\$ 43,821	\$ 34,355	\$ (26,733)	\$ 324,351
CMO collateral and mortgages held-for- investment	22,018,119	-	-	(122,527)	21,895,592
Allowance for loan losses	(53,272)	(10,683)	-	-	(63,955)
Mortgages held-for-sale	-	1,154	586,591	-	587,745
Finance receivables	-	1,605,642	-	(1,133,822)	471,820
Other assets	363,031	50,456	51,377	135,350	600,214
<b>Total assets</b>	<b>22,600,786</b>	<b>1,690,390</b>	<b>672,323</b>	<b>(1,147,732)</b>	<b>23,815,767</b>
<b>Total liabilities</b>	<b>21,695,469</b>	<b>1,528,221</b>	<b>636,527</b>	<b>(1,088,525)</b>	<b>22,771,692</b>
<b>Total stockholders' equity</b>	<b>905,317</b>	<b>162,169</b>	<b>35,796</b>	<b>(59,207)</b>	<b>1,044,075</b>
<b>Statement of Operations Items for the year ended December 31, 2004:</b>	<b>Long-Term Investment Operations</b>	<b>Warehouse Lending Operations</b>	<b>Mortgage Operations (IFC)</b>	<b>Inter- Company(1)</b>	<b>Consolidated</b>
Net interest income	\$ 231,944	\$ 45,822	\$ 14,744	\$ 50,573	\$ 343,083
Provision for loan losses	24,851	6,076	-	-	30,927
Realized gain (loss) from derivatives	(91,881)	-	-	-	(91,881)
Change in fair value of derivatives	96,575	-	-	-	96,575
Other non-interest income	11,617	10,592	130,563	(117,095)	35,677
Non-interest expense and income taxes	8,102	6,899	102,363	(22,474)	94,890
<b>Net earnings</b>	<b>\$ 215,302</b>	<b>\$ 43,439</b>	<b>\$ 42,944</b>	<b>\$ (44,048)</b>	<b>\$ 257,637</b>

(1) Statement of operations items are net of adjustments on inter-company sales transactions.

The following table presents reporting segments for the year ended December 31, 2003:

Balance Sheet Items as of December 31, 2003:	Long-Term Investment Operations	Warehouse Lending Operations	Mortgage Operations (IFC)	Inter- Company (1)	Consolidated
Cash and cash equivalents	\$ 91,274	\$ 32,268	\$ 27,454	\$ (25,843)	\$ 125,153
CMO collateral and mortgages held-for- investment	9,094,503	-	269,679	(67,289)	9,296,893
Allowance for loan losses	(34,739)	(3,857)	-	-	(38,596)
Mortgages held-for-sale	-	2,624	394,994	-	397,618
Finance receivables	-	1,630,979	-	(1,000,949)	630,030
Other assets	54,857	26,285	48,250	37,467	166,859
Total assets	9,205,895	1,688,299	740,377	(1,056,614)	10,577,957
Total liabilities	8,865,020	1,569,569	712,037	(1,041,456)	10,105,170
Total stockholders' equity	340,875	118,730	28,340	(15,158)	472,787

**Statement of Operations Items for the  
year ended December 31, 2003:**

Net interest income	\$ 130,529	\$ 28,950	\$ 8,262	\$ 8,966	\$ 176,707
Provision for loan losses	22,368	2,485	-	-	24,853
Equity in net earnings of IFC	-	-	-	11,537	11,537
Realized gain (loss) from derivatives	(47,847)	-	-	-	(47,847)
Change in fair value of derivatives	31,826	-	-	-	31,826
Other non-interest income	17,615	6,016	55,723	(31,836)	47,518
Non-interest expense and income taxes	4,332	5,012	47,096	(10,531)	45,909
Net earnings	\$ 105,423	\$ 27,469	\$ 16,889	\$ (802)	\$ 148,979

(1) Statement of operations items are net of adjustments on inter-company sales transactions.

**Note J—Fair Value of Financial Instruments**

The estimated fair value amounts 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. 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 following table presents the fair value of financial instruments included in the consolidated balance sheets for the periods presented:

	December 31, 2005		December 31, 2004	
	Carrying Amount	Estimated Fair Value of Financial Instruments	Carrying Amount	Estimated Fair Value of Financial Instruments
<b>Assets</b>				
Cash and cash equivalents	\$ 146,621	\$ 146,621	\$ 324,351	\$ 324,351
Cash margin balances	16,567	16,567	7,902	7,902
Restricted cash	698	698	253,360	253,360
Investment securities available-for-sale	40,227	40,227	25,427	25,427
Investments for deferred compensation plan	8,041	8,041	4,189	4,189
CMO collateral	24,494,290	24,409,599	21,308,906	21,595,622
Mortgages held-for-investment	160,070	156,694	586,686	612,394
Finance receivables	350,217	350,217	471,820	471,820
Mortgages held-for-sale	2,052,694	2,052,694	587,745	601,203
Derivative assets	250,368	250,368	95,388	95,388
<b>Liabilities</b>				
CMO borrowings, excluding accrued interest	\$ 23,972,349	\$ 24,051,587	\$ 21,193,494	\$ 21,163,573
Reverse repurchase agreements	2,430,075	2,430,075	1,527,558	1,527,558
Derivative liabilities	2,495	2,495	4,417	4,417

The fair value estimates as of December 31, 2005 and 2004 are based on pertinent information available to management as of that date. Although management is not aware of any factors that would significantly affect the estimated fair value amounts, such amounts have not been comprehensively revalued for purposes of these consolidated financial statements since those dates and, therefore, current estimates of fair value may differ significantly from the amounts presented.

The following describes the methods and assumptions used by management in estimating fair values:

*Cash and Cash Equivalents, Cash Margin Balances, and Restricted Cash*

Fair value approximates carrying amounts as these instruments are demand deposits and money market mutual funds and do not present unanticipated interest rate or credit concerns.

*Investment Securities Available-for-Sale and Investments for Deferred Compensation Plan*

Fair value is estimated using a discounted cash flow model, which incorporates certain assumptions such as prepayment, yield and losses.

*CMO Collateral*

Fair value is estimated based on quoted market prices from independent dealers and brokers for similar types of mortgages.

### *Finance Receivables*

Fair value approximates carrying amounts due to the short-term nature of the assets and do not present unanticipated interest rate or credit concerns.

### *Mortgages Held-for-Investment*

Fair value is estimated based on estimates of proceeds that could be received from the sale of the underlying collateral of each mortgage.

### *Mortgages Held-for-Sale*

Fair value is estimated based on estimates of proceeds that could be received from the sale of the underlying collateral of each mortgage.

### *CMO Borrowings*

Fair value of CMO borrowings is estimated based on the use of a bond model, which incorporates certain assumptions such as prepayment, yield and losses.

### *Reverse Repurchase Agreements*

Fair value approximates carrying amounts due to the short-term nature of the liabilities and do not present unanticipated interest rate or credit concerns.

### *Derivative Assets and Liabilities*

Fair value is estimated based on quoted market prices from independent dealers and brokers.

## **Note K—Income Taxes**

The following table presents income tax benefit for the periods indicated:

	<b>For the year ended December 31,</b>		
	<b>2005</b>	<b>2004</b>	<b>2003</b>
<b>Current income taxes:</b>			
Federal	\$ 3,233	\$ 18,869	\$ 7,947
State	1,167	5,135	913
<b>Total current income taxes</b>	<b>4,400</b>	<b>24,004</b>	<b>8,860</b>
<b>Deferred income taxes:</b>			
Federal	(602)	396	(3,748)
State	(7,081)	(3,457)	(851)
<b>Total deferred income taxes</b>	<b>(7,683)</b>	<b>(3,061)</b>	<b>(4,599)</b>
<b>Total income taxes at TRS</b>	<b>(3,283)</b>	<b>20,943</b>	<b>4,261</b>
Elimination of income taxes on inter-company profits	(26,368)	(34,393)	(5,658)
<b>Total income tax benefit</b>	<b>\$ (29,651)</b>	<b>\$ (13,450)</b>	<b>\$ (1,397)</b>

Effective income taxes differ from the amount determined by applying the statutory federal rate of 35% for the period indicated as follows:

	For the year ended December 31,		
	2005	2004	2003
Income taxed at federal tax rate	\$ 84,213	\$ 85,465	\$ 51,654
State tax, net of federal income tax	(5,594)	(1,329)	567
Exclusion of REIT income and IFC income prior to consolidation	(93,002)	(90,559)	(50,046)
Amortization of deferred charge(1)	(9,511)	(5,674)	(1,980)
REMIC transaction ISAC 2005-2	(1,909)	-	-
Other	(3,848)	(1,353)	(1,592)
<b>Total income tax benefit</b>	<b>\$ (29,651)</b>	<b>\$ (13,450)</b>	<b>\$ (1,397)</b>

- (1) Included in equity in net earnings of IFC in the consolidated statement of operations during the year ended December 31, 2003 was \$4.3 million of amortization of deferred charge.

The tax affected cumulative temporary differences that give rise to deferred tax assets and liabilities for the periods indicated are as follows:

	At December 31,	
	2005	2004
<b>Deferred tax assets:</b>		
Depreciation and amortization	\$ 340	\$ -
Salary accruals	3,868	4,604
Other accruals	1,743	1,736
Non-accrual loans	685	-
Provision for repurchases	4,601	947
REMIC interest	-	31
FAS 133 valuation	1,492	3,601
Change in fair value of loans held for sale	1,967	-
State net operating loss	7,209	4,707
<b>Total gross deferred tax assets</b>	<b>21,905</b>	<b>15,626</b>
<b>Deferred tax liabilities:</b>		
Mortgage servicing rights	(7,097)	(6,867)
Depreciation and amortization	-	(879)
Non-accrual loans	-	(96)
Other	(2,648)	(2,456)
<b>Total gross deferred tax liabilities</b>	<b>(9,745)</b>	<b>(10,298)</b>
<b>Net deferred tax asset</b>	<b>\$ 12,160</b>	<b>\$ 5,328</b>

Management believes that the deferred tax asset will more likely than not be realized due to the reversal of the deferred tax liability and expected future taxable income. In determining the possible future realization of deferred tax assets, future taxable income from the following sources are taken into account:

- (a) the reversal of taxable temporary differences and (b) future operations exclusive of reversing temporary differences.

As of December 31, 2005, the Company has an estimated federal and California net operating loss tax carry-forward of \$18.1 million and \$66.5 million, respectively. The federal and California net operating loss carry-forward begins to expire in the year 2020 and 2013, respectively.

## **Note L—Employee Benefit Plans**

### *401(k) Plan*

After meeting certain employment requirements, employees can participate in our 401(k) plan. Under the 401(k) plan, employees may contribute up to 25% of their salaries, pursuant to certain restrictions. We match 50% of the first 4% of employee contributions. Additional contributions may be made at the discretion of the board of directors. During the years ended December 31, 2005, 2004 and 2003, we recorded \$950 thousand, \$775 thousand and \$445 thousand, respectively, for matching and discretionary contributions.

### *Deferred Compensation Plan*

The Company maintains a nonqualified deferred compensation plan (the "Deferred Compensation Plan") for certain executives of the Company. Under the Deferred Compensation Plan, eligible participants may defer receipt of up to 50% of their base compensation and up to 100% of their bonuses on a pretax basis until specified future dates, upon retirement or death. The deferred amounts are placed in a trust and invested by the Company. Participants recommend investment vehicles for the funds, subject to approval by the trustees. The balance due each participant increases or decreases as a result of the related investment gains and losses. The trust and the investments therein are assets of the Company and the participants of the Deferred Compensation Plan are general creditors of the Company with respect to benefits due and are recorded in the accompanying consolidated balance sheets. Included in accrued liabilities in the accompanying consolidated balance sheets at December 31, 2005 and 2004 was \$8.1 million and \$5.2 million, respectively, relating to amounts owed by the Company to the plan participants.

Effective January 2006, the Company terminated the Deferred Compensation Plan. The plan was terminated due to market conditions and lack of participation. The amounts held in trust by the Company under this plan were distributed to participants in 2006.

## **Note M—Related Party Transactions**

IFC has entered into an insurance commitment program with Radian Guaranty, Inc. A director of IMH was the Chairman and Chief Executive Officer of Radian Group, Inc. and its principal subsidiary, Radian Guaranty, Inc. until April 30, 2005. Radian Guaranty has agreed to insure mortgage loans acquired or originated by IFC that meet certain credit criteria. IFC pays Radian on a monthly basis. The amount paid depends on the number of mortgage loans insured by Radian and the credit quality of the mortgages. For the year ended December 31, 2005 and 2004, IFC paid an aggregate of approximately \$19.0 and \$12.0 million, respectively, to Radian in connection with the insurance program. This includes only lender paid mortgage insurance.

In May 2005, a director of IMH became Chairman and Chief Executive Officer of Clayton Holdings, Inc., a mortgage underwriting company and a company with which IFC obtains services. For the year ended 2005, IFC paid an aggregate of \$1.0 million Clayton in connection with due diligence services provided.

During the ordinary course of business, loans have been extended to officers and directors of the Company. All such loans are made at the prevailing market rates and conditions existing at the time.

## **Note N—Commitments and Contingencies**

We are a party to financial instruments with off-balance sheet risk in the normal course of business. Such instruments include short-term commitments to extend credit to borrowers under warehouse lines of credit, which involve elements of credit risk, lease commitments, and exposure to credit loss in the event of nonperformance by the counter-parties to the various agreements associated with loan purchases. Unless noted otherwise, we do not require collateral or other security to support

such commitments. We use the same credit policies in making commitments and conditional obligations as we do for on-balance sheet instruments.

#### *Short-Term Loan Commitments*

The warehouse lending operations provide secured short-term revolving financing to small and medium-size mortgage originators to finance mortgages from the closing of the mortgages until sold to permanent investors. As of December 31, 2005, the warehouse lending operations had approved warehouse lines to non-affiliated customers of \$691.5 million, of which \$350.2 million was outstanding, as compared to \$738.7 million and \$471.8 million, respectively, as of December 31, 2004.

#### *Lease Commitments*

The Company leases office space under various operating lease agreements. Minimum premises rental commitments under non-cancelable leases are as follows:

Year 2006	\$	7,641,124
Year 2007		9,586,280
Year 2008		7,881,369
Year 2009		6,781,679
Year 2010 and thereafter		45,921,229
Total lease commitments	\$	77,811,681

Total rental expense for the years ended December 31, 2005, 2004 and 2003 was \$4.4 million, \$3.2 million and \$1.4 million, respectively and is included in occupancy expense in the consolidated statement of operations.

#### *Mortgage Repurchase Commitments*

In the ordinary course of business, the mortgage operation is exposed to liability under representations and warranties made to purchasers and insurers of mortgages and the purchasers of servicing rights. Under certain circumstances, the mortgage operations are required to repurchase mortgages if there had been a breach of representations or warranties.

#### *Master Commitments*

The mortgage operations establish mortgage purchase commitments (master commitments) with sellers that, subject to certain conditions, entitle the seller to sell and obligate the mortgage operations to purchase a specified dollar amount of mortgages over a period generally ranging from six months to one year. The terms of each master commitment specify whether a seller may sell mortgages to the mortgage operations on a mandatory, best efforts or optional basis. Master commitments generally do not obligate the mortgage operations to purchase mortgages at a specific price, but rather provide the seller with a future outlet for the sale of its originated mortgages based on quoted prices at the time of purchase. As of December 31, 2005, the mortgage operations had outstanding short-term master commitments with 193 sellers to purchase mortgages in the aggregate principal amount of \$9.8 billion over periods ranging from one month to one year, of which \$2.9 billion had been purchased or committed to be purchased pursuant to loan commitments. There is no exposure to credit loss in this type of commitment until the loans are funded and interest rate risk associated with the short-term commitments is mitigated by the use of forward contracts to sell loans to investors.

Sellers who have entered into master commitments may sell mortgages to the mortgage operations by executing individual or bulk loan commitments. Each loan commitment, in conjunction with the related master commitment, specifies the terms of the related sale, including the quantity and price of the mortgages or the formula by which the price will be determined, the loan commitment type and the delivery requirements. Historically, the up-front fee paid by a seller to obtain a master commitment on a mandatory delivery basis is often refunded pro rata as the seller delivers loans pursuant to rate-locks. We retain any remaining fee after the master commitment expires.

Following the issuance of a loan commitment, the mortgage operations are subject to the risk of interest rate fluctuations and enter into derivatives to diminish such risk. Interest rate risk management transactions may include mandatory or optional forward sale commitments of mortgages or mortgage-backed securities, interest rate caps, floors and swaps, mandatory forward sale commitments, mandatory or optional sales of futures and other financial futures transactions. Management, based on various factors including market conditions and the expected volume of mortgage purchases, determines the nature and quantity of derivative transactions.

#### *Loan Commitments*

The mortgage operations also acquire mortgages from sellers that are not purchased pursuant to master commitments. These purchases may be made on an individual loan basis or on a bulk loan purchase basis. Pursuant to these purchases, we enter loan commitments on an individual loan basis and on a bulk purchase basis. A loan commitment for a bulk purchase may obligate the seller to sell and the mortgage operations to purchase a specific group of mortgages, generally ranging from \$500 thousand to \$125.0 million in aggregate committed principal amount, at set prices on specific dates.

Bulk purchases enable the mortgage operations to acquire substantial quantities of mortgages on a more immediate basis. The specific pricing, delivery and program requirements of these purchases are determined by negotiation between the parties but are generally in accordance with the provisions of our seller/servicer guide. Due to the active presence of investment banks and other substantial investors in this area, bulk pricing is extremely competitive. Mortgages are also purchased from individual sellers, typically smaller originators of mortgages, who do not wish to sell pursuant to either a master commitment or on a bulk purchase basis. The terms of these individual purchases are based primarily on our seller/servicer guide and standard pricing provisions.

#### *Mandatory, Best-Efforts and Optional Rate-Lock*

Mandatory rate-locks require the seller to deliver a specified quantity of mortgages over a specified period of time regardless of whether the mortgages are actually originated by the seller or whether circumstances beyond the seller's control prevent delivery. The mortgage operations are required to purchase all mortgages covered by the rate-lock at prices established at the time of rate-lock. If the seller is unable to deliver the specified mortgages, it may instead deliver comparable mortgages approved by the mortgage operations within the specified delivery time. Failure to deliver the specified mortgages or acceptable substitute mortgages under a mandatory rate-lock obligates the seller to pay a penalty. In contrast, mortgages sold on a best efforts basis must be delivered to the mortgage operations only if they are actually originated by the seller. The best-efforts rate-lock provides sellers with an effective way to sell mortgages during the origination process without any penalty for failure to deliver. Optional rate-locks give the seller the option to deliver mortgages to us at a fixed price on a future date and require the payment of up-front fees. The mortgage operations retain any up-front fees paid in connection with optional rate-locks if the mortgages are not delivered.

#### *Forward Sale Commitments*

As of December 31, 2005, the mortgage operations had \$156 million in outstanding commitments to sell mortgages through mortgage-backed securities. These commitments allow the mortgage operations to enter into mandatory commitments when the mortgage operations notify the investor of its intent to exercise a portion of the forward delivery contracts. The mortgage operations were not obligated under mandatory commitments to deliver loans to such investors as of December 31, 2005. The credit risk of forward contracts relates to the counter-parties ability to perform under the contract. We evaluate counter-parties based on their ability to perform prior to entering into any agreements.

As of December 31, 2005, the mortgage operations had written option contracts and swaps with an outstanding notional balance of \$130 million and \$1.7 billion, respectively. The mortgage operations may sell, call or buy put options on U.S. Treasury bonds and mortgage-backed securities. The risk in writing a call option is that the mortgage operations give up the opportunity for profit if the market price of the mortgages increases and the option is exercised. The mortgage operations also have the additional risk of not being able to enter into a closing transaction if a liquid secondary market does not exist. The risk of buying a put option is limited to the premium paid for the put option.

Mortgage-related Litigation

On June 27, 2000, a complaint captioned Michael P. and Shellie Gilmore v. Preferred Credit Corporation and Impac Funding Corporation, et al. was filed in the Circuit Court for Clay County, Missouri, as a purported class action lawsuit alleging that the defendants violated Missouri's Second Loans Act and Merchandising Practices Act. In July 2001, the Missouri complaint was amended to include IMH and other Impac-related entities. A plaintiffs class was certified on January 2, 2003. On June 22, 2004, the court issued an order to stay all proceedings pending the outcome of an appeal in a similar case in the Eighth Circuit.

On February 3, 2004, a complaint captioned James and Jill Baker v. Century Financial Group, Inc, et al was filed in the Circuit Court of Clay County, Missouri, as a purported class action lawsuit alleging that the defendants violated Missouri's Second Loan Act and Merchandising Practices Act.

On October 2, 2001, a complaint captioned Deborah Searcy, Shirley Walker, et al. v. Impac Funding Corporation, Impac Mortgage Holdings, Inc. et. al. was filed in the Wayne County Circuit Court, State of Michigan, as a purported class action lawsuit alleging that the defendants violated Michigan's Secondary Mortgage Loan Act, Credit Reform Act and Consumer Protection Act. A motion to dismiss an amended complaint has been filed, but not yet ruled upon.

On July 31, 2003, a purported class action complaint captioned Frazier, et al v. Impac Funding Corp., et al. was filed in federal court in Tennessee. The causes of action in the action allege violations of Tennessee's usury statute and Consumer Protection Act. A motion to dismiss the complaint was filed and not yet ruled upon. The court agreed to administratively close the case on April 5, 2004 pending an appeal in a similar case. On April 29, 2004, the court issued its order administratively closing the case.

On November 25, 2003, a complaint captioned Michael and Amber Stallings v. Empire Funding Home Loan Owner Trust 1997-3; U.S. Bank, National Association; and Wilmington Trust Company was filed in the United States District Court for the Western District of Tennessee, as a purported class action lawsuit alleging that the defendants violated Tennessee predatory lending laws governing second mortgage loans. The complaint further alleges that certain assignees of mortgage loans, including two Impac-related trusts, should be included as defendants in the lawsuit. Like the *Frazier* matter this case was administratively closed on April 29, 2004 pending an appeal in a similar case.

All of the above purported class action lawsuits are similar in nature in that they allege that the mortgage loan originators violated the respective state's statutes by charging excessive fees and costs when making second mortgage loans on residential real estate. The complaints allege that IFC was a purchaser, and is a holder, along with other affiliated entities, of second mortgage loans originated by other lenders. The plaintiffs in the lawsuits are seeking damages that include disgorgement of interest paid, restitution, rescission, actual damages, statutory damages, exemplary damages, pre-judgment interest and punitive damages. No specific dollar amount of damages is specified in the complaints.

We believe that we have meritorious defenses to the above claims and intend to defend these claims vigorously. Nevertheless, litigation is uncertain and we may not prevail in the lawsuits and can express no opinion as to its ultimate outcome. An adverse judgment in any of these matters could have a material adverse affect on us, however, no judgment in any matter is probable to occur nor is any amount of any loss from such judgment reasonably estimable at this time.

Securities Litigation

From January 10, 2006, through February 28, 2006, six purported class action complaints have been filed against IMH and its senior officers and all but one of its directors by the following plaintiffs, individually and on behalf of all others similarly situated, in the U.S. District Court, Central District of California: Earl Schriver, Jr. (filed January 10, 2006), Jeff Dayton (filed January 13, 2006), Joseph Mathieu (filed January 18, 2006), Fred Safir and Wilma Libar (filed January 26, 2006), Ronald Kelner (filed February 1, 2006), and Miroslav Bardos (filed February 9, 2006). The complaints, which are brought on behalf of

persons who acquired IMH's common stock during the period of May 13, 2005 through August 9, 2005, allege claims against all defendants for violations under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder, and claims against the individual defendants for violations of Section 20(a) of the Exchange Act. Plaintiffs claim that the defendants caused IMH's common stock to trade at artificially inflated prices through false and misleading statements related to the company's financial condition and future prospects and that the individual defendants improperly sold holdings. The complaints seek compensatory damages for all damages sustained as a result of the defendants' actions, including interest, reasonable costs and expenses, and other relief as the court may deem just and proper.

From January 27, 2006, through February 28, 2006, seven shareholder derivative actions have been filed against the company and all of its senior officers and directors by the following parties, derivatively on behalf of nominal defendant IMH, four of which are filed in the U.S. District Court, Central District of California and three of which are filed in Orange County Superior Court: Green Meadows Partners, LLP (filed January 27, 2006), Louis Misarti and Anne Misarti (filed February 1, 2006), Miguel Portillo (filed February 6, 2006), Brian Dawley (filed February 14, 2006), Michael Eleftheriou (filed February 21, 2006), Henry J. Krsjak (filed February 21, 2006) and Ronald A. Gustafson (filed February 24, 2006). The actions allege claims for a shareholder derivative complaint for breach of fiduciary duties for insider selling and misappropriation of information, abuse of control, gross mismanagement, waste of corporate assets, unjust enrichment and violation of California Corporations Code related to false and misleading statements regarding the company's business and future prospects, and in the case of one complaint, related to materially deficient internal controls and illegal stock sales. The shareholder derivative actions generally seek, in favor of the company, damages sustained as a result of the individual defendants' breach of fiduciary duties and the other causes of action, and, in the case of two derivative actions, in an amount equal to three times the difference between prices at which stock was sold and the market value at which shares would have been sold had the alleged non-public information been publicly disseminated; a constructive trust for the stock proceeds; equitable and injunctive relief; disgorgement of all profits, benefits and other compensation obtained by defendants; costs and disbursements of the action including attorneys', accountants' and experts' fees and further relief as the court deems just and proper. Furthermore, one derivative action is seeking relief directing all necessary actions to reform and improve corporate governance and internal procedures to comply with applicable law; and another derivative action includes punitive damages.

We believe that we have meritorious defenses to the above claims and intend to defend these claims vigorously. 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.

#### Other Litigation

We are a party to other litigation and claims which are normal in the course of our operations. While the results of such other litigation and claims cannot be predicted with certainty, we believe the final outcome of such matters will not have a material adverse effect on our financial position.

#### **Note O—Derivative Instruments**

Our primary objective is to limit exposure to the variability in future cash flows attributable to the variability of one-month LIBOR, which is the underlying index of adjustable rate CMO borrowings and in the variability of the value of mortgage loans held-for-sale as we enter into interest rate lock commitments and purchase commitments. We also monitor on an ongoing basis the prepayment risks that arise in fluctuating interest rate environments. Our interest rate risk management program is formulated with the intent to mitigate the potential adverse effects of changing interest rates on cash flows on CMO borrowings and the value of mortgages held-for-sale. To mitigate exposure to the effect of changing interest rates, we purchase derivative instruments primarily in the form of swaps and, to a lesser extent, caps and floors.

Derivative assets amounted to \$250.4 million as of December 31, 2005 and \$95.4 million as of December 31, 2004. Cash margin balances placed with third parties of \$16.6 million and \$7.9 million as of December 31, 2005 and 2004, respectively are included in other assets on the consolidated balance sheets. Included in other liabilities on the consolidated balance sheets as of December 31, 2005 and 2004 are \$2.5 million and \$4.4 million of derivative liabilities, respectively.



## Note P—Stock Option Plans

Grants under stock option plans are made and administered by the board of directors. We currently have a 1995 Stock Option, Deferred Stock and Restricted Stock Plan (1995 Plan) and a 2001 Stock Option, Deferred Stock and Restricted Stock Plan (2001 Plan), collectively, "the stock plans." Each stock plan provides for the grant of ISOs, NQSOs, deferred stock and restricted stock and, in the case of the 2001 Plan, dividend equivalent rights and, in the case of the 1995 Plan, stock appreciation rights and limited stock appreciation rights awards (awards). The total number of shares initially reserved and available for issuance under the 2001 Plan was 1.0 million shares. However, on the beginning of each calendar year the maximum number of shares available for issuance may increase by 3.5% of the total number of shares of stock outstanding or a lesser amount determined by the board of directors. Pursuant to this provision, in 2005, 2004 and 2003, under the 2001 Plan an additional 2.6 million, 2.0 million and 1.5 million shares, respectively, were available for grant. At December 31, 2005, no shares were reserved and available for issuance under the 1995 Plan and 2,91,189 shares were reserved and available for issuance under the 2001 Plan. Options or awards may not be granted under the 2001 Plan after March 27, 2011. The 1995 Plan expired on August 31, 2005, but outstanding options granted under the 1995 Plan may still be exercised, to the extent exercisable.

Options granted under the stock plans would become exercisable in accordance with the terms of the grant made by the board of directors. Awards will be subject to the terms and restrictions of the award made by the board of directors. The board of directors has discretionary authority to select participants from among eligible persons and to determine at the time an option or award is granted and, in the case of options, whether it is intended to be an ISO or a NQSO, and when and in what increments shares covered by the option may be purchased. Option transactions for the periods indicated are summarized as follows:

### For the year ended December 31,

	2005		2004		2003	
	Number of Shares	Weighted-Average Exercise Price \$	Number of Shares	Weighted-Average Exercise Price \$	Number of Shares	Weighted-Average Exercise Price \$
Options outstanding at beginning of year	4,433,884	14.53	3,395,445	10.59	2,446,427	7.88
Options granted	1,747,500	13.76	1,536,000	22.91	1,548,000	14.27
Options exercised	(590,337)	10.69	(345,893)	10.71	(520,978)	8.74
Options forfeited / cancelled	(324,503)	17.01	(151,668)	19.90	(78,004)	10.68
Options outstanding at end of year	5,266,544	14.55	4,433,884	14.53	3,395,445	10.59

The following table presents information about fixed stock options outstanding at December 31, 2005:

Exercise Price Range (\$)	Stock Options Outstanding			Options Exercisable		
	Number Outstanding	Weighted-Average Remaining Contractual Life in Years	Weighted-Average Exercise Price (\$)	Number Exercisable	Weighted-Average Exercise Price (\$)	
3.85	22,500	5.08	3.85	22,500	3.85	
4.18	652,500	5.24	4.18	652,500	4.18	
4.44 - 9.42	121,250	5.67	7.37	121,250	7.37	
10.54	20,000	0.33	10.54	20,000	10.54	
10.95	418,622	0.58	10.95	418,622	10.95	
13.76	1,574,000	3.61	13.76	-	-	
14.27	1,136,339	1.58	14.27	671,324	14.27	
21.77	40,000	8.47	21.77	40,000	21.77	
22.83	726,333	2.58	22.83	247,660	22.83	
23.10	555,000	2.59	23.10	184,994	23.10	
3.85 - 23.10	5,266,544	2.96	14.55	2,378,850	12.14	

#### Note Q—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 cumulative redeemable preferred stock outstanding for the periods indicated:

	For the year ended December 31,		
	2005	2004	2003
<b>Numerator for basic earnings per share:</b>			
Net earnings	\$ 270,258	\$ 257,637	\$ 148,979
Less: Cash dividends on cumulative redeemable preferred stock	(14,530)	(3,750)	-
Net earnings available to common stockholders	\$ 255,728	\$ 253,887	\$ 148,979
<b>Denominator for basic earnings per share:</b>			
Basic weighted average number of common shares outstanding during the period	75,594	66,967	50,732
<b>Denominator for diluted earnings per share:</b>			
Diluted weighted average number of common shares outstanding during the period	75,594	66,967	50,732
Net effect of dilutive stock options	683	1,277	1,047
Diluted weighted average common shares	76,277	68,244	51,779
<b>Net earnings per share:</b>			
Basic	\$ 3.38	\$ 3.79	\$ 2.94
Diluted	\$ 3.35	\$ 3.72	\$ 2.88

The anti-dilutive effects of stock options outstanding as of December 31, 2005, 2004 and 2003 were 1.4 million, 612 thousand and none, respectively.

**Note R—Quarterly Financial Data (unaudited)**

Selected quarterly financial data for 2005 follows:

	<b>For the Three Months Ended,</b>			
	<b>December 31,</b>	<b>September 30,</b>	<b>June 30,</b>	<b>March 31,</b>
Interest income	\$ 340,746	\$ 324,050	\$ 309,785	\$ 277,380
Interest expense	326,150	281,154	243,632	196,274
Net interest income	14,596	42,896	66,153	81,106
Provision for loan losses	5,344	13,434	5,711	6,074
Non-interest income (expense)	39,491	129,012	(79,384)	131,806
Non-interest expense	39,179	39,454	40,182	35,691
Income taxes	(15,727)	(7,337)	(4,124)	(2,463)
Net earnings (loss)	\$ 25,291	\$ 126,357	\$ (55,000)	\$ 173,610
Net earnings (loss) per share - diluted (1)	\$ 0.28	\$ 1.61	\$ (0.78)	\$ 2.26
Dividends declared per share	\$ 0.20	\$ 0.45	\$ 0.75	\$ 0.75

Selected quarterly financial data for 2004 follows:

	<b>For the Three Months Ended,</b>			
	<b>December 31,</b>	<b>September 30,</b>	<b>June 30,</b>	<b>March 31,</b>
Interest income	\$ 250,372	\$ 210,388	\$ 160,719	\$ 134,137
Interest expense	160,683	114,967	75,269	61,614
Net interest income	89,689	95,421	85,450	72,523
Provision (benefit) for loan losses	6,149	(229)	15,282	9,725
Non-interest income (expense)	65,258	(88,780)	96,628	(32,735)
Non-interest expense	31,060	25,623	26,454	25,203
Income taxes	3,371	(9,436)	(2,872)	(4,513)
Net earnings (loss)	\$ 114,367	\$ (9,317)	\$ 143,214	\$ 9,373
Net earnings (loss) per share - diluted (1)	\$ 1.52	\$ (0.15)	\$ 2.17	\$ 0.15
Dividends declared per share	\$ 0.75	\$ 0.75	\$ 0.75	\$ 0.65

(1) Diluted earnings per share are computed independently for each of the quarters presented. Therefore, the sum of the quarterly earnings per share may not equal the total for the year.

**Note S—Schedule of Mortgage Loans on Real Estate**

The following table presents the activity included in CMO collateral and mortgages held for investment on the consolidated balance sheets for the years presented.

	<b>For the year ended December 31,</b>		
	<b>2005</b>	<b>2004</b>	<b>2003</b>
Beginning Balance	\$ 21,895,592	\$ 9,296,893	\$ 5,215,731
Additions:			
Loans retained and originated	13,044,229	17,368,376	6,078,378
Additions of premiums	277,075	333,669	51,859
Loans transferred for mortgages held-for-sale	-	-	269,679
Total additions	13,321,304	17,702,045	6,399,916
Deductions:			
Principal paydowns	(10,243,488)	(4,666,671)	(2,148,153)
Loans transferred to mortgages held-for-sale	-	(269,679)	-
Loans sold to third parties	-	-	(89,949)
Amortization of premiums	(240,786)	(130,851)	(44,482)
Transfers to other real estate owned	(78,262)	(36,145)	(36,170)
Total deductions	(10,562,536)	(5,103,346)	(2,318,754)
Ending Balance	\$ 24,654,360	\$ 21,895,592	\$ 9,296,893

Characteristics of our CMO collateral and loans held-for-investment at December 31, 2005, which consisted primarily of Alt-A mortgages (dollar amounts in thousands):

<b>Original Loan Amounts</b>	<b>Number of Mortgage Loans</b>	<b>Aggregate Principal Balance</b>	<b>Maturity Date</b>	<b>Percent of Total</b>
\$50,000 or less	1,972	\$ 61,855	6/07 - 11/35	0.25%
\$50,001 to \$100,000	8,737	694,496	10/10 - 1/36	2.85%
\$100,001 to \$150,000	16,673	2,067,670	10/03 - 1/36	8.48%
\$150,001 to \$200,000	15,047	2,609,895	11/10 - 1/36	10.70%
\$200,001 to \$250,000	11,791	2,629,296	2/12 - 1/36	10.78%
\$250,001 to \$300,000	10,037	2,742,578	11/17 - 1/36	11.24%
\$300,001 to \$350,000	7,842	2,526,428	3/12 - 1/36	10.36%
\$350,001 to \$400,000	5,888	2,197,513	6/17 - 1/36	9.01%
\$400,001 to \$450,000	3,753	1,585,339	4/14 - 1/36	6.50%
\$450,001 to \$500,000	3,200	1,516,119	11/17 - 1/36	6.21%
\$500,001 to \$550,000	1,936	1,011,963	4/19 - 1/36	4.15%
\$550,001 to \$600,000	1,638	938,254	11/17 - 2/36	3.85%
\$600,001 to \$650,000	1,479	927,564	6/17 - 1/36	3.80%
\$650,001 or more	2,891	2,888,049	11/17 - 1/36	11.84%
	92,884	24,397,019		100%
Unamortized net premiums on mortgages		313,564		
REO transfers pending		(56,223)		
Total CMO collateral and mortgages held-for-investment		\$ 24,654,360		

Characteristics of our CMO collateral and loans held-for-investment at December 31, 2005, which consisted primarily of Alt-A mortgages (dollar amounts in thousands):

<b>Interest Rate Ranges</b>	<b>Number of Mortgage Loans</b>	<b>Aggregate Principal Balance</b>	<b>Percent of Total</b>
4% or less	2,016	\$ 600,688	2.46%
4.01% to 4.5%	3,896	1,184,690	4.86%
4.51% to 5.0%	9,471	2,858,959	11.72%
5.01% to 5.5%	14,121	4,333,827	17.76%
5.51% to 6.0%	19,345	5,606,284	22.98%
6.01% to 6.5%	15,858	4,192,822	17.19%
6.51% to 7.0%	12,405	2,978,041	12.21%
7.01% to 7.5%	6,054	1,297,022	5.32%
7.51% to 8.0%	3,533	692,687	2.84%
8.01% to 8.5%	1,397	232,342	0.95%
8.51% to 9.0%	1,184	153,789	0.63%
9.01% to 9.5%	616	68,264	0.28%
9.51% or more	2,988	197,604	0.81%
	<b>92,884</b>	<b>24,397,019</b>	<b>100%</b>
Unamortized net premiums on mortgages		313,564	
REO transfers pending		(56,223)	
<b>Total CMO collateral and mortgages held-for-investment</b>		<b>\$ 24,654,360</b>	

The geographic distribution of the Company's CMO collateral and loans held-for-investment at December 31, 2005 was as follows:

<b>Geographic Location</b>	<b>Number of Mortgage Loans</b>	<b>Aggregate Principal Balance</b>	<b>Percent of Total</b>
CA	39,704	\$ 13,652,388	55.96%
FL	12,272	2,369,838	9.71%
AZ	3,828	762,597	3.13%
VA	2,850	757,197	3.10%
NV	2,757	652,280	2.67%
MD	2,136	513,879	2.11%
NY	1,519	487,222	2.00%
NJ	1,793	453,200	1.86%
CO	2,216	444,814	1.82%
IL	2,235	438,586	1.80%
Other	21,574	3,865,018	15.84%
	<b>92,884</b>	<b>24,397,019</b>	<b>100%</b>
Unamortized net premiums on mortgages		313,564	
REO transfers pending		(56,223)	
<b>Total CMO collateral and mortgages held-for-investment</b>		<b>\$ 24,654,360</b>	

**Note T—Redeemable Preferred Stock**

On May 28, 2004, the Company sold 2.0 million shares of Series B Cumulative Redeemable Preferred Stock, raising \$48.3 million in net proceeds. The shares have a liquidation value of \$25.00 per share and will pay an annual coupon of 9.375%. The shares are redeemable at the Company's option, in whole or in part, on or after May 28, 2009 except in limited circumstances to preserve the Company's REIT status.

On November 18, 2004, the Company sold 4.0 million shares of Series C Cumulative Redeemable Preferred Stock, raising \$96.6 million in net proceeds. The shares have a liquidation value of \$25.00 per share and will pay an annual coupon of 9.125%. The shares are redeemable at the Company's option, in whole or in part, on or after November 23, 2009 except in limited circumstances to preserve the Company's REIT status. The Company granted its underwriters an option, exercisable for 30 days, to purchase up to an additional 300,000 shares to cover over-allotments, if any. On December 7, 2004 the underwriters exercised their options for 300,000 shares in over-allotments resulting in net proceeds of \$7.3 million.

**Note U—Trust Preferred Securities**

During 2005, the Company formed four wholly-owned trust subsidiaries (Trusts) for the purpose of issuing an aggregate of \$99.2 million of trust preferred securities (the Trust Preferred Securities). The proceeds from the sale thereof were invested in junior subordinated debt issued by the Company. All proceeds from the sale of the Trust Preferred Securities and the common securities issued by the Trusts are invested in junior subordinated notes (Notes), which are the sole assets of the Trusts. The Trusts pay dividends on the Trust Preferred Securities at the same rate as paid by the Company on the Notes held by the Trusts.

The following table shows the Trust Preferred Securities issued for the year ended December 31, 2005:

	<b>Trust Preferred Securities</b>	<b>Common Securities</b>	<b>Junior Subordinated Debt</b>	<b>Stated Maturity Date</b>	<b>Optional Redemption Date</b>
Impac Capital Trust # 1 (1)	\$ 25,000	\$ 780	\$ 25,780	04/30/35	4/30/2010 (5)
Impac Capital Trust # 2 (2)	25,000	774	25,774	04/30/35	4/30/2010 (6)
Impac Capital Trust # 3 (3)	26,250	820	27,070	06/30/35	6/30/2010 (5)
Impac Capital Trust # 4 (4)	20,000	620	20,620	07/30/35	7/30/2010 (5)
<b>Sub-total</b>	<b>\$ 96,250</b>	<b>\$ 2,994</b>	<b>99,244</b>		
Unamortized debt issuance costs			(2,494)		
<b>Total</b>			<b>\$ 96,750</b>		

- (1) Requires quarterly distributions initially at a fixed rate of 8.01% per annum through April 30, 2010 and thereafter at a variable rate of three-month LIBOR plus 3.75% per annum. Distributions are cumulative but after April 2006 may be deferred for a period of up to four consecutive quarterly interest payment periods if the Company exercises its right to defer the payment of interest on the Notes (Extension Period).
- (2) Requires quarterly distributions initially at a fixed rate of 8.065% per annum through April 30, 2010 and thereafter at a variable rate of three-month LIBOR plus 3.75% per annum. Distributions are cumulative but after April 2006 may be deferred for a period of up to four consecutive quarterly interest payment periods if the Company exercises its right to defer the payment of interest on the Notes (Extension Period).
- (3) Requires quarterly distributions initially at a fixed rate of 8.01% per annum through June 30, 2010 and thereafter at a variable rate of three-month LIBOR plus 3.75% per annum. Distributions are cumulative but after May 2006 may be deferred for a period of up to four consecutive quarterly interest payment periods if the Company exercises its right to defer the payment of interest on the Notes (Extension Period).
- (4) Requires quarterly distributions initially at a fixed rate of 8.55% per annum through July 30, 2010 and thereafter at a variable rate of three-month LIBOR plus 3.75% per annum. Distributions are cumulative but may be deferred for a period of up to twenty consecutive quarterly interest payment periods if the Company exercises its right to defer the payment of interest on the Notes (Extension Period).
- (5) Redeemable at par at any time after the date indicated.
- (6) Redeemable at par at any time after the date indicated and before that date, under certain events, at a premium of 7.5% of the outstanding amount.

During any Extension Period, the Company may not declare or pay dividends on its capital stock. If an event of default occurs (such as a payment default that is outstanding for 30 days, a default in performance, a breach of any covenant or representation, bankruptcy or insolvency of the Company or liquidation or dissolution of the Trust) either the trustee of the Notes or the holders of at least 25% of the aggregate principal amount of the outstanding Notes may declare the principal amount of, and all accrued interest on, all the Notes to be due and payable immediately, or if the holders of the Notes fail to make such declaration, the holders of at least 25% in aggregate liquidation amount of the Preferred Securities outstanding shall have a right to make such declaration.

FIN 46R requires the deconsolidation of trust preferred entities since the Company does not have a significant variable interest in the trust. Therefore, the Company records its investment in the trust preferred entities in other assets and accounts for such under the equity method of accounting and reflects a liability for the issuance of the junior subordinated notes to the trust preferred entities. The interest expense on such notes is recorded in interest expense – other borrowings in the consolidated statement of operations and comprehensive earnings.

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**ARTICLES SUPPLEMENTARY  
TO THE  
ARTICLES OF INCORPORATION  
OF  
IMPAC MORTGAGE HOLDINGS, INC.**

Impac Mortgage Holdings, Inc., a corporation organized and existing under the laws of the State of Maryland (the "Corporation"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

**FIRST:** Pursuant to the authority granted to and vested in the Board of Directors of the Corporation (the "Board of Directors") in accordance with Article VI of the charter of the Corporation, including these Articles Supplementary (the "Charter"), the Board of Directors adopted resolutions reclassifying 1,200,000 shares (the "Shares") of Series B 10.5% Cumulative Convertible Preferred Stock, \$.01 par value per share (the "Series B Preferred Stock"), as Preferred Stock (as defined in the Charter).

**SECOND:** The Shares, as reclassified and redesignated, shall have the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, and terms and conditions of redemption for Preferred Stock as set forth in the Charter.

**THIRD:** The Shares have been reclassified by the Board of Directors pursuant to Article VI of the Charter.

**FOURTH:** These Articles Supplementary have been approved by the Board of Directors in the manner and by the vote required by law.

**FIFTH:** The undersigned Secretary of the Corporation acknowledges these Articles Supplementary to be the corporate act of the Corporation and, as to all matters or facts required to be verified under oath, the undersigned President acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

[STATE OF MARYLAND STAMP]

**STATE OF MARYLAND**

I hereby certify that this is a true and complete copy of the 3 page document on file in this office. DATED 5/31/01

**STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

/s/ Ann Custes, Custodian

This stamp replaces our previous certification system. Effective: 6/95

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IN WITNESS WHEREOF, the Corporation has caused these Articles Supplementary to be signed in its name and on its behalf by its President and attested to by its Secretary on this 23 day of January, 2000.

ATTEST:

/s/ Ronald Morrison

By:

/s/ William S. Ashmore

(SEAL)

---

Ronald Morrison  
Secretary

---

William S. Ashmore  
President

---

## QuickLinks

[Exhibit 3.1\(h\)](#)

[ARTICLES SUPPLEMENTARY TO THE ARTICLES OF INCORPORATION OF IMPAC MORTGAGE HOLDINGS, INC.](#)

[QuickLinks](#) -- Click here to rapidly navigate through this document

**Exhibit 4.8**

**EXECUTION COPY**

IMPAC MORTGAGE HOLDINGS, INC.  
as Issuer

INDENTURE

Dated as of October 18, 2005

WILMINGTON TRUST COMPANY  
as Trustee

FIXED/FLOATING RATE JUNIOR SUBORDINATED DEBT SECURITIES DUE 2035

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**EXHIBITS**

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EXHIBIT A            FORM OF DEBT SECURITY



THIS INDENTURE, dated as of October 18, 2005, between Impac Mortgage Holdings, Inc., a Maryland corporation (hereinafter sometimes called the "Company"), and Wilmington Trust Company, a Delaware banking corporation with its principal place of business in the State of Delaware, as trustee (hereinafter sometimes called the "Trustee").

W I T N E S S E T H:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its Fixed/Floating Rate Junior Subordinated Debt Securities due 2035 (the "Debt Securities") under this Indenture and to provide, among other things, for the execution and authentication, delivery and administration thereof, the Company has duly authorized the execution of this Indenture.

NOW, THEREFORE, in consideration of the premises, and the purchase of the Debt Securities by the holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective holders from time to time of the Debt Securities as follows:

**ARTICLE I**

**DEFINITIONS**

Section 1.01. *Definitions.*

The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All accounting terms used herein and not expressly defined shall have the meanings assigned to such terms in accordance with generally accepted accounting principles and the term "generally accepted accounting principles" means such accounting principles as are generally accepted in the United States at the time of any computation. The words "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.

"*Additional Amounts*": has the meaning set forth in Section 3.06.

"*Additional Provisions*": has the meaning set forth in Section 15.01.

"*Authenticating Agent*": means any agent or agents of the Trustee which at the time shall be appointed and acting pursuant to Section 6.12.

"*Bankruptcy Law*": means Title 11, U.S. Code, or any similar federal or state law for the relief of debtors.

"*Board of Directors*": means the board of directors or the executive committee or any other duly authorized designated officers of the Company.

"*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 and delivered to the Trustee.

"*Business Day*": means any day other than a Saturday, Sunday or any other day on which banking institutions in Wilmington, Delaware, New York City or Newport Beach, California are permitted or required by any applicable law or executive order to close.

"*Calculation Agent*": means the Person identified as "Trustee" in the first paragraph hereof with respect to the Debt Securities and the Institutional Trustee with respect to the Trust Securities.

"*Capital Securities*": means undivided beneficial interests in the assets of the Trust which are designated as "TruPS®" and rank *pari passu* with Common Securities issued by the Trust; *provided, however*, that if an Event of Default (as defined in the Declaration) has occurred and is continuing, the rights of holders of such Common Securities to payment in respect of distributions and payments upon

liquidation, redemption and otherwise are subordinated to the rights of holders of such Capital Securities.

"*Certificate*": means a certificate signed by any one of the principal executive officer, the principal financial officer or the principal accounting officer of the Company.

"*Clearstream*": means Citibank, N.A., as operator of Clearstream Banking, société anonyme.

"*Code*": has the meaning set forth in Section 4.03.

"*Common Securities*": means undivided beneficial interests in the assets of the Trust which are designated as "Common Securities" and rank *pari passu* with Capital Securities issued by the Trust; *provided, however*, that if an Event of Default (as defined in the Declaration) has occurred and is continuing, the rights of holders of such Common Securities to payment in respect of distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights of holders of such Capital Securities.

"*Company*": means Impac Mortgage Holdings, Inc., a Maryland corporation, and, subject to the provisions of Article XI, shall include its successors and assigns.

"*Debt Security*" or "*Debt Securities*": has the meaning stated in the first recital of this Indenture.

"*Debt Security Register*": has the meaning specified in Section 2.05.

"*Declaration*": means the Amended and Restated Declaration of Trust of the Trust dated as of October 18, 2005, as amended or supplemented from time to time.

"*Default*": means any event, act or condition that with notice or lapse of time, or both, would constitute an Event of Default.

"*Defaulted Interest*": has the meaning set forth in Section 2.08.

"*Deferred Interest*": has the meaning set forth in Section 2.11.

"*Euroclear*": Euroclear Bank S.A./N.V. as operator and depository of the Euroclear system.

"*Event of Default*": means any event specified in Section 5.01, which has continued for the period of time, if any, and after the giving of the notice, if any, therein designated.

"*Exchange Act*": means the Securities Exchange Act of 1934, as amended.

"*Extension Period*": has the meaning set forth in Section 2.11.

"*Indenture*": means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented, or both.

"*Institutional Trustee*": has the meaning set forth in the Declaration.

"*Interest Payment Date*": means April 30, July 30, October 30 and January 30 of each year, commencing on January 30, 2006, during the term of this Indenture.

"*Interest Period*": has the meaning set forth in Section 2.08.

"*Interest Rate*": means (i) prior to July 30, 2010, a per annum rate of interest equal to 8.55% and (ii) from and including July 30, 2010, a per annum rate of interest, reset quarterly, equal to LIBOR, as determined on the LIBOR Determination Date for such Interest Period, plus 3.75%.

"*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 a change in law or regulation or 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 Trust is or, within 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 of 1940, as amended, which change or prospective

change becomes effective or would become effective, as the case may be, on or after the date of the original issuance of the Debt Securities.

"LIBOR": means the London Interbank Offered Rate for U.S. Dollar deposits in Europe as determined by the Calculation Agent according to Section 2.10(b).

"LIBOR Banking Day": has the meaning set forth in Section 2.10(b)(1).

"LIBOR Business Day": has the meaning set forth in Section 2.10(b)(1).

"LIBOR Determination Date": has the meaning set forth in Section 2.10(b).

"Liquidation Amount": means the stated amount of \$1,000 per Trust Security.

"Maturity Date": means July 30, 2035.

"Officers' Certificate": means a certificate signed by the Chairman of the Board, the Vice Chairman, the President or any Vice President, and by the Chief Financial Officer, the Treasurer, an Assistant Treasurer, the Comptroller, an Assistant Comptroller, the Secretary or an Assistant Secretary of the Company, and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 14.06 if and to the extent required by the provisions of such Section.

"Opinion of Counsel": means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, or may be other counsel reasonably satisfactory to the Trustee. Each such opinion shall include the statements provided for in Section 14.06 if and to the extent required by the provisions of such Section.

The term "outstanding," when used with reference to Debt Securities, subject to the provisions of Section 7.04, means, as of any particular time, all Debt Securities authenticated and delivered by the Trustee or the Authenticating Agent under this Indenture, except:

(a) Debt Securities theretofore canceled by the Trustee or the Authenticating Agent or delivered to the Trustee for cancellation;

(b) Debt Securities, or portions thereof, for the payment or redemption of which moneys in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent); *provided*, that, if such Debt Securities, or portions thereof, are to be redeemed prior to maturity thereof, notice of such redemption shall have been given as provided in Articles X and XIV or provision satisfactory to the Trustee shall have been made for giving such notice; and

(c) Debt Securities paid pursuant to Section 2.06 or in lieu of or in substitution for which other Debt Securities shall have been authenticated and delivered pursuant to the terms of Section 2.06 unless proof satisfactory to the Company and the Trustee is presented that any such Debt Securities are held by bona fide holders in due course.

"Paying Agent": has the meaning set forth in Section 3.04(e).

"Person": means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Predecessor Security": of any particular Debt Security means every previous Debt Security evidencing all or a portion of the same debt as that evidenced by such particular Debt Security; and, for the purposes of this definition, any Debt Security authenticated and delivered under Section 2.06 in lieu of a lost, destroyed or stolen Debt Security shall be deemed to evidence the same debt as the lost, destroyed or stolen Debt Security.

"Principal Office of the Trustee": means the office of the Trustee, at which at any particular time its corporate trust business shall be principally administered, which at all times shall be located within the United States and at the time of the execution of this Indenture shall be Rodney Square North, 1100 North Market Street, Wilmington, DE 19890-0001.

"Redemption Date": has the meaning set forth in Section 10.01.

"Redemption Price": means 100% of the principal amount of the Debt Securities being redeemed plus accrued and unpaid interest on such Debt Securities to the Redemption Date or, in the case of redemption at full maturity, the Maturity Date, or, in the case of a redemption due to the occurrence of a Special Event, to the Special Redemption Date if such Special Redemption Date is on or after July 30, 2010.

"Regulation S Transferee": means a non-U.S. Person acquiring Debt Securities in accordance with Regulation S under the Securities Act.

"Responsible Officer": means, with respect to the Trustee, any officer within the Principal Office of the Trustee with direct responsibility for the administration of the Indenture, including any vice-president, any assistant vice-president, any secretary, any assistant secretary, the treasurer, any assistant treasurer, any trust officer or other officer of the Principal Office of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

"Securities Act": means the Securities Act of 1933, as amended.

"Securityholder," "holder of Debt Securities" or other similar terms: means any Person in whose name at the time a particular Debt Security is registered on the Debt Security Register.

"Senior Indebtedness": means, with respect to the Company, (i) the principal, premium, if any, and interest in respect of (A) indebtedness of the Company for money borrowed and (B) indebtedness evidenced by securities, debentures, notes, bonds or other similar instruments issued by the Company; (ii) all capital lease obligations of the Company; (iii) all obligations of the Company issued or assumed as the deferred purchase price of property, all conditional sale obligations of the Company and all obligations of the Company under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business); (iv) all obligations of the Company for the reimbursement of any letter of credit, any banker's acceptance, any security purchase facility, any repurchase agreement or similar arrangement, any interest rate swap, any other hedging arrangement, any obligation under options or any similar credit or other transaction; (v) all obligations of the type referred to in clauses (i) through (iv) above of other Persons for the payment of which the Company is responsible or liable as obligor, guarantor or otherwise ("guarantees"); and (vi) all obligations of the type referred to in clauses (i) through (v) above of other Persons secured by any lien on any property or asset of the Company (whether or not such obligation is assumed by the Company), whether incurred on or prior to the date of this Indenture or thereafter incurred, except that Senior Indebtedness does not include obligations in respect of (1) any indebtedness issued under this Indenture, and (2) any indebtedness or any guarantee that is by its terms subordinated to or *pari passu* with the Debt Securities; including, without limitation, the debt securities of the Company issued under the following Indentures (x) the Amended and Restated Indenture, dated September 16, 2005, between the Company and JPMorgan Chase Bank, National Association, as trustee, (y) the Indenture, dated April 22, 2005, between the Company and Wilmington Trust Company, as trustee, and (z) the Indenture, dated May 20, 2005, between the Company and JPMorgan Chase Bank, National Association, as trustee.

"*Special Event*": means either a Tax Event or an Investment Company Event.

"*Special Redemption Date*": has the meaning set forth in Section 10.02.

"*Special Redemption Price*": means (i) if the Special Redemption Date is prior to July 30, 2010, 107.5% of the principal amount of the Debt Securities being redeemed pursuant to Section 10.02 plus accrued and unpaid interest on such Debt Securities to the Special Redemption Date and (ii) if the Special Redemption Date is on or after July 30, 2010, the Redemption Price for such Special Redemption Date.

"*Subsidiary*": means, with respect to any Person, (i) any corporation, at least a majority of the outstanding voting stock of which is owned, directly or indirectly, by such Person or by one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries, (ii) any general partnership, joint venture or similar entity, at least a majority of the outstanding partnership or similar interests of which shall at the time be owned by such Person, or by one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries, and (iii) any limited partnership of which such Person or any of its Subsidiaries is a general partner. For the purposes of this definition, "voting stock" means shares, interests, participations or other equivalents in the equity interest (however designated) in such Person having ordinary voting power for the election of a majority of the directors (or the equivalent) of such Person, other than shares, interests, participations or other equivalents having such power only by reason of the occurrence of a contingency.

"*Tax Event*": means the receipt by the Company and the Trust of an Opinion of Counsel experienced in such matters to the effect that, as a result of 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 as a result of any official administrative pronouncement (including any private letter ruling, technical advice memorandum, regulatory procedure, notice or announcement (an "Administrative Action")) or judicial decision interpreting or applying such laws or regulations, regardless of whether such Administrative Action or judicial decision is issued to or in connection with a proceeding involving the Company or the Trust and whether or not subject to review or appeal, which amendment, clarification, change, Administrative Action or decision is enacted, promulgated or announced, in each case on or after the date of original issuance of the Debt Securities, there is more than an insubstantial risk that: (i) the Trust is, or will be within 90 days of the date of such opinion, subject to United States federal income tax with respect to income received or accrued on the Debt Securities; (ii) interest payable by the Company on the Debt Securities is not, or within 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; or (iii) the Trust is, or will be within 90 days of the date of such opinion, subject to or otherwise required to pay, or required to withhold from distributions to holders of Trust Securities, more than a *de minimis* amount of other taxes (including withholding taxes), duties, assessments or other governmental charges.

"*Trust*": means Impac Capital Trust #4, the Delaware statutory trust, or any other similar trust created for the purpose of issuing Capital Securities in connection with the issuance of Debt Securities under this Indenture, of which the Company is the sponsor.

"*Trust Indenture Act*": means the Trust Indenture Act of 1939, as amended from time-to-time, or any successor legislation.

"*Trust Securities*": means Common Securities and Capital Securities of Impac Capital Trust #4.

"*Trustee*": means the Person identified as "Trustee" in the first paragraph hereof, and, subject to the provisions of Article VI hereof, shall also include its successors and assigns as Trustee hereunder.

"*United States*": means the United States of America and the District of Columbia.

"U.S. Person": has the meaning given to United States Person as set forth in Section 7701(a)(30) of the Code.

## ARTICLE II

### DEBT SECURITIES

#### SECTION 2.01. *Authentication and Dating.*

Upon the execution and delivery of this Indenture, or from time to time thereafter, Debt Securities in an aggregate principal amount not in excess of \$20,620,000 may be executed and delivered by the Company to the Trustee for authentication, and the Trustee shall thereupon authenticate and make available for delivery said Debt Securities to or upon the written order of the Company, signed by its Chairman of the Board of Directors, Vice Chairman, President or Chief Financial Officer or one of its Vice Presidents, without any further action by the Company hereunder. In authenticating such Debt Securities, and accepting the additional responsibilities under this Indenture in relation to such Debt Securities, the Trustee shall be entitled to receive, and (subject to Section 6.01) shall be fully protected in relying upon a copy of any Board Resolution or Board Resolutions relating thereto and, if applicable, an appropriate record of any action taken pursuant to such resolution, in each case certified by the Secretary or an Assistant Secretary or other officers with appropriate delegated authority of the Company as the case may be.

The Trustee shall have the right to decline to authenticate and deliver any Debt Securities under this Section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if a Responsible Officer of the Trustee in good faith shall determine that such action would expose the Trustee to personal liability to existing Securityholders.

The definitive Debt Securities shall be typed, printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Debt Securities, as evidenced by their execution of such Debt Securities.

#### SECTION 2.02. *Form of Trustee's Certificate of Authentication.*

The Trustee's certificate of authentication on all Debt Securities shall be in substantially the following form:

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

Wilmington Trust Company, not in its individual capacity but solely as trustee

By

\_\_\_\_\_  
Authorized Officer

#### SECTION 2.03. *Form and Denomination of Debt Securities.*

Subject to Section 2.05, the Debt Securities shall be substantially in the form of Exhibit A hereto. The Debt Securities shall be in registered, certificated form without coupons and in minimum denominations of \$100,000 and any multiple of \$1,000 in excess thereof. The Debt Securities shall be numbered, lettered, or otherwise distinguished in such manner or in accordance with such plans as the officers executing the same may determine with the approval of the Trustee as evidenced by the execution and authentication thereof.

SECTION 2.04. *Execution of Debt Securities.*

The Debt Securities shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its Chairman of the Board of Directors, Vice Chairman, President or Chief Financial Officer or one of its Executive Vice Presidents, Senior Vice Presidents or Vice Presidents, by facsimile or otherwise, and which need not be attested. Only such Debt Securities as shall bear thereon a certificate of authentication substantially in the form herein before recited, executed by the Trustee or the Authenticating Agent by the manual signature of an authorized officer, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee or the Authenticating Agent upon any Debt Security executed by the Company shall be conclusive evidence that the Debt Security so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture.

In case any officer of the Company who shall have signed any of the Debt Securities shall cease to be such officer before the Debt Securities so signed shall have been authenticated and delivered by the Trustee or the Authenticating Agent, or disposed of by the Company, such Debt Securities nevertheless may be authenticated and delivered or disposed of as though the Person who signed such Debt Securities had not ceased to be such officer of the Company; and any Debt Security may be signed on behalf of the Company by such Persons as, at the actual date of the execution of such Debt Security, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such an officer.

Every Debt Security shall be dated the date of its authentication.

SECTION 2.05. *Exchange and Registration of Transfer of Debt Securities.*

The Company shall cause to be kept, at the office or agency maintained for the purpose of registration of transfer and for exchange as provided in Section 3.02, a register (the "Debt Security Register") for the Debt Securities issued hereunder in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration and transfer of all Debt Securities as provided in this Article II. Such register shall be in written form or in any other form capable of being converted into written form within a reasonable time.

Debt Securities to be exchanged may be surrendered at the Principal Office of the Trustee or at any office or agency to be maintained by the Company for such purpose as provided in Section 3.02, and the Company shall execute, the Company or the Trustee shall register and the Trustee or the Authenticating Agent shall authenticate and make available for delivery in exchange therefor the Debt Security or Debt Securities which the Securityholder making the exchange shall be entitled to receive. Upon due presentment for registration of transfer of any Debt Security at the Principal Office of the Trustee or at any office or agency of the Company maintained for such purpose as provided in Section 3.02, the Company shall execute, the Company or the Trustee shall register and the Trustee or the Authenticating Agent shall authenticate and make available for delivery in the name of the transferee or transferees a new Debt Security for a like aggregate principal amount. Registration or registration of transfer of any Debt Security by the Trustee or by any agent of the Company appointed pursuant to Section 3.02, and delivery of such Debt Security, shall be deemed to complete the registration or registration of transfer of such Debt Security.

All Debt Securities presented for registration of transfer or for exchange or payment shall (if so required by the Company or the Trustee or the Authenticating Agent) be duly endorsed by, or be accompanied by, a written instrument or instruments of transfer in form satisfactory to the Company and either the Trustee or the Authenticating Agent duly executed by, the holder or such holder's attorney duly authorized in writing.

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

The Company or the Trustee shall not be required to exchange or register a transfer of any Debt Security for a period of 15 days immediately preceding the date of selection of Debt Securities for redemption.

Upon the request of the Initial Purchaser (as defined in the Declaration) the Company shall provide for the Debt Securities to be transferred and held through the facilities of The Depository Trust Company, the Euroclear, Clearstream or similar book-entry systems for holders and transferees who are qualified institutional buyers for purposes of Rule 144A under the Securities Act or Regulation S Transferees or, consistent with an opinion of counsel, other holders or transferees. The Company shall cause appropriate revisions to the form of Debt Securities necessary to facilitate book-entry transfers and holding.

Notwithstanding the foregoing, Debt Securities may not be transferred except in compliance with the restricted securities legend set forth below (subject to the preceding paragraph), unless otherwise determined by the Company in accordance with applicable law, which legend shall be placed on each Debt Security:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS OR ANY OTHER APPLICABLE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY ONLY (A) TO THE COMPANY, (B) PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON THE HOLDER REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO A "NON-U.S. PERSON" IN AN "OFFSHORE TRANSACTION" PURSUANT TO REGULATION S UNDER THE SECURITIES ACT, (D) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF SUBPARAGRAPH (a) (1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT THAT IS ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF AN "ACCREDITED INVESTOR," FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO IT IN ACCORDANCE WITH THE INDENTURE, A COPY OF WHICH MAY BE OBTAINED FROM THE COMPANY. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES THAT IT WILL COMPLY WITH THE FOREGOING RESTRICTIONS.



THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES, REPRESENTS AND WARRANTS THAT IT WILL NOT ENGAGE IN HEDGING TRANSACTIONS INVOLVING THIS SECURITY UNLESS SUCH TRANSACTIONS ARE IN COMPLIANCE WITH THE SECURITIES ACT.

THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF 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, UNLESS SUCH PURCHASER OR HOLDER IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION OR ITS PURCHASE AND HOLDING OF THIS SECURITY IS NOT PROHIBITED BY SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE WITH RESPECT TO SUCH PURCHASE OR HOLDING. ANY PURCHASER OR HOLDER OF THIS SECURITY OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT EITHER (i) 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, OR (ii) SUCH PURCHASE WILL NOT RESULT IN A PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE FOR WHICH THERE IS NO APPLICABLE STATUTORY OR ADMINISTRATIVE EXEMPTION.

IN CONNECTION WITH ANY TRANSFER, THE HOLDER OF THIS SECURITY WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS MAY BE REQUIRED BY THE INDENTURE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

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

SECTION 2.06. *Mutilated, Destroyed, Lost or Stolen Debt Securities.*

In case any Debt Security shall become mutilated or be destroyed, lost or stolen, the Company shall execute, and upon its written request the Trustee shall authenticate and deliver, a new Debt Security bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Debt Security, or in lieu of and in substitution for the Debt Security so destroyed, lost or stolen. In every case the applicant for a substituted Debt Security shall furnish to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in

every case of destruction, loss or theft, the applicant shall also furnish to the Company and the Trustee evidence to their satisfaction of the destruction, loss or theft of such Debt Security and of the ownership thereof.

The Trustee may authenticate any such substituted Debt Security and deliver the same upon the written request or authorization of any officer of the Company. Upon the issuance of any substituted Debt Security, 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 connected therewith. In case any Debt Security which has matured or is about to mature or has been called for redemption in full shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Debt Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Debt Security) if the applicant for such payment shall furnish to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless and, in case of destruction, loss or theft, evidence satisfactory to the Company and to the Trustee of the destruction, loss or theft of such Debt Security and of the ownership thereof.

Every substituted Debt Security issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any such Debt Security is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Debt Security shall be found at any time, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Debt Securities duly issued hereunder. All Debt Securities shall be held and owned upon the express condition that, to the extent permitted by applicable law, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Debt Securities and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

#### SECTION 2.07. *Temporary Debt Securities.*

Pending the preparation of definitive Debt Securities, the Company may execute and the Trustee shall authenticate and make available for delivery temporary Debt Securities that are typed, printed or lithographed. Temporary Debt Securities shall be issuable in any authorized denomination, and substantially in the form of the definitive Debt Securities but with such omissions, insertions and variations as may be appropriate for temporary Debt Securities, all as may be determined by the Company. Every such temporary Debt Security shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the definitive Debt Securities. Without unreasonable delay, the Company will execute and deliver to the Trustee or the Authenticating Agent definitive Debt Securities and thereupon any or all temporary Debt Securities may be surrendered in exchange therefor, at the Principal Office of the Trustee or at any office or agency maintained by the Company for such purpose as provided in Section 3.02, and the Trustee or the Authenticating Agent shall authenticate and make available for delivery in exchange for such temporary Debt Securities a like aggregate principal amount of such definitive Debt Securities. Such exchange shall be made by the Company at its own expense and without any charge therefor except that in case of any such exchange involving a registration of transfer the Company may require payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. Until so exchanged, the temporary Debt Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Debt Securities authenticated and delivered hereunder.

#### SECTION 2.08. *Payment of Interest.*

Each Debt Security will bear interest at the then applicable Interest Rate, for the period from and including the immediately preceding Interest Payment Date or, in the case of the first interest period, the original date of issuance of such Debt Security to, but excluding, the next applicable Interest

Payment Date or, in the case of the last interest period, the Redemption Date, Special Redemption Date or Maturity Date, as applicable (each such period an "Interest Period"), on the principal thereof, on any overdue principal and (to the extent that payment of such interest is enforceable under applicable law) on Deferred Interest and on any overdue installment of interest (including Defaulted Interest), payable (subject to the provisions of Article XV) on each Interest Payment Date commencing on January 30, 2006. Interest and any Deferred Interest on any Debt Security that is payable, and is punctually paid or duly provided for by the Company, on any Interest Payment Date shall be paid to the Person in whose name said Debt Security (or one or more Predecessor Securities) is registered at the close of business on the regular record date for such interest installment, except that interest and any Deferred Interest payable on the Maturity Date, the Redemption Date or the Special Redemption Date, as the case may be, shall be paid to the Person to whom principal is paid. In the event that any Debt Security or portion thereof is called for redemption and the redemption date is subsequent to a regular record date with respect to any Interest Payment Date and prior to such Interest Payment Date, interest on such Debt Security will be paid upon presentation and surrender of such Debt Security.

Any interest on any Debt Security, other than Deferred Interest, that is payable, but is not punctually paid or duly provided for by the Company, on any Interest Payment Date (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 shall be paid by the Company to the Persons in whose names such Debt 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, which shall be fixed in the following manner: the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Debt 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 reasonably 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 as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall not be more than fifteen nor less than ten days prior to the date of the proposed payment and not less than ten 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 Securityholder at his or her address as it appears in the Debt Security Register, not less than ten days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names such Debt Securities (or their respective Predecessor Securities) are registered on such special record date and thereafter the Company shall have no further payment obligation in respect of the Defaulted Interest.

Any interest scheduled to become payable on an Interest Payment Date occurring during an Extension Period shall not be Defaulted Interest and shall be payable on such other date as may be specified in the terms of such Debt Securities.

The term "regular record date" as used herein shall mean the fifteenth day prior to an Interest Payment Date whether or not such date is a Business Day.

Subject to the foregoing provisions of this Section, each Debt Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Debt Security shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Debt Security.

SECTION 2.09. *Cancellation of Debt Securities Paid, etc.*

All Debt Securities surrendered for the purpose of payment, redemption, exchange or registration of transfer, shall, if surrendered to the Company or any Paying Agent, be surrendered to the Trustee and promptly canceled by it, or, if surrendered to the Trustee or any Authenticating Agent, shall be promptly canceled by it, and no Debt Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. All Debt Securities canceled by any Authenticating Agent shall be delivered to the Trustee. The Trustee shall destroy all canceled Debt Securities unless the Company otherwise directs the Trustee in writing, in which case the Trustee shall dispose of such Debt Securities as directed by the Company. If the Company shall acquire any of the Debt Securities, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Debt Securities unless and until the same are surrendered to the Trustee for cancellation.

SECTION 2.10. *Computation of Interest.*

(a) The amount of interest payable for each Interest Period will be computed as follows: (i) for each Interest Period up to and including the Interest Period ending on July 29, 2010, on the basis of a 360-day year consisting of twelve 30-day months, and (ii) for each subsequent Interest Period, on the basis of a 360-day year and the actual number of days elapsed in the relevant Interest Period.

(b) LIBOR for a given Interest Period shall be determined by the Calculation Agent in accordance with the following provisions:

(1) On the second LIBOR Business Day (*provided*, that on such day commercial banks are open for business (including dealings in foreign currency deposits) in London (a "LIBOR Banking Day"), and otherwise the next preceding LIBOR Business Day that is also a LIBOR Banking Day) prior to April 30, July 30, October 30 and January 30), as the case may be, immediately prior to the commencement of such Interest Period (each such day, a "LIBOR Determination Date"), LIBOR shall equal the rate, as obtained by the Calculation Agent, for three-month U.S. Dollar deposits in Europe which appears on 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 Telerate Page 3750, as of 11:00 a.m. (London time) on such LIBOR Determination Date, as reported by Bloomberg Financial Markets Commodities News. "LIBOR Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banking institutions in New York, New York or Wilmington, Delaware are authorized or obligated by law or executive order to be closed. If such rate is superseded on Telerate Page 3750 by a corrected rate before 12:00 noon (London time) on the same LIBOR Determination Date, the corrected rate as so substituted will be the applicable LIBOR for that LIBOR Determination Date.

(2) If, on any LIBOR Determination Date, such rate does not appear on Telerate Page 3750 as reported by Bloomberg Financial Markets Commodities News or such other page as may replace such Telerate 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 U.S. Dollar deposits in Europe (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 the arithmetic mean of such quotations. If, on any LIBOR Determination Date, only one or none of the Reference Banks provides such a quotation, LIBOR shall be deemed to be the arithmetic mean of the offered quotations that at least two leading banks in the City of New York (as selected by the Calculation Agent) are quoting on the relevant LIBOR Determination Date for three-month U.S. Dollar deposits in Europe at

approximately 11:00 a.m. (London time) in an amount determined by the Calculation Agent. As used herein, "Reference Banks" means four major banks in the London interbank market selected by the Calculation Agent.

(3) 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 for such Interest Period shall be LIBOR in effect for the immediately preceding Interest Period.

(c) All percentages resulting from any calculations on the Debt Securities will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with five one-millionths of a percentage point rounded upward (e.g., 9.876545% (or .09876545) being rounded to 9.87655% (or .0987655)), and all dollar amounts used in or resulting from such calculation will be rounded to the nearest cent (with one-half cent being rounded upward).

(d) On each LIBOR Determination Date, the Calculation Agent shall notify, in writing, the Company and the Paying Agent of the applicable Interest Rate in effect for the related Interest Payment Date. The Calculation Agent shall, upon the request of the holder of any Debt Securities, provide the Interest Rate then in effect. All calculations made by the Calculation Agent in the absence of manifest error shall be conclusive for all purposes and binding on the Company and the Holders of the Debt Securities. The Paying Agent shall be entitled to rely on information received from the Calculation Agent or the Company as to the Interest Rate. The Company shall, from time to time, provide any necessary information to the Paying Agent relating to any original issue discount and interest on the Debt Securities that is included in any payment and reportable for taxable income calculation purposes.

#### SECTION 2.11. *Extension of Interest Payment Period.*

So long as no Event of Default has occurred and is continuing, the Company shall have the right, from time to time and without causing an Event of Default, to defer payments of interest on the Debt Securities by extending the interest payment period on the Debt Securities at any time and from time to time during the term of the Debt Securities, for up to twenty consecutive quarterly periods (each such extended interest payment period, an "Extension Period"), during which Extension Period no interest shall be due and payable. No Extension Period may end on a date other than an Interest Payment Date. During any Extension Period, interest will continue to accrue on the Debt Securities, and interest on such accrued interest (such accrued interest and interest thereon referred to herein as "Deferred Interest") will accrue at an annual rate equal to the Interest Rate in effect for such Extension Period, compounded quarterly from the date such Deferred Interest would have been payable were it not for the Extension Period, to the extent permitted by law. No interest or Deferred Interest shall be due and payable during an Extension Period, except at the end thereof. At the end of any such Extension Period the Company shall pay all Deferred Interest then accrued and unpaid on the Debt Securities; *provided, however*, that no Extension Period may extend beyond the Maturity Date, Redemption Date or Special Redemption Date; and *provided further, however*, that during any such Extension Period, the Company shall be subject to the restrictions set forth in Section 3.08 of this Indenture. Prior to the termination of any Extension Period, the Company may further extend such period, *provided*, that such period together with all such previous and further consecutive extensions thereof shall not exceed twenty consecutive quarterly periods, or extend beyond the Maturity Date, Redemption Date or Special Redemption Date. The deferral of the payment of interest during an Extension Period shall not defer the payment of any Additional Amounts that may be due and payable. Upon the termination of any Extension Period and upon the payment of all Deferred Interest, the Company may commence a new Extension Period, subject to the foregoing requirements. The Company must give the Trustee notice of its election to begin any Extension Period at least one Business Day prior to the regular record date related to the date such interest would otherwise be next payable. The Company must give the Trustee notice of its election to extend any Extension Period at

least one Business Day prior to the regular record date related to the next succeeding date on which interest on the Debt Securities would have been payable except for the election to extend such existing Extension Period. The Trustee shall give notice of the Company's election to begin a new Extension Period to the Securityholders.

#### SECTION 2.12. *CUSIP Numbers.*

The Company in issuing the Debt Securities may use a "CUSIP" number (if then generally in use), and, if so, the Trustee shall use a "CUSIP" number in notices of redemption as a convenience to Securityholders; *provided*, that any such notice may state that no representation is made as to the correctness of such number either as printed on the Debt Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Debt Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee in writing of any change in the CUSIP number.

### ARTICLE III

#### PARTICULAR COVENANTS OF THE COMPANY

##### SECTION 3.01. *Payment of Principal, Premium and Interest; Agreed Treatment of the Debt Securities.*

(a) The Company covenants and agrees that it will duly and punctually pay or cause to be paid all payments due on the Debt Securities at the place, at the respective times and in the manner provided in this Indenture and the Debt Securities. At the option of the Company, each installment of interest on the Debt Securities may be paid (i) by mailing checks for such interest payable to the order of the holders of Debt Securities entitled thereto as they appear on the Debt Security Register or (ii) by wire transfer to any account with a banking institution located in the United States designated by such holders to the Paying Agent no later than the related record date.

(b) The Company will treat the Debt Securities as indebtedness, and the interest payable in respect of such Debt Securities as interest, for all U.S. federal income tax purposes. All payments in respect of such Debt 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-8 BEN (or any substitute or successor form) establishing its non-U.S. status for U.S. federal income tax purposes.

(c) As of the date of this Indenture, the Company has no intention to exercise its right under Section 2.11 to defer payments of interest on the Debt Securities by commencing an Extension Period.

(d) As of the date of this Indenture, the Company believes that the likelihood that it would exercise its right under Section 2.11 to defer payments of interest on the Debt Securities by commencing an Extension Period at any time during which the Debt Securities are outstanding is remote because of the restrictions that would be imposed on the Company's ability to declare or pay dividends or distributions on, or to redeem, purchase or make a liquidation payment with respect to, any of its outstanding equity and on the Company's ability to make any payments of principal of or interest on, or repurchase or redeem, any of its debt securities that rank *pari passu* in all respects with (or junior in interest to) the Debt Securities.

##### SECTION 3.02. *Offices for Notices and Payments, etc.*

So long as any of the Debt Securities remain outstanding, the Company will maintain in Wilmington, Delaware or in Newport Beach, California an office or agency where the Debt Securities may be presented for payment, an office or agency where the Debt Securities may be presented for registration of transfer and for exchange as provided in this Indenture and an office or agency where notices and demands to or upon the Company in respect of the Debt Securities or of this Indenture may be served. The Company will give to the Trustee written notice of the location of any such office or agency and of any change of location thereof. Until otherwise designated from time to time by the Company in a notice to the Trustee, or specified as contemplated by Section 2.05, such office or agency for all of the above purposes shall be the Principal Office of the Trustee. In case the Company shall fail to maintain any such office or agency in Wilmington, Delaware or in Newport Beach, California or shall fail to give such notice of the location or of any change in the location thereof, presentations and demands may be made and notices may be served at the Principal Office of the Trustee.

In addition to any such office or agency, the Company may from time to time designate one or more offices or agencies outside Wilmington, Delaware or Newport Beach, California where the Debt Securities may be presented for registration of transfer and for exchange in the manner provided in this Indenture, and the Company may from time to time rescind such designation, as the Company may deem desirable or expedient; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain any such office or agency in Wilmington, Delaware or in Newport Beach, California for the purposes above mentioned. The Company will give to the Trustee prompt written notice of any such designation or rescission thereof.

SECTION 3.03. *Appointments to Fill Vacancies in Trustee's Office.*

The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 6.09, a Trustee, so that there shall at all times be a Trustee hereunder.

SECTION 3.04. *Provision as to Paying Agent.*

(a) If the Company shall appoint a Paying Agent other than the Trustee, it will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provision of this Section 3.04,

(1) that it will hold all sums held by it as such agent for the payment of all payments due on the Debt Securities (whether such sums have been paid to it by the Company or by any other obligor on the Debt Securities) in trust for the benefit of the holders of the Debt Securities;

(2) that it will give the Trustee prompt written notice of any failure by the Company (or by any other obligor on the Debt Securities) to make any payment on the Debt Securities when the same shall be due and payable; and

(3) that it will, at any time during the continuance of any Event of Default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the payments due on the Debt Securities, set aside, segregate and hold in trust for the benefit of the holders of the Debt Securities a sum sufficient to pay such payments so becoming due and will notify the Trustee in writing of any failure to take such action and of any failure by the Company (or by any other obligor under the Debt Securities) to make any payment on the Debt Securities when the same shall become due and payable.

Whenever the Company shall have one or more Paying Agents for the Debt Securities, it will, on or prior to each due date of the payments on the Debt Securities, deposit with a Paying Agent a sum sufficient to pay all payments so becoming due, such sum to be held in trust for the benefit of the Persons entitled thereto and (unless such Paying Agent is the Trustee) the Company shall promptly notify the Trustee in writing of its action or failure to act.

(c) Anything in this Section 3.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge with respect to the Debt Securities, or for any other reason, pay, or direct any Paying Agent to pay to the Trustee all sums held in trust by the Company or any such Paying Agent, such sums to be held by the Trustee upon the same terms and conditions herein contained.

(d) Anything in this Section 3.04 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 3.04 is subject to Sections 12.03 and 12.04.

(e) The Company hereby initially appoints the Trustee to act as Paying Agent (the "Paying Agent").

SECTION 3.05. *Certificate to Trustee.*

The Company will deliver to the Trustee on or before 120 days after the end of each fiscal year, so long as Debt Securities are outstanding hereunder, a Certificate stating that in the course of the performance by the signers of their duties as officers of the Company they would normally have knowledge of any default by the Company in the performance of any covenants of the Company contained herein, stating whether or not they have knowledge of any such default and, if so, specifying each such default of which the signers have knowledge and the nature thereof.

SECTION 3.06. *Additional Amounts.*

If and for so long as the Trust is the holder of all Debt Securities and is subject to or otherwise required to pay, or is required to withhold from distributions to holders of Trust Securities, any additional taxes (including withholding taxes), duties, assessments or other governmental charges as a result of a Tax Event, the Company will pay such additional amounts (the "Additional Amounts") on the Debt Securities as shall be required so that the net amounts received and retained by the Trust for distribution to holders of Trust Securities after paying all taxes (including withholding taxes on distributions to holders of Trust Securities), duties, assessments or other governmental charges will be equal to the amounts the Trust would have received and retained for distribution to holders of Trust Securities after paying all taxes (including withholding taxes on distributions to holders of Trust Securities), duties, assessments or other governmental charges if no such additional taxes, duties, assessments or other governmental charges had been imposed. Whenever in this Indenture or the Debt Securities there is a reference in any context to the payment of principal of or interest on the Debt Securities, such mention shall be deemed to include mention of payments of the Additional Amounts provided for in this paragraph to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to the provisions of this paragraph and express mention of the payment of Additional Amounts (if applicable) in any provisions hereof shall not be construed as excluding Additional Amounts in those provisions hereof where such express mention is not made, *provided, however*, that the deferral of the payment of interest during an Extension Period pursuant to Section 2.11 shall not defer the payment of any Additional Amounts that may be due and payable.

SECTION 3.07. *Compliance with Consolidation Provisions.*

The Company will not, while any of the Debt Securities remain outstanding, consolidate with, or merge into any other Person, or merge into itself, or sell or convey all or substantially all of its property to any other Person unless the provisions of Article XI hereof are complied with.

SECTION 3.08. *Limitation on Dividends.*

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, (ii) the Company shall be in default with respect to its payment of any obligations or (iii) the Company shall have given notice of its election to defer payments of interest on the Debt Securities by extending the interest payment period as provided herein and such period, or any extension thereof, shall have commenced and be continuing, 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), (ii) or (iii) 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).

SECTION 3.09. *Covenants as to the Trust.*

For so long as such Trust Securities remain outstanding, the Company shall maintain, directly or indirectly, 100% ownership of the Common Securities; *provided, however*, that any permitted successor of the Company under this Indenture that is a U.S. Person may succeed to the Company's ownership of such Common Securities. The Company, as owner of the Common Securities, shall use commercially reasonable efforts (a) to cause the Trust to remain a statutory trust, except in connection with a distribution of Debt Securities to the holders of Trust Securities in liquidation of the Trust, the redemption of all of the Trust Securities or certain mergers, consolidations or amalgamations, each as permitted by the Declaration, (b) to cause the Trust to otherwise continue to be classified as a grantor trust for United States federal income tax purposes and (c) to cause each holder of Trust Securities to be treated as owning an undivided beneficial interest in the Debt Securities.

SECTION 3.10. *Covenant as to REIT Status.*

The Company will use its reasonable efforts to meet the requirements to qualify as a real estate investment trust (a "REIT") under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended, effective for the taxable year ending December 31, 2005 and succeeding taxable years for so long as the judgment of the Company's board of directors is that the Company should maintain its status as a REIT.

**ARTICLE IV**

**LISTS AND REPORTS  
BY THE COMPANY AND THE TRUSTEE**

SECTION 4.01. *Securityholders' Lists.*

The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee:

(a) on each regular record date for an Interest Payment Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Securityholders of the Debt Securities as of such record date; and

(b) at such other times as the Trustee may request in writing, within 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 15 days prior to the time such list is furnished;

except that no such lists need be furnished under this Section 4.01 so long as the Trustee is in possession thereof by reason of its acting as Debt Security registrar.

SECTION 4.02. *Preservation and Disclosure of Lists.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of Debt Securities (1) contained in the most recent list furnished to it as provided in Section 4.01 or (2) received by it in the capacity of Debt Securities registrar (if so acting) hereunder. The Trustee may destroy any list furnished to it as provided in Section 4.01 upon receipt of a new list so furnished.

(b) In case three or more holders of Debt Securities (hereinafter referred to as "applicants") apply in writing to the Trustee and furnish to the Trustee reasonable proof that each such applicant has owned a Debt Security for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other holders of Debt Securities with respect to their rights under this Indenture or under such Debt Securities and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall within five Business Days after the receipt of such application, at its election, either:

(1) afford such applicants access to the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 4.02, or

(2) inform such applicants as to the approximate number of holders of Debt Securities whose names and addresses appear in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 4.02, and as to the approximate cost of mailing to such Securityholders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Securityholder of Debt Securities whose name and address appear in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 4.02 a copy of the form of proxy or other communication which is specified in such request with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, the Trustee shall mail to such applicants and file with the Securities and Exchange Commission, if permitted or required by applicable law, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the holders of all Debt Securities, as the case may be, or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If said Commission, as permitted or required by applicable law, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, said Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Securityholders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Each and every holder of Debt Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any Paying Agent shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the holders of Debt Securities in accordance with the provisions of subsection (b) of this Section 4.02, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under said subsection (b).

SECTION 4.03. *Financial and Other Information.*

If at any time the Trust ceases to exist for whatever reason or is no longer the holder of the Debt Securities, the Company shall:

(a) deliver to each Securityholder either (1) each Report on Form 10-K and Form 10-Q prepared by the Company and filed with the Securities and Exchange Commission in accordance with the Exchange Act within 90 days after the filing of each Form 10-K and within 30 days after the filing of each Form 10-Q, or (2) if the Company is at any time neither subject to Section 13 or 15(d) of the Exchange Act nor exempt from reporting pursuant to Rule 12g3-2(b) thereunder, the information required to be provided by Rule 144A(d)(4) under the Securities Act; and

(b) prepare and deliver to each Securityholder, within 30 days after the end of the fiscal year of the Company, Form 1099 or such other annual U.S. federal income tax information statement required by the Code, containing such information with regard to the Debt Securities held by such Securityholder as is required by the Code and the income tax regulations of the U.S. Treasury thereunder.

**ARTICLE V**

**REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS  
UPON AN EVENT OF DEFAULT**

SECTION 5.01. *Events of Default.*

The following events shall be "Events of Default" with respect to Debt Securities:

(a) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appoints a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property, or orders the winding-up or liquidation of its affairs and such decree or order shall remain unstayed and in effect for a period of 90 consecutive days; or

(b) the Company shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or of any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or

(c) the Company defaults in the payment of any interest upon any Debt Security when it becomes due and payable, and continuance of such default for a period of 30 days; for the avoidance of doubt, an extension of any interest payment period by the Company in accordance with Section 2.11 of this Indenture shall not constitute a default under this clause 5.01(c); or

(d) the Company defaults in the payment of all or any part of the principal of (or premium, if any, on) any Debt Securities as and when the same shall become due and payable either at maturity, upon an optional or Special Event redemption in accordance with Article X of this Indenture, by declaration of acceleration pursuant to this Section 5.01 or otherwise; or

(e) the Company defaults in the performance of, or breaches, any of its covenants or agreements in Section 3.06, 3.07, 3.08, 3.09 or 3.10 of this Indenture (other than a covenant or agreement a default in whose performance or whose breach is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 90 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

not less than 25% in aggregate principal amount of the outstanding Debt 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

(f) the Trust shall have voluntarily or involuntarily liquidated, dissolved, wound-up its business or otherwise terminated its existence except in connection with (1) the distribution of the Debt Securities to holders of the Trust Securities in liquidation of their interests in the Trust, (2) the redemption of all of the outstanding Trust Securities or (3) certain mergers, consolidations or amalgamations, each as permitted by the Declaration.

If an Event of Default occurs and is continuing with respect to the Debt Securities, then, and in each and every such case, unless the principal of the Debt Securities shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Debt Securities then outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by Securityholders), may declare the entire principal of the Debt Securities and the interest accrued, but unpaid, thereon, if any, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable.

The foregoing provisions, however, are subject to the condition that if, at any time after the principal of the Debt Securities shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, (i) the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Debt Securities and all payments on the Debt Securities which shall have become due otherwise than by acceleration (with interest upon all such payments and Deferred Interest, to the extent permitted by law) and such amount as shall be sufficient to cover reasonable compensation to the Trustee and each predecessor Trustee, their respective agents and counsel, and all other amounts due to the Trustee pursuant to Section 6.06, if any, and (ii) all Events of Default under this Indenture, other than the non-payment of the payments on Debt Securities which shall have become due by acceleration, shall have been cured, waived or otherwise remedied as provided herein, then and in every such case the holders of a majority in aggregate principal amount of the Debt Securities then outstanding, by written notice to the Company and to the Trustee, may waive all defaults and rescind and annul such declaration and its consequences, but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such rescission or annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Trustee and the holders of the Debt Securities shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the holders of the Debt Securities shall continue as though no such proceeding had been taken.

#### SECTION 5.02. *Payment of Debt Securities on Default; Suit Therefor.*

The Company covenants that upon the occurrence of either (i) an Event of Default pursuant to clause 5.01(c) or 5.01(d) and upon demand of the Trustee, which, notwithstanding any other provision of this Indenture, the Trustee is hereby authorized to and shall make within one Business Day of acquiring knowledge of such Event of Default, or (ii) an Event of Default pursuant to clause 5.01(e) caused by the breach of any of the covenants or agreements in Section 3.08, the Company will pay to the Trustee, for the benefit of the holders of the Debt Securities, the whole amount that then shall have become due and payable on all Debt Securities and any Deferred Interest accrued on the Debt Securities; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents and counsel, and

any other amounts due to the Trustee under Section 6.06. In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or any other obligor on such Debt Securities and collect in the manner provided by law out of the property of the Company or any other obligor on such Debt Securities wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Debt Securities under Bankruptcy Law, or in case a receiver or trustee shall have been appointed for the property of the Company or such other obligor, or in the case of any other similar judicial proceedings relative to the Company or other obligor upon the Debt Securities, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Debt Securities shall then be due and payable as therein expressed or by declaration of acceleration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 5.02, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and interest owing and unpaid in respect of the Debt Securities and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys and counsel, and for reimbursement of all other amounts due to the Trustee under Section 6.06) and of the Securityholders allowed in such judicial proceedings relative to the Company or any other obligor on the Debt Securities, or to the creditors or property of the Company or such other obligor, unless prohibited by applicable law and regulations, to vote on behalf of the holders of the Debt Securities in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency proceedings or Person performing similar functions in comparable proceedings, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the Securityholders 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 Securityholders, to pay to the Trustee such amounts as shall be sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee and their respective agents and counsel, and all other amounts due to the Trustee under Section 6.06.

Nothing herein contained shall be construed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Debt Securities or the rights of any holder thereof or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Debt Securities, may be enforced by the Trustee without the possession of any of the Debt Securities, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Debt Securities.

In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Debt Securities, and it shall not be necessary to make any holders of the Debt Securities parties to any such proceedings.

SECTION 5.03. *Application of Moneys Collected by Trustee.*

Any moneys collected by the Trustee shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such moneys, upon presentation of the several Debt Securities in respect of which moneys have been collected, and stamping thereon the payment, if only partially paid, and upon surrender thereof if fully paid:

First: To the payment of costs and expenses incurred by, and reasonable fees of, the Trustee, its agents and counsel, and of all other amounts due to the Trustee under Section 6.06;

Second: To the payment of all Senior Indebtedness of the Company if and to the extent required by Article XV;

Third: To the payment of the amounts then due and unpaid upon Debt Securities, in respect of which or for the benefit of which money has been collected, ratably, without preference or priority of any kind, according to the amounts due on such Debt Securities; and

Fourth: The balance, if any, to the Company.

SECTION 5.04. *Proceedings by Securityholders.*

No holder of any Debt Security shall have any right to institute any suit, action or proceeding for any remedy hereunder, unless such holder previously shall have given to the Trustee written notice of an Event of Default with respect to the Debt Securities and unless the holders of not less than 25% in aggregate principal amount of the Debt Securities then outstanding shall have given the Trustee a written request to institute such action, suit or proceeding and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action, suit or proceeding; *provided*, that no holder of Debt Securities shall have any right to prejudice the rights of any other holder of Debt Securities, obtain priority or preference over any other such holder or enforce any right under this Indenture except in the manner herein provided and for the equal, ratable and common benefit of all holders of Debt Securities.

Notwithstanding any other provisions in this Indenture, however, the right of any holder of any Debt Security to receive payment of the principal of, premium, if any, and interest on such Debt Security when due, or to institute suit for the enforcement of any such payment, shall not be impaired or affected without the consent of such holder. For the protection and enforcement of the provisions of this Section, each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

SECTION 5.05. *Proceedings by Trustee.*

In case of an Event of Default hereunder the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

SECTION 5.06. *Remedies Cumulative and Continuing.*

Except as otherwise provided in Section 2.06, all powers and remedies given by this Article V to the Trustee or to the Securityholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any other powers and remedies available to the Trustee or the holders of the Debt Securities, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture or otherwise established with respect to the Debt

Securities, and no delay or omission of the Trustee or of any holder of any of the Debt Securities to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 5.04, every power and remedy given by this Article V or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Securityholders.

SECTION 5.07. *Direction of Proceedings and Waiver of Defaults by Majority of Securityholders.*

The holders of a majority in aggregate principal amount of the Debt Securities affected (voting as one class) at the time outstanding 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 with respect to such Debt Securities; *provided, however*, that (subject to the provisions of Section 6.01) the Trustee shall have the right to decline to follow any such direction if the Trustee shall determine that the action so directed would be unjustly prejudicial to the holders not taking part in such direction or if the Trustee being advised by counsel determines that the action or proceeding so directed may not lawfully be taken or if a Responsible Officer of the Trustee shall determine that the action or proceedings so directed would involve the Trustee in personal liability. Prior to any declaration accelerating the maturity of the Debt Securities, the holders of a majority in aggregate principal amount of the Debt Securities at the time outstanding may on behalf of the holders of all of the Debt Securities waive (or modify any previously granted waiver of) any past default or Event of Default and its consequences, except a default (a) in the payment of principal of, premium, if any, or interest on any of the Debt Securities, (b) in respect of covenants or provisions hereof which cannot be modified or amended without the consent of the holder of each Debt Security affected, or (c) in respect of the covenants contained in Section 3.09; *provided, however*, that if the Debt Securities are held by the Trust or a trustee of such trust, such waiver or modification to such waiver shall not be effective until the holders of a majority in liquidation preference of the Trust Securities shall have consented to such waiver or modification to such waiver; *provided, further*, that if the consent of the holder of each outstanding Debt Security is required, such waiver shall not be effective until each holder of the Trust Securities shall have consented to such waiver. Upon any such waiver, the default covered thereby shall be deemed to be cured for all purposes of this Indenture and the Company, the Trustee and the holders of the Debt Securities shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon. Whenever any default or Event of Default hereunder shall have been waived as permitted by this Section 5.07, said default or Event of Default shall for all purposes of the Debt Securities and this Indenture be deemed to have been cured and to be not continuing.

SECTION 5.08. *Notice of Defaults.*

The Trustee shall, within 90 days after a Responsible Officer of the Trustee shall have actual knowledge or received written notice of the occurrence of a default with respect to the Debt Securities, mail to all Securityholders, as the names and addresses of such holders appear upon the Debt Security Register, notice of all defaults with respect to the Debt Securities known to the Trustee, unless such defaults shall have been cured before the giving of such notice (the term "defaults" for the purpose of this Section 5.08 being hereby defined to be the events specified in subsections (a), (b), (c), (d) and (e) of Section 5.01, and, with the exception of Section 5.01(e) not including periods of grace, if any, provided for therein); *provided*, that, except in the case of default in the payment of the principal of, premium, if any, or interest on any of the Debt Securities, the Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Trustee in good faith determines that the withholding of such notice is in the interests of the Securityholders.

SECTION 5.09. *Undertaking to Pay Costs.*

All parties to this Indenture agree, and each holder of any Debt Security by such holder's 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 5.09 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder, or group of Securityholders, holding in the aggregate more than 10% in principal amount of the Debt Securities outstanding, or to any suit instituted by any Securityholder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Debt Security against the Company on or after the same shall have become due and payable.

**ARTICLE VI**

**CONCERNING THE TRUSTEE**

SECTION 6.01. *Duties and Responsibilities of Trustee.*

With respect to the holders of Debt Securities issued hereunder, the Trustee, prior to the occurrence of an Event of Default with respect to the Debt Securities and after the curing or waiving of all Events of Default which may have occurred, with respect to the Debt Securities, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default with respect to the Debt Securities has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default with respect to the Debt Securities and after the curing or waiving of all Events of Default which may have occurred

(1) the duties and obligations of the Trustee with respect to the Debt Securities shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations with respect to the Debt Securities as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which 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 conform on their face to the requirements of this Indenture;

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(c) 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 Securityholders pursuant to Section 5.07, relating to



the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(d) the Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Debt Securities unless either (1) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (2) written notice of such Default or Event of Default shall have been given to the Trustee by the Company or any other obligor on the Debt Securities or by any holder of the Debt Securities, except with respect to an Event of Default pursuant to Section 5.01(c) or 5.01(d) hereof (other than an Event of Default resulting from the default in the payment of Additional Amounts, or premium, if any, if the Trustee does not have actual knowledge or written notice that such payment is due and payable), of which the Trustee shall be deemed to have knowledge.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

#### SECTION 6.02. *Reliance on Documents, Opinions, etc.*

Except as otherwise provided in Section 6.01:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, note, debenture or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee may consult with counsel of its selection and any advice or 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 accordance with such advice or Opinion of Counsel;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Securityholders, pursuant to the provisions of this Indenture, unless such Securityholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby;

(e) the Trustee shall not be liable for any action taken or omitted by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture; nothing contained herein shall, however, relieve the Trustee of the obligation, upon the occurrence of an Event of Default with respect to the Debt Securities (that has not been cured or waived) to exercise with respect to the Debt Securities such of the rights and powers vested in it by this Indenture, and to use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs;

(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, consent, order, approval, bond, debenture, coupon or other paper or document, unless requested in writing to do so by the holders of not less than a majority in principal amount of the outstanding Debt Securities affected thereby; *provided, however*, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this

Indenture, the Trustee may require reasonable indemnity against such expense or liability as a condition to so proceeding; and

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents (including any Authenticating Agent) or attorneys, and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent or attorney appointed by it with due care.

SECTION 6.03. *No Responsibility for Recitals, etc.*

The recitals contained herein and in the Debt Securities (except in the certificate of authentication of the Trustee or the Authenticating Agent) shall be taken as the statements of the Company and the Trustee and the Authenticating Agent assume no responsibility for the correctness of the same. The Trustee and the Authenticating Agent make no representations as to the validity or sufficiency of this Indenture or of the Debt Securities. The Trustee and the Authenticating Agent shall not be accountable for the use or application by the Company of any Debt Securities or the proceeds of any Debt Securities authenticated and delivered by the Trustee or the Authenticating Agent in conformity with the provisions of this Indenture.

SECTION 6.04. *Trustee, Authenticating Agent, Paying Agents, Transfer Agents or Registrar May Own Debt Securities.*

The Trustee or any Authenticating Agent or any Paying Agent or any transfer agent or any Debt Security registrar, in its individual or any other capacity, may become the owner or pledgee of Debt Securities with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, transfer agent or Debt Security registrar.

SECTION 6.05. *Moneys to be Held in Trust.*

Subject to the provisions of Section 12.04, all moneys received by the Trustee or any Paying Agent shall, until used or applied as herein provided, be held in trust for the purpose for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee and any Paying Agent shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company. So long as no Event of Default shall have occurred and be continuing, all interest allowed on any such moneys, if any, shall be paid from time to time to the Company upon the written order of the Company, signed by the Chairman of the Board of Directors, the President, the Chief Operating Officer, a Vice President, the Treasurer or an Assistant Treasurer of the Company.

SECTION 6.06. *Compensation and Expenses of Trustee.*

The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as shall be agreed to in writing between the Company and the Trustee (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and the Company will pay or reimburse the Trustee upon its written request for all documented reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance that arises from its negligence or bad faith. The Company also covenants to indemnify each of the Trustee (including in its individual capacity) and any predecessor Trustee (and its officers, agents, directors and employees) for, and to hold it harmless against, any and all loss, damage, claim, liability or expense including taxes (other than taxes based on the income of the Trustee), except to the extent such loss, damage, claim, liability or expense results from the negligence, willful misconduct or bad faith of such indemnitee, arising out of or in connection with the acceptance or administration of this Trust, including the costs and expenses of defending itself

against any claim or liability in the premises. The obligations of the Company under this Section 6.06 to compensate and indemnify the Trustee and to pay or reimburse the Trustee for documented expenses, disbursements and advances shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Debt Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Debt Securities.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in subsections (a), (b) or (g) of Section 5.01, the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law.

The provisions of this Section shall survive the resignation or removal of the Trustee and the defeasance or other termination of this Indenture.

*SECTION 6.07. Officers' Certificate as Evidence.*

Except as otherwise provided in Sections 6.01 and 6.02, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

*SECTION 6.08. Eligibility of Trustee.*

The Trustee hereunder shall at all times be a U.S. Person that is a banking corporation or national association organized and doing business under the laws of the United States of America or any state thereof or of the District of Columbia and authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least fifty million U.S. dollars (\$50,000,000) and subject to supervision or examination by federal, state, or District of Columbia authority. If such corporation or national association publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 6.08 the combined capital and surplus of such corporation or national association shall be deemed to be its combined capital and surplus as set forth in its most recent records of condition so published.

The Company may not, nor may any Person directly or indirectly controlling, controlled by, or under common control with the Company, serve as Trustee, notwithstanding that such corporation or national association shall be otherwise eligible and qualified under this Article.

In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.08, the Trustee shall resign immediately in the manner and with the effect specified in Section 6.09.

If the Trustee has or shall acquire any "conflicting interest" within the meaning of § 310(b) of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to this Indenture.

*SECTION 6.09. Resignation or Removal of Trustee.*

(a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign by giving written notice of such resignation to the Company and by mailing notice thereof, at the Company's

expense, to the holders of the Debt Securities at their addresses as they shall appear on the Debt Security Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee or trustees by written instrument, in duplicate, executed by order of its Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor Trustee. If no successor Trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation to the affected Securityholders, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, or any Securityholder who has been a bona fide holder of a Debt Security or Debt Securities for at least six months may, subject to the provisions of Section 5.09, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor Trustee.

(b) In case at any time any of the following shall occur—

(1) the Trustee shall fail to comply with the provisions of the last paragraph of Section 6.08 after written request therefor by the Company or by any Securityholder who has been a bona fide holder of a Debt Security or Debt Securities for at least six months,

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 6.08 and shall fail to resign after written request therefor by the Company or by any such Securityholder, or

(3) the Trustee shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, the Company may remove the Trustee and appoint a successor Trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor Trustee, or, subject to the provisions of Section 5.09, if no successor Trustee shall have been so appointed and have accepted appointment within 30 days of the occurrence of any of (1), (2) or (3) above, any Securityholder who has been a bona fide holder of a Debt Security or Debt Securities for at least six months may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor Trustee.

(c) Upon prior written notice to the Company and the Trustee, the holders of a majority in aggregate principal amount of the Debt Securities at the time outstanding may at any time remove the Trustee and nominate a successor Trustee, which shall be deemed appointed as successor Trustee unless within ten Business Days after such nomination the Company objects thereto, in which case or in the case of a failure by such holders to nominate a successor Trustee, the Trustee so removed or any Securityholder, upon the terms and conditions and otherwise as in subsection (a) of this Section 6.09 provided, may petition any court of competent jurisdiction for an appointment of a successor.

(d) Any resignation or removal of the Trustee and appointment of a successor Trustee pursuant to any of the provisions of this Section 6.09 shall become effective upon acceptance of appointment by the successor Trustee as provided in Section 6.10.

#### SECTION 6.10. *Acceptance by Successor Trustee.*

Any successor Trustee appointed as provided in Section 6.09 shall execute, acknowledge and deliver to the Company and to its predecessor Trustee an instrument accepting such appointment hereunder, 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, duties and obligations with respect to the Debt Securities of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor Trustee, the Trustee ceasing to act shall, upon payment of the amounts then due it pursuant to the provisions of Section 6.06, execute and deliver an instrument transferring to such successor Trustee all the rights and powers of the Trustee so ceasing to act and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. In addition, if a successor Trustee is appointed, the Company, the retiring Trustee and the successor Trustee shall execute and deliver an indenture supplemental hereto which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Debt Securities as to which the predecessor Trustee is not retiring shall continue to be vested in the predecessor Trustee, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the Debt Securities and trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be Trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee. Any Trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such Trustee to secure any amounts then due it pursuant to the provisions of Section 6.06.

No successor Trustee shall accept appointment as provided in this Section 6.10 unless at the time of such acceptance such successor Trustee shall be eligible and qualified under the provisions of Section 6.08.

In no event shall a retiring Trustee be liable for the acts or omissions of any successor Trustee hereunder.

Upon acceptance of appointment by a successor Trustee as provided in this Section 6.10, the Company shall mail notice of the succession of such Trustee hereunder to the holders of Debt Securities at their addresses as they shall appear on the Debt Security Register. If the Company fails to mail such notice within ten Business Days after the acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Company.

#### SECTION 6.11. *Succession by Merger, etc.*

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation 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 corporation shall be otherwise eligible and qualified under this Article.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture any of the Debt Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor Trustee, and deliver such Debt Securities so authenticated; and in case at that time any of the Debt Securities shall not have been authenticated, any successor to the Trustee may authenticate such Debt Securities either in the name of any predecessor hereunder or in the name of the successor Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Debt Securities or in this Indenture provided that the certificate of the Trustee shall have; *provided, however*, that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Debt Securities in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

SECTION 6.12. *Authenticating Agents.*

There may be one or more Authenticating Agents appointed by the Trustee upon the request of the Company with power to act on its behalf and subject to its direction in the authentication and delivery of Debt Securities issued upon exchange or registration of transfer thereof as fully to all intents and purposes as though any such Authenticating Agent had been expressly authorized to authenticate and deliver Debt Securities; *provided*, that the Trustee shall have no liability to the Company for any acts or omissions of the Authenticating Agent with respect to the authentication and delivery of Debt Securities. Any such Authenticating Agent shall at all times be a corporation organized and doing business under the laws of the United States or of any state thereof or of the District of Columbia authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of at least \$50,000,000 and being subject to supervision or examination by federal, state or District of Columbia authority. If such corporation publishes reports of condition at least annually pursuant to law or the requirements of such authority, then for the purposes of this Section 6.12 the combined capital and surplus of such corporation 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, it shall resign immediately in the manner and with the effect herein specified in this Section.

Any corporation into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any Authenticating Agent shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of any Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, if such successor corporation is otherwise eligible under this Section 6.12 without the execution or filing of any paper or any further act on the part of the parties hereto or such Authenticating Agent.

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any Authenticating Agent with respect to the Debt Securities by giving written notice of termination 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 any Authenticating Agent shall cease to be eligible under this Section 6.12, the Trustee may, and upon the request of the Company shall, promptly appoint a successor Authenticating Agent eligible under this Section 6.12, shall give written notice of such appointment to the Company and shall mail notice of such appointment to all holders of Debt Securities as the names and addresses of such holders appear on the Debt Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all rights, powers, duties and responsibilities with respect to the Debt Securities of its predecessor hereunder, with like effect as if originally named as Authenticating Agent herein.

The Company agrees to pay to any Authenticating Agent from time to time reasonable compensation for its services. Any Authenticating Agent shall have no responsibility or liability for any action taken by it as such in accordance with the directions of the Trustee.

**ARTICLE VII**

**CONCERNING THE SECURITYHOLDERS**

SECTION 7.01. *Action by Securityholders.*

Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate principal amount of the Debt Securities may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be

evidenced (a) by any instrument or any number of instruments of similar tenor executed by such Securityholders in person or by agent or proxy appointed in writing, or (b) by the record of such holders of Debt Securities voting in favor thereof at any meeting of such Securityholders duly called and held in accordance with the provisions of Article VIII, or (c) by a combination of such instrument or instruments and any such record of such a meeting of such Securityholders, or (d) by any other method the Trustee deems satisfactory.

If the Company shall solicit from the Securityholders any request, demand, authorization, direction, notice, consent, waiver or other action or revocation of the same, the Company may, at its option, as evidenced by an Officers' Certificate, fix in advance a record date for such Debt Securities for the determination of Securityholders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other action or revocation of the same, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other action or revocation of the same may be given before or after the record date, but only the Securityholders of record at the close of business on the record date shall be deemed to be Securityholders for the purposes of determining whether Securityholders of the requisite proportion of outstanding Debt Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other action or revocation of the same, and for that purpose the outstanding Debt Securities shall be computed as of the record date; *provided, however*, that no such authorization, agreement or consent by such Securityholders on the record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

SECTION 7.02. *Proof of Execution by Securityholders.*

Subject to the provisions of Sections 6.01, 6.02 and 8.05, proof of the execution of any instrument by a Securityholder or such Securityholder's agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be reasonably satisfactory to the Trustee. The ownership of Debt Securities shall be proved by the Debt Security Register or by a certificate of the Debt Security registrar. The Trustee may require such additional proof of any matter referred to in this Section as it shall deem necessary.

The record of any Securityholders' meeting shall be proved in the manner provided in Section 8.06.

SECTION 7.03. *Who Are Deemed Absolute Owners.*

Prior to due presentment for registration of transfer of any Debt Security, the Company, the Trustee, any Authenticating Agent, any Paying Agent, any transfer agent and any Debt Security registrar may deem the Person in whose name such Debt Security shall be registered upon the Debt Security Register to be, and may treat such Person as, the absolute owner of such Debt Security (whether or not such Debt Security shall be overdue) for the purpose of receiving payment of or on account of the principal of, premium, if any, and interest on such Debt Security and for all other purposes; and neither the Company nor the Trustee nor any Authenticating Agent nor any Paying Agent nor any transfer agent nor any Debt Security registrar shall be affected by any notice to the contrary. All such payments so made to any holder for the time being or upon such holder's order shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Debt Security.

SECTION 7.04. *Debt Securities Owned by Company Deemed Not Outstanding.*

In determining whether the holders of the requisite aggregate principal amount of Debt Securities have concurred in any direction, consent or waiver under this Indenture, Debt Securities which are owned by the Company or any other obligor on the Debt Securities or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Debt Securities shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided*, that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Debt Securities which a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Debt Securities so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section 7.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Debt Securities and that the pledgee is not the Company or any such other obligor or Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

SECTION 7.05. *Revocation of Consents; Future Securityholders Bound.*

At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 7.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Debt Securities specified in this Indenture in connection with such action, any holder (in cases where no record date has been set pursuant to Section 7.01) or any holder as of an applicable record date (in cases where a record date has been set pursuant to Section 7.01) of a Debt Security (or any Debt Security issued in whole or in part in exchange or substitution therefor) the serial number of which is shown by the evidence to be included in the Debt Securities the holders of which have consented to such action may, by filing written notice with the Trustee at the Principal Office of the Trustee and upon proof of holding as provided in Section 7.02, revoke such action so far as concerns such Debt Security (or so far as concerns the principal amount represented by any exchanged or substituted Debt Security). Except as aforesaid any such action taken by the holder of any Debt Security shall be conclusive and binding upon such holder and upon all future holders and owners of such Debt Security, and of any Debt Security issued in exchange or substitution therefor or on registration of transfer thereof, irrespective of whether or not any notation in regard thereto is made upon such Debt Security or any Debt Security issued in exchange or substitution therefor.

**ARTICLE VIII**

**SECURITYHOLDERS' MEETINGS**

SECTION 8.01. *Purposes of Meetings.*

A meeting of Securityholders may be called at any time and from time to time pursuant to the provisions of this Article VIII for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Securityholders pursuant to any of the provisions of Article V;
- (b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article VI;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 9.02; or



(d) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of such Debt Securities under any other provision of this Indenture or under applicable law.

SECTION 8.02. *Call of Meetings by Trustee.*

The Trustee may at any time call a meeting of Securityholders to take any action specified in Section 8.01, to be held at such time and at such place in New York, New York, Wilmington, Delaware, or Newport Beach, California as the Trustee shall determine. Notice of every meeting of the Securityholders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed to holders of Debt Securities affected at their addresses as they shall appear on the Debt Securities Register. Such notice shall be mailed not less than 20 nor more than 180 days prior to the date fixed for the meeting.

SECTION 8.03. *Call of Meetings by Company or Securityholders.*

In case at any time the Company pursuant to a Board Resolution, or the holders of at least 10% in aggregate principal amount of the Debt Securities, as the case may be, then outstanding, shall have requested the Trustee to call a meeting of Securityholders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Company or such Securityholders may determine the time and the place in Newport Beach, California for such meeting and may call such meeting to take any action authorized in Section 8.01, by mailing notice thereof as provided in Section 8.02.

SECTION 8.04. *Qualifications for Voting.*

To be entitled to vote at any meeting of Securityholders a Person shall be (a) a holder of one or more Debt Securities with respect to which the meeting is being held or (b) a Person appointed by an instrument in writing as proxy by a holder of one or more such Debt Securities. The only Persons who shall be entitled to be present or to speak at any meeting of Securityholders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 8.05. *Regulations.*

Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Securityholders, in regard to proof of the holding of Debt Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Securityholders as provided in Section 8.03, in which case the Company or the Securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by majority vote at the meeting.

Subject to the provisions of Section 7.04, at any meeting each holder of Debt Securities with respect to which such meeting is being held or proxy therefor shall be entitled to one vote for each \$1,000 principal amount of Debt Securities held or represented by such holder; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Debt Security challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Debt Securities held by such chairman or instruments in writing as aforesaid duly designating such chairman as the Person to vote on behalf of

other Securityholders. Any meeting of Securityholders duly called pursuant to the provisions of Section 8.02 or 8.03 may be adjourned from time to time by a majority of those present, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

#### SECTION 8.06. *Voting.*

The vote upon any resolution submitted to any meeting of holders of Debt Securities with respect to which such meeting is being held shall be by written ballots on which shall be subscribed the signatures of such holders or of their representatives by proxy and the serial number or numbers of the Debt Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Securityholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 8.02. The record shall show the serial numbers of the Debt Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

#### SECTION 8.07. *Quorum; Actions.*

The Persons entitled to vote a majority in outstanding principal amount of the Debt Securities shall constitute a quorum for a meeting of Securityholders; *provided, however*, that if any action is to be taken at such meeting with respect to a consent, waiver, request, demand, notice, authorization, direction or other action which may be given by the holders of not less than a specified percentage in outstanding principal amount of the Debt Securities, the Persons holding or representing such specified percentage in outstanding principal amount of the Debt Securities will constitute a quorum. In the absence of a quorum within 30 minutes of the time appointed for any such meeting, the meeting shall, if convened at the request of Securityholders, be dissolved. In any other case the meeting may be adjourned for a period of not less than 10 days as determined by the permanent chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days as determined by the permanent chairman of the meeting prior to the adjournment of such adjourned meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 8.02, except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage, as provided above, of the outstanding principal amount of the Debt Securities which shall constitute a quorum.

Except as limited by the proviso in the first paragraph of Section 9.02, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted by the affirmative vote of the holders of not less than a majority in outstanding principal amount of the Debt Securities; *provided, however*, that, except as limited by the proviso in the first paragraph of Section 9.02, any resolution with respect to any consent, waiver, request, demand, notice, authorization, direction or other action that this Indenture expressly provides may be given by the holders of not less than a specified percentage in outstanding principal amount of the Debt Securities may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid only by the affirmative vote of the holders of not less than such specified percentage in outstanding principal amount of the Debt Securities.

Any resolution passed or decision taken at any meeting of holders of Debt Securities duly held in accordance with this Section shall be binding on all the Securityholders, whether or not present or represented at the meeting.

## ARTICLE IX

### SUPPLEMENTAL INDENTURES

#### SECTION 9.01. *Supplemental Indentures Without Consent of Securityholders.*

The Company, when authorized by a Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto, without the consent of the Securityholders, for one or more of the following purposes:

(a) to evidence the succession of another corporation to the Company, or successive successions, and the assumption by the successor corporation of the covenants, agreements and obligations of the Company, pursuant to Article XI hereof;

(b) to add to the covenants of the Company such further covenants, restrictions or conditions for the protection of the holders of Debt Securities as the Board of Directors shall consider to be for the protection of the holders of such Debt Securities, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions or conditions a default or an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; *provided, however*, that in respect of any such additional covenant, restriction or condition such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default;

(c) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture; *provided*, that any such action shall not adversely affect the interests of the holders of the Debt Securities;

(d) to add to, delete from, or revise the terms of Debt Securities, including, without limitation, any terms relating to the issuance, exchange, registration or transfer of Debt Securities, including to provide for transfer procedures and restrictions substantially similar to those applicable to the Capital Securities, as required by Section 2.05 (for purposes of assuring that no registration of Debt Securities is required under the Securities Act); *provided*, that any such action shall not adversely affect the interests of the holders of the Debt Securities then outstanding (it being understood, for purposes of this proviso, that providing for transfer of the Debt Securities in global or book-entry form and transfer restrictions on Debt Securities substantially similar to those applicable to Capital Securities shall not be deemed to adversely affect the holders of the Debt Securities);

(e) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Debt Securities and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.10;

(f) to make any change (other than as elsewhere provided in this paragraph) that does not adversely affect the rights of any Securityholder in any material respect; or

(g) to provide for the issuance of and establish the form and terms and conditions of the Debt Securities, to establish the form of any certifications required to be furnished pursuant to the terms of this Indenture or the Debt Securities, or to add to the rights of the holders of Debt Securities.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer and assignment of any property thereunder, but the Trustee shall not be obligated to, but may in its discretion, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 9.01 may be executed by the Company and the Trustee without the consent of the holders of any of the Debt Securities at the time outstanding, notwithstanding any of the provisions of Section 9.02.

SECTION 9.02. *Supplemental Indentures with Consent of Securityholders.*

With the consent (evidenced as provided in Section 7.01) of the holders of not less than a majority in aggregate principal amount of the Debt Securities at the time outstanding affected by such supplemental indenture (voting as a class), the Company, when authorized by a Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act, then in effect, applicable to indentures qualified thereunder) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the holders of the Debt Securities; *provided, however*, that no such supplemental indenture shall without such consent of the holders of each Debt Security then outstanding and affected thereby (i) extend the fixed maturity of any Debt Security, or reduce the principal amount thereof or any premium thereon, or reduce the rate or extend the time of payment of interest thereon, or reduce any amount payable on redemption thereof or make the principal thereof or any interest or premium thereon payable in any coin or currency other than that provided in the Debt Securities, or impair or affect the right of any Securityholder to institute suit for payment thereof or impair the right of repayment, if any, at the option of the holder, or (ii) reduce the aforesaid percentage of Debt Securities the holders of which are required to consent to any such supplemental indenture; and *provided, further*, that if the Debt Securities are held by the Trust or a trustee of such trust, such supplemental indenture shall not be effective until the holders of a majority in liquidation preference of the Trust Securities shall have consented to such supplemental indenture; *provided, further*, that if the consent of the Securityholder of each outstanding Debt Security is required, such supplemental indenture shall not be effective until each holder of the Trust Securities shall have consented to such supplemental indenture.

Upon the request of the Company accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Securityholders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Section, the Trustee shall transmit by mail, first class postage prepaid, a notice, prepared by the Company, setting forth in general terms the substance of such supplemental indenture, to the Securityholders as their names and addresses appear upon the Debt Security Register. Any failure of the Trustee to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

It shall not be necessary for the consent of the Securityholders under this Section 9.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

SECTION 9.03. *Effect of Supplemental Indentures.*

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

SECTION 9.04. *Notation on Debt Securities.*

Debt Securities authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article IX may bear a notation as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Debt Securities so modified as to conform, in the opinion of the Board of Directors of the Company, to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company, authenticated by the Trustee or the Authenticating Agent and delivered in exchange for the Debt Securities then outstanding.

SECTION 9.05. *Evidence of Compliance of Supplemental Indenture to be Furnished to Trustee.*

The Trustee, subject to the provisions of Sections 6.01 and 6.02, shall, in addition to the documents required by Section 14.06, receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article IX. The Trustee shall receive an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to this Article IX is authorized or permitted by, and conforms to, the terms of this Article IX and that it is proper for the Trustee under the provisions of this Article IX to join in the execution thereof.

## ARTICLE X

### REDEMPTION OF DEBT SECURITIES

SECTION 10.01. *Optional Redemption.*

At any time the Company shall have the right, to redeem the Debt Securities, in whole or in part, on any Interest Payment Date on or after July 30, 2010 (the "Redemption Date"), at the Redemption Price.

SECTION 10.02. *Special Event Redemption.*

If a Special Event shall occur and be continuing, the Company shall have the right to redeem the Debt Securities, in whole but not in part, at any time within 90 days following the occurrence of such Special Event (the "Special Redemption Date"), at the Special Redemption Price.

SECTION 10.03. *Notice of Redemption; Selection of Debt Securities.*

In case the Company shall desire to exercise the right to redeem all, or, as the case may be, any part of the Debt Securities, it shall fix a date for redemption and shall mail a notice of such redemption at least 30 and not more than 60 days prior to the date fixed for redemption to the holders of Debt Securities so to be redeemed as a whole or in part at their last addresses as the same appear on the Debt Security Register. Such mailing shall be by first class mail. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the holder of any Debt Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Debt Security.

Each such notice of redemption shall specify the CUSIP number, if any, of the Debt Securities to be redeemed, the date fixed for redemption, the redemption price at which Debt Securities are to be redeemed or an estimate thereof, the place or places of payment, that payment will be made upon presentation and surrender of such Debt Securities, that interest accrued to the date fixed for redemption will be paid as specified in said notice, and that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue. If less than all the Debt Securities are to be redeemed the notice of redemption shall specify the numbers of the Debt Securities to be redeemed. In case the Debt Securities are to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Debt Security, a new Debt Security or Debt Securities in principal amount equal to the unredeemed portion thereof will be issued.

Prior to 10:00 a.m. New York City time on the Redemption Date or the Special Redemption Date specified in the notice of redemption given as provided in this Section, the Company will deposit with the Trustee or with one or more Paying Agents an amount of money sufficient to redeem on the redemption date all the Debt Securities so called for redemption at the appropriate redemption price, together with accrued interest to the date fixed for redemption.

The Company will give the Trustee notice not less than 30 nor more than 60 days prior to the redemption date as to the Redemption Price or Special Redemption Price (as the case may be) at which the Debt Securities are to be redeemed, and the aggregate principal amount of Debt Securities to be redeemed and the Trustee shall select, in such manner as in its sole discretion it shall deem appropriate and fair, the Debt Securities or portions thereof (in integral multiples of \$1,000) to be redeemed.

#### SECTION 10.04. *Payment of Debt Securities Called for Redemption.*

If notice of redemption has been given as provided in Section 10.03, the Debt Securities or portions of Debt Securities with respect to which such notice has been given shall become due and payable on the Redemption Date or the Special Redemption Date (as the case may be) and at the place or places stated in such notice at the applicable Redemption Price or Special Redemption Price (as the case may be), and on and after said Redemption Date or the Special Redemption Date (unless the Company shall default in the payment of the Redemption Price or Special Redemption Price (as the case may be) for such Debt Securities) interest on the Debt Securities or portions of Debt Securities so called for redemption shall cease to accrue. On presentation and surrender of such Debt Securities at a place of payment specified in said notice, such Debt Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price or Special Redemption Price (as the case may be).

Upon presentation of any Debt Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and make available for delivery to the holder thereof, at the expense of the Company, a new Debt Security or Debt Securities of authorized denominations in principal amount equal to the unredeemed portion of the Debt Security so presented.

### ARTICLE XI

#### CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

##### SECTION 11.01. *Company May Consolidate, etc., on Certain Terms.*

Nothing contained in this Indenture or in the Debt Securities shall prevent any consolidation or merger of the Company with or into any other corporation or corporations (whether or not affiliated with the Company) or successive consolidations or mergers in which the Company or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance, transfer or other disposition of the property or capital stock of the Company or its successor or successors as an entirety,

or substantially as an entirety, to any other corporation (whether or not affiliated with the Company, or its successor or successors) authorized to acquire and operate the same; *provided, however*, that the Company hereby covenants and agrees that, upon any such consolidation, merger (where the Company is not the surviving corporation), sale, conveyance, transfer or other disposition, the due and punctual payment of all payments due on all of the Debt Securities in accordance with their terms, according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this Indenture to be kept or performed by the Company, shall be expressly assumed by supplemental indenture reasonably satisfactory in form to the Trustee executed and delivered to the Trustee by the entity formed by such consolidation, or into which the Company shall have been merged, or by the entity which shall have acquired such property or capital stock and after giving effect to such consolidation, merger, sale, conveyance, transfer or other disposition, no Default or Event of Default shall have occurred and be continuing.

SECTION 11.02. *Successor Entity to be Substituted.*

In case of any such consolidation, merger, sale, conveyance, transfer or other disposition and upon the assumption by the successor entity, by supplemental indenture, executed and delivered to the Trustee and reasonably satisfactory in form to the Trustee, of the due and punctual payment of the principal of and premium, if any, and interest on all of the Debt Securities and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed or observed by the Company, such successor entity shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the Company, and thereupon the predecessor entity shall be relieved of any further liability or obligation hereunder or upon the Debt Securities. Such successor entity thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Debt Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee or the Authenticating Agent; and, upon the order of such successor entity instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee or the Authenticating Agent shall authenticate and deliver any Debt Securities which previously shall have been signed and delivered by the officers of the Company, to the Trustee or the Authenticating Agent for authentication, and any Debt Securities which such successor entity thereafter shall cause to be signed and delivered to the Trustee or the Authenticating Agent for that purpose. All the Debt Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Debt Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Debt Securities had been issued at the date of the execution hereof.

SECTION 11.03. *Opinion of Counsel to be Given to Trustee.*

The Trustee, subject to the provisions of Sections 6.01 and 6.02, shall receive, in addition to the Opinion of Counsel required by Section 9.05, an Opinion of Counsel as conclusive evidence that any consolidation, merger, sale, conveyance, transfer or other disposition, and any assumption, permitted or required by the terms of this Article XI complies with the provisions of this Article XI.

## ARTICLE XII

### SATISFACTION AND DISCHARGE OF INDENTURE

SECTION 12.01. *Discharge of Indenture.*

When (a) the Company shall deliver to the Trustee for cancellation all Debt Securities theretofore authenticated (other than any Debt Securities which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.06) and not theretofore canceled, or (b) all the Debt Securities not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to

be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Company shall deposit with the Trustee, in trust, funds, which shall be immediately due and payable, sufficient to pay at maturity or upon redemption all of the Debt Securities (other than any Debt Securities which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.06) not theretofore canceled or delivered to the Trustee for cancellation, including principal and premium, if any, and interest due or to become due to such date of maturity or redemption date, as the case may be, but excluding, however, the amount of any moneys for the payment of principal of, and premium, if any, or interest on the Debt Securities (1) theretofore repaid to the Company in accordance with the provisions of Section 12.04, or (2) paid to any state or to the District of Columbia pursuant to its unclaimed property or similar laws, and if in the case of either clause (a) or clause (b) the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect except for the provisions of Sections 2.05, 2.06, 3.01, 3.02, 3.04, 6.06, 6.09 and 12.04 hereof, which shall survive until such Debt Securities shall mature or are redeemed, as the case may be, and are paid in full. Thereafter, Sections 6.06, 6.09 and 12.04 shall survive, and the Trustee, on demand of the Company accompanied by 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, and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture, the Company, however, hereby agreeing to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee in connection with this Indenture or the Debt Securities.

SECTION 12.02. *Deposited Moneys to be Held in Trust by Trustee.*

Subject to the provisions of Section 12.04, all moneys deposited with the Trustee pursuant to Section 12.01 shall be held in trust and applied by it to the payment, either directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the holders of the particular Debt Securities for the payment of which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for principal, and premium, if any, and interest.

SECTION 12.03. *Paying Agent to Repay Moneys Held.*

Upon the satisfaction and discharge of this Indenture, all moneys then held by any Paying Agent of the Debt Securities (other than the Trustee) shall, upon demand of the Company, be repaid to the Company or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

SECTION 12.04. *Return of Unclaimed Moneys.*

Any moneys deposited with or paid to the Trustee or any Paying Agent for payment of the principal of, and premium, if any, or interest on Debt Securities and not applied but remaining unclaimed by the holders of Debt Securities for two years after the date upon which the principal of, and premium, if any, or interest on such Debt Securities, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee or such Paying Agent on written demand; and the holder of any of the Debt Securities shall thereafter look only to the Company for any payment which such holder may be entitled to collect and all liability of the Trustee or such Paying Agent with respect to such moneys shall thereupon cease.



## ARTICLE XIII

### IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

#### SECTION 13.01. *Indenture and Debt Securities Solely Corporate Obligations.*

No recourse for the payment of the principal of or premium, if any, or interest on any Debt Security, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture, or in any such Debt Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, officer, director, employee or agent, as such, past, present or future, of the Company or of any predecessor or successor corporation of the Company, either directly or through the Company or any successor corporation of the Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Debt Securities.

## ARTICLE XIV

### MISCELLANEOUS PROVISIONS

#### SECTION 14.01. *Successors.*

All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

#### SECTION 14.02. *Official Acts by Successor Entity.*

Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the like board, committee, officer or other authorized Person of any entity that shall at the time be the lawful successor of the Company.

#### SECTION 14.03. *Surrender of Company Powers.*

The Company by instrument in writing executed by authority of  $\frac{2}{3}$  (two-thirds) of its Board of Directors and delivered to the Trustee may surrender any of the powers reserved to the Company and thereupon such power so surrendered shall terminate both as to the Company and as to any permitted successor.

#### SECTION 14.04. *Addresses for Notices, etc.*

Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Securityholders on the Company may be given or served in writing by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee for such purpose) to the Company at:

Impac Mortgage Holdings, Inc.  
1401 Dove Street  
Newport Beach, California, 92660  
Attention: Gretchen Verdugo

Any notice, direction, request or demand by any Securityholder or the Company to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made in writing at the office of Wilmington Trust Company at:

Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, DE 19890-0001  
Attention: Corporate Trust Administrator

SECTION 14.05. *Governing Law.*

This Indenture and each Debt Security shall be deemed to be a contract made under the law of the State of New York, and for all purposes shall be governed by and construed in accordance with the law of said State, without regard to conflict of laws principles thereof.

SECTION 14.06. *Evidence of Compliance with Conditions Precedent.*

Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that in the opinion of the signers all conditions 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 have been complied with (except that no such Opinion of Counsel is required to be furnished to the Trustee in connection with the authentication and issuance of Debt Securities issued on the date of this Indenture).

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture (except certificates delivered pursuant to Section 3.05) shall include (a) a statement that the person making such certificate or opinion has read such covenant or condition; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of such person, 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 (d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

SECTION 14.07. *Non-Business Days.*

In any case where the date of payment of interest on or principal of the Debt Securities is not a Business Day, the payment of such interest on or principal of the Debt Securities need not be made on such date but may be made on the next succeeding Business Day, with the same force and effect as if made on the date of payment, except if such Business Day is in the next succeeding calendar year, such payment will be made on the immediately preceding Business Day.

SECTION 14.08. *Table of Contents, Headings, etc.*

The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 14.09. *Execution in Counterparts.*

This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

SECTION 14.10. *Severability.*

In case any one or more of the provisions contained in this Indenture or in the Debt Securities shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture or of such Debt Securities, but this Indenture and such Debt Securities shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

SECTION 14.11. *Assignment.*

Subject to Article XI, the Company will have the right at all times to assign any of its rights or obligations under this Indenture to a direct or indirect wholly owned Subsidiary of the Company, *provided*, that, subject to Article XI, in the event of any such assignment, the Company will remain liable for all such obligations. Subject to the foregoing, this Indenture is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns. This Indenture may not otherwise be assigned by the parties thereto.

SECTION 14.12. *Acknowledgment of Rights.*

The Company acknowledges that, with respect to any Debt Securities held by the Trust or the Institutional Trustee of the Trust, if the Institutional Trustee of the Trust fails to enforce its rights under this Indenture as the holder of Debt Securities held as the assets of the Trust after the holders of a majority in Liquidation Amount of the Capital Securities of the Trust have so directed in writing such Institutional Trustee, a holder of record of such Capital Securities may to the fullest extent permitted by law institute legal proceedings directly against the Company to enforce such Institutional Trustee's rights under this Indenture without first instituting any legal proceedings against such Institutional Trustee or any other Person. Notwithstanding the foregoing, if an Event of Default has occurred and is continuing and such event is attributable to the failure of the Company to pay interest (or premium, if any) or principal on the Debt Securities on the date such interest (or premium, if any) or principal is otherwise due and payable (or in the case of redemption, on the redemption date), the Company acknowledges that a holder of record of Capital Securities of the Trust may directly institute a proceeding against the Company for enforcement of payment to such holder directly of the principal of (or premium, if any) or interest on the Debt Securities having an aggregate principal amount equal to the aggregate Liquidation Amount of the Capital Securities of such holder on or after the respective due date specified in the Debt Securities.

**ARTICLE XV**

**SUBORDINATION OF DEBT SECURITIES**

SECTION 15.01. *Agreement to Subordinate.*

The Company covenants and agrees, and each holder of Debt Securities issued hereunder and under any supplemental indenture (the "Additional Provisions") by such Securityholder's acceptance thereof likewise covenants and agrees, that all Debt Securities shall be issued subject to the provisions of this Article XV; and each holder of a Debt Security, whether upon original issue or upon transfer or assignment thereof, accepts and agrees to be bound by such provisions.

The payment by the Company of the payments due on all Debt Securities issued hereunder and under any Additional Provisions shall, to the extent and in the manner hereinafter set forth, be subordinated and junior in right of payment to the prior payment in full of all Senior Indebtedness of the Company, whether outstanding at the date of this Indenture or thereafter incurred.

No provision of this Article XV shall prevent the occurrence of any default or Event of Default hereunder.

SECTION 15.02. *Default on Senior Indebtedness.*

In the event and during the continuation of any default by the Company in the payment of principal, premium, interest or any other payment due on any Senior Indebtedness of the Company following any applicable grace period, or in the event that the maturity of any Senior Indebtedness of the Company has been accelerated because of a default, and such acceleration has not been rescinded or canceled and such Senior Indebtedness has not been paid in full, then, in either case, no payment shall be made by the Company with respect to the payments due on the Debt Securities.

In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee when such payment is prohibited by the preceding paragraph of this Section 15.02, such payment shall, subject to Section 15.06, be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Indebtedness or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Indebtedness may have been issued, as their respective interests may appear, but only to the extent that the holders of the Senior Indebtedness (or their representative or representatives or a trustee) notify the Trustee in writing within 90 days of such payment of the amounts then due and owing on the Senior Indebtedness and only the amounts specified in such notice to the Trustee shall be paid to the holders of Senior Indebtedness.

SECTION 15.03. *Liquidation; Dissolution; Bankruptcy.*

Upon any payment by the Company or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding-up or liquidation or reorganization of the Company, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all amounts due upon all Senior Indebtedness of the Company shall first be paid in full, or payment thereof provided for in money in accordance with its terms, before any payment is made by the Company on the Debt Securities; and upon any such dissolution or winding-up or liquidation or reorganization, any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Securityholders or the Trustee would be entitled to receive from the Company, except for the provisions of this Article XV, shall be paid by the Company, or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Securityholders or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Indebtedness of the Company (pro rata to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders, as calculated by the Company) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay such Senior Indebtedness in full, in money or money's worth, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Indebtedness, before any payment or distribution is made to the Securityholders.

In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, prohibited by the foregoing, shall be received by the Trustee before all Senior Indebtedness of the Company is paid in full, or provision is made for such payment in money in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of such Senior Indebtedness or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness may have been issued, as their respective interests may appear, as calculated by the Company, for application to the payment of all Senior Indebtedness of the Company remaining unpaid to the extent necessary to pay such Senior Indebtedness in full in money in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of such Senior Indebtedness.

For purposes of this Article XV, the words "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article XV with respect to the Debt Securities to the payment of all Senior Indebtedness of the Company, that may at the time be outstanding, *provided*, that (a) such Senior Indebtedness is assumed by the new corporation, if any, resulting from any such reorganization or readjustment, and (b) the rights of the holders of such Senior Indebtedness are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided for in Article XI of this Indenture shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 15.03 if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article XI of this Indenture. Nothing in Section 15.02 or in this Section 15.03 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.06 of this Indenture.

SECTION 15.04. *Subrogation.*

Subject to the payment in full of all Senior Indebtedness of the Company, the Securityholders shall be subrogated to the rights of the holders of such Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to such Senior Indebtedness until all payments due on the Debt Securities shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of such Senior Indebtedness of any cash, property or securities to which the Securityholders or the Trustee would be entitled except for the provisions of this Article XV, and no payment over pursuant to the provisions of this Article XV to or for the benefit of the holders of such Senior Indebtedness by Securityholders or the Trustee, shall, as between the Company, its creditors other than holders of Senior Indebtedness of the Company, and the holders of the Debt Securities be deemed to be a payment or distribution by the Company to or on account of such Senior Indebtedness. It is understood that the provisions of this Article XV are and are intended solely for the purposes of defining the relative rights of the holders of the Debt Securities, on the one hand, and the holders of such Senior Indebtedness, on the other hand.

Nothing contained in this Article XV or elsewhere in this Indenture, any Additional Provisions or in the Debt Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Indebtedness of the Company, and the holders of the Debt Securities, the obligation of the Company, which is absolute and unconditional, to pay to the holders of the Debt Securities all payments on the Debt Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the holders of the Debt Securities and creditors of the Company, other than the holders of Senior Indebtedness of the Company, nor shall anything herein or therein prevent the Trustee or the holder of any Debt Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article XV of the holders of such Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article XV, the Trustee, subject to the provisions of Article VI of this Indenture, and the Securityholders shall be entitled to conclusively rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidation trustee, agent or other Person making such payment or distribution, delivered to the Trustee or to the Securityholders, for the purposes of ascertaining the Persons entitled to participate in such distribution, the holders of Senior Indebtedness

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 XV.

SECTION 15.05. *Trustee to Effectuate Subordination.*

Each Securityholder by such Securityholder's acceptance thereof authorizes and directs the Trustee on such Securityholder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article XV and appoints the Trustee such Securityholder's attorney-in-fact for any and all such purposes.

SECTION 15.06. *Notice by the Company.*

The Company shall give prompt written notice to a Responsible Officer of the Trustee at the Principal Office of the Trustee of any fact known to the Company that would prohibit the making of any payment of moneys to or by the Trustee in respect of the Debt Securities pursuant to the provisions of this Article XV. Notwithstanding the provisions of this Article XV or any other provision of this Indenture or any Additional Provisions, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment of moneys to or by the Trustee in respect of the Debt Securities pursuant to the provisions of this Article XV, unless and until a Responsible Officer of the Trustee at the Principal Office of the Trustee shall have received written notice thereof from the Company or a holder or holders of Senior Indebtedness or from any trustee therefor; and before the receipt of any such written notice, the Trustee, subject to the provisions of Article VI of this Indenture, shall be entitled in all respects to assume that no such facts exist; *provided, however,* that if the Trustee shall not have received the notice provided for in this Section 15.06 at least two Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of the principal of (or premium, if any) or interest on any Debt Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purposes 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.

The Trustee, subject to the provisions of Article VI of this Indenture, shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself or herself to be a holder of Senior Indebtedness of the Company (or a trustee or representative on behalf of such holder) to establish that such notice has been given by a holder of such Senior Indebtedness or a trustee or representative on behalf of any such holder or holders. 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 such Senior Indebtedness to participate in any payment or distribution pursuant to this Article XV, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of such Senior Indebtedness 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 XV, 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 15.07. *Rights of the Trustee; Holders of Senior Indebtedness.*

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XV in respect of any Senior Indebtedness at any time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture or any Additional Provisions shall deprive the Trustee of any of its rights as such holder.

With respect to the holders of Senior Indebtedness of the Company, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article XV, and no implied covenants or obligations with respect to the holders of such Senior

Indebtedness shall be read into this Indenture or any Additional Provisions against the Trustee. The Trustee shall not owe or be deemed to owe any fiduciary duty to the holders of such Senior Indebtedness and, subject to the provisions of Article VI of this Indenture, the Trustee shall not be liable to any holder of such Senior Indebtedness if it shall pay over or deliver to Securityholders, the Company or any other Person money or assets to which any holder of such Senior Indebtedness shall be entitled by virtue of this Article XV or otherwise.

Nothing in this Article XV shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.06.

SECTION 15.08. *Subordination May Not Be Impaired.*

No right of any present or future holder of any Senior Indebtedness of the Company 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 otherwise be charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness of the Company may, at any time and from time to time, without the consent of or notice to the Trustee or the Securityholders, without incurring responsibility to the Securityholders and without impairing or releasing the subordination provided in this Article XV or the obligations hereunder of the holders of the Debt Securities to the holders of such Senior Indebtedness, do any one or more of the following: (a) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, such Senior Indebtedness, or otherwise amend or supplement in any manner such Senior Indebtedness or any instrument evidencing the same or any agreement under which such Senior Indebtedness is outstanding; (b) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing such Senior Indebtedness; (c) release any Person liable in any manner for the collection of such Senior Indebtedness; and (d) exercise or refrain from exercising any rights against the Company, and any other Person.

Wilmington Trust Company, in its capacity as Trustee, hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions herein above set forth.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed by their respective officers thereunto duly authorized, as of the day and year first above written.

Impac Mortgage Holdings, Inc.

By /s/ GRETCHEN VERDUGO

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Name: Gretchen Verdugo  
Title: EVP/Chief Accounting Officer

Wilmington Trust Company, as Trustee

By: /s/ MICHELE C. HARRA

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Name: Michele C. Harra  
Title: Financial Services Officer

## FORM OF FIXED/FLOATING RATE JUNIOR SUBORDINATED DEBT SECURITY DUE 2035

[FORM OF FACE OF SECURITY]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS OR ANY OTHER APPLICABLE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY ONLY (A) TO THE COMPANY, (B) PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON THE HOLDER REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO A "NON-U.S. PERSON" IN AN "OFFSHORE TRANSACTION" PURSUANT TO REGULATIONS UNDER THE SECURITIES ACT, (D) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF SUBPARAGRAPH (a)(1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT THAT IS ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF AN "ACCREDITED INVESTOR," FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO IT IN ACCORDANCE WITH THE INDENTURE, A COPY OF WHICH MAY BE OBTAINED FROM THE COMPANY. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES THAT IT WILL COMPLY WITH THE FOREGOING RESTRICTIONS.

THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES, REPRESENTS AND WARRANTS THAT IT WILL NOT ENGAGE IN HEDGING TRANSACTIONS INVOLVING THIS SECURITY UNLESS SUCH TRANSACTIONS ARE IN COMPLIANCE WITH THE SECURITIES ACT.

THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF 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, UNLESS SUCH PURCHASER OR HOLDER



IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION OR ITS PURCHASE AND HOLDING OF THIS SECURITY IS NOT PROHIBITED BY SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE WITH RESPECT TO SUCH PURCHASE OR HOLDING. ANY PURCHASER OR HOLDER OF THIS SECURITY OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT EITHER (i) 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, OR (ii) SUCH PURCHASE WILL NOT RESULT IN A PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE FOR WHICH THERE IS NO APPLICABLE STATUTORY OR ADMINISTRATIVE EXEMPTION.

IN CONNECTION WITH ANY TRANSFER, THE HOLDER OF THIS SECURITY WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS MAY BE REQUIRED BY THE INDENTURE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

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

of

## Impac Mortgage Holdings, Inc.

Impac Mortgage Holdings, Inc., a Maryland corporation (the "Company"), for value received promises to pay to Wilmington Trust Company, not in its individual capacity but solely as Institutional Trustee for Impac Capital Trust #4, a Delaware statutory trust (the "Holder"), or registered assigns, the principal sum of Twenty Million Six-Hundred Twenty Thousand Dollars (\$20,620,000) on July 30, 2035 and to pay interest on said principal sum from October 18, 2005, or from the most recent interest payment date (each such date, an "Interest Payment Date") to which interest has been paid or duly provided for, quarterly (subject to deferral as set forth herein) in arrears on April 30, July 30, October 30, and January 30 of each year commencing on January 30, 2006, (1) until July 30, 2010, at a fixed rate per annum equal to 8.55%, and (2) from and including July 30, 2010 at a variable per annum rate, reset quarterly, equal to LIBOR (as defined in the Indenture) plus 3.75% (the "Interest Rate"), until the principal hereof shall have become due and payable, and on any overdue principal and (without duplication and to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at an annual rate equal to the Interest Rate in effect for each such Extension Period compounded quarterly. The amount of interest payable on any Interest Payment Date shall be computed (1) for each Interest Period up to and including the Interest Period ending on July 29, 2010, on the basis of a 360-day year consisting of twelve 30-day months, and (2) for each subsequent Interest Period, on the basis of a 360-day year and the actual number of days elapsed in the relevant Interest Period. In the event that any date on which the principal or interest is payable on this Debt Security is not a Business Day, then payment payable on such date will be made on the next succeeding day that is a Business Day, except that, if such Business Day is 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 such date. The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Debt Security (or one or more Predecessor Securities, as defined in said Indenture) is registered at the close of business on the regular record date for such interest installment, except that interest and any Deferred Interest payable on the Maturity Date shall be paid to the Person to whom principal is paid. Any such interest installment not punctually paid or duly provided for shall forthwith cease to be payable to the registered holders on such regular record date and may be paid to the Person in whose name this Debt Security (or one or more Predecessor Debt Securities) is registered at the close of business on a special record date to be fixed by the Trustee for the payment of such defaulted interest, notice whereof shall be given to the registered holders of the Debt Securities not less than 10 days prior to such special record date, all as more fully provided in the Indenture. The principal of and interest on this Debt Security shall be payable at the office or agency of the Trustee (or other Paying Agent appointed by the Company) maintained for that purpose in any coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts; *provided, however*, that payment of interest may be made at the option of the Company by check mailed to the registered holder at such address as shall appear in the Debt Security Register or by wire transfer to an account appropriately designated by the holder hereof. Notwithstanding the foregoing, so long as the holder of this Debt Security is the Institutional Trustee, the payment of the principal of and interest on this Debt Security will be made in immediately available funds at such place and to such account as may be designated by the Trustee.

So long as no Event of Default has occurred and is continuing, the Company shall have the right, from time to time and without causing an Event of Default, to defer payments of interest on the Debt Securities by extending the interest payment period on the Debt Securities at any time and from time to time during the term of the Debt Securities, for up to 20 consecutive quarterly periods (each such extended interest payment period, an "Extension Period"), during which Extension Period no interest

shall be due and payable. During any Extension Period, interest will continue to accrue on the Debt Securities, and interest on such accrued interest (such accrued interest and interest thereon referred to herein as "Deferred Interest") will accrue at an annual rate equal to the Interest Rate in effect for each such Extension Period, compounded quarterly from the date such Deferred Interest would have been payable were it not for the Extension Period, to the extent permitted by law. No Extension Period may end on a date other than an Interest Payment Date. At the end of any such Extension Period the Company shall pay all Deferred Interest then accrued and unpaid on the Debt Securities; *provided, however*, that no Extension Period may extend beyond the Maturity Date, Redemption Date or Special Redemption Date and *provided, further, however*, during any such Extension Period, the Company may 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 Company's capital stock or (ii) make any payment 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 (A) 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, (B) in connection with a dividend reinvestment or stockholder stock purchase plan or (C) 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 applicable Extension Period, (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). Prior to the termination of any Extension Period, the Company may further extend such period, *provided*, that such period together with all such previous and further consecutive extensions thereof shall not exceed 20 consecutive quarterly periods, or extend beyond the Maturity Date, Redemption Date or Special Redemption Date. Upon the termination of any Extension Period and upon the payment of all Deferred Interest, the Company may commence a new Extension Period, subject to the foregoing requirements. No interest or Deferred Interest shall be due and payable during an Extension Period, except at the end thereof, but Deferred Interest shall accrue upon each installment of interest that would otherwise have been due and payable during such Extension Period until such installment is paid. The deferral of the payment of interest during an Extension Period shall not defer the payment of any Additional Amounts that may be due and payable. The Company must give the Trustee notice of its election to begin such Extension Period at least one Business Day prior to the earlier of (i) the next succeeding date on which interest on the Debt Securities would have been payable except for the election to begin such Extension Period or (ii) the date such interest is payable, but in any event not later than the related regular record date.

The indebtedness evidenced by this Debt 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 Indebtedness, and this Debt Security is issued subject to the provisions of the Indenture with respect thereto. Each holder of this Debt Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on such holder's behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination so provided and (c) appoints the Trustee such holder's attorney-in-fact for any and all such purposes. Each holder hereof, by such holder's acceptance hereof, hereby waives all notice of the acceptance of the subordination provisions contained

herein and in the Indenture by each holder of Senior Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

This Debt Security shall not be entitled to any benefit under the Indenture hereinafter referred to and shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by or on behalf of the Trustee.

The provisions of this Debt Security are continued on the reverse side hereof and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

IN WITNESS WHEREOF, the Company has duly executed this certificate.

Impac Mortgage Holdings, Inc.

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

Name:

Title:

Dated: October 18, 2005

CERTIFICATE OF AUTHENTICATION

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

Wilmington Trust Company, not in its individual  
capacity but solely as the Trustee

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

Authorized Officer

Dated: October 18, 2005

This Debt Security is one of a duly authorized series of Debt Securities of the Company, all issued or to be issued pursuant to an Indenture (the "Indenture"), dated as of October 18, 2005, duly executed and delivered between the Company and Wilmington Trust Company, as Trustee (the "Trustee"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the holders of the Debt Securities (referred to herein as the "Debt Securities") of which this Debt Security is a part. The summary of the terms of this Debt Security contained herein does not purport to be complete and is qualified by reference to the Indenture.

Upon the occurrence and continuation of a Tax Event or an Investment Company Event (each a "Special Event"), this Debt Security may become due and payable, in whole but not in part, at any time, within 90 days following the occurrence of such Tax Event or Investment Company Event (the "Special Redemption Date"), as the case may be, at the Special Redemption Price. The Company shall also have the right to redeem this Debt Security at the option of the Company, in whole or in part, on any Interest Payment Date on or after July 30, 2010 (a "Redemption Date"), at the Redemption Price.

If the Debt Securities are only partially redeemed by the Company, the Debt Securities will be redeemed *pro rata* or by lot or by any other method utilized by the Trustee.

"Redemption Price" means 100% of the principal amount of the Debt Securities being redeemed plus accrued and unpaid interest on such Debt Securities to the Redemption Date or, in the case of a redemption due to the occurrence of a Special Event, to the Special Redemption Date if such Special Redemption Date is on or after July 30, 2010.

"Special Redemption Price" means (1) if the Special Redemption Date is before July 30, 2010, 107.5% of the principal amount of the Debt Securities being redeemed pursuant to Section 10.02 of the Indenture plus accrued and unpaid interest on such Debt Securities to the Special Redemption Date and (2) if the Special Redemption Date is on or after July 30, 2010, the Redemption Price for such Special Redemption Date.

In the event of redemption of this Debt Security in part only, a new Debt Security or Debt Securities for the unredeemed portion hereof will be issued in the name of the holder hereof upon the cancellation hereof.

In case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of all of the Debt Securities may be declared due and payable, and upon such declaration of acceleration shall become due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the holders of not less than a majority in aggregate principal amount of the Debt Securities at the time outstanding affected thereby, as specified in the Indenture, to execute supplemental indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or of modifying in any manner the rights of the holders of the Debt Securities; *provided, however*, that no such supplemental indenture shall, among other things, without the consent of the holders of each Debt Security then outstanding and affected thereby (i) extend the fixed maturity of the Debt Securities, or reduce the principal amount thereof or any redemption premium thereon, or reduce the rate or extend the time of payment of interest thereon, or make payments due on the Debt Securities payable in any coin or currency other than that provided in the Debt Securities, or impair or affect the right of any holder of Debt Securities to institute suit for the payment thereof, or (ii) reduce the aforesaid percentage of Debt Securities, the holders of which are required to consent to any such supplemental indenture. The Indenture also contains provisions permitting the holders of a majority in aggregate principal amount of the Debt

Securities at the time outstanding, on behalf of all of the holders of the Debt Securities, to waive any past default in the performance of any of the covenants contained in the Indenture, or established pursuant to the Indenture, and its consequences, except a default in payments due on any of the Debt Securities. Any such consent or waiver by the registered holder of this Debt Security (unless revoked as provided in the Indenture) shall be conclusive and binding upon such holder and upon all future holders and owners of this Debt Security and of any Debt Security issued in exchange herefor or in place hereof (whether by registration of transfer or otherwise), irrespective of whether or not any notation of such consent or waiver is made upon this Debt Security.

No reference herein to the Indenture and no provision of this Debt Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay all payments due on this Debt Security at the time and place and at the rate and in the money herein prescribed.

As provided in the Indenture and subject to certain limitations herein and therein set forth, this Debt Security is transferable by the registered holder hereof on the Debt Security Register of the Company, upon surrender of this Debt Security for registration of transfer at the office or agency of the Trustee in Wilmington, Delaware accompanied by a written instrument or instruments of transfer in form satisfactory to the Company or the Trustee duly executed by the registered holder hereof or such holder's attorney duly authorized in writing, and thereupon one or more new Debt Securities of authorized denominations and for the same aggregate principal amount will be issued to the designated transferee or transferees. No service charge will be made for any such registration of transfer, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in relation thereto.

Prior to due presentment for registration of transfer of this Debt Security, the Company, the Trustee, any Authenticating Agent, any Paying Agent, any transfer agent and the Debt Security registrar may deem and treat the registered holder hereof as the absolute owner hereof (whether or not this Debt Security shall be overdue and notwithstanding any notice of ownership or writing hereon) for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes, and neither the Company nor the Trustee nor any Authenticating Agent nor any Paying Agent nor any transfer agent nor any Debt Security registrar shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of or the interest on this Debt Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture, against any incorporator, stockholder, officer or director, past, present or future, as such, of the Company or of any predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released.

The Debt Securities are issuable only in registered certificated form without coupons. As provided in the Indenture and subject to certain limitations herein and therein set forth, the Debt Securities are exchangeable for a like aggregate principal amount of Debt Securities of a different authorized denomination, as requested by the holder surrendering the same. All terms used in this Debt Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THE DEBT SECURITIES, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF.

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**IMPAC FUNDING CORPORATION  
2006 AMENDED AND RESTATED  
DEFERRED COMPENSATION PLAN**

**ARTICLE I**

**INTRODUCTION**

1.1 *Purpose.* The purpose of this Plan is to enable the Sponsor and Affiliated Companies to provide a competitive tax-deferred capital accumulation vehicle in order to attract and retain key management.

1.2 *Effective Date and Term.* This Plan is effective as of February 1, 2000 (the "Effective Date"), unless otherwise expressly provided herein. This amendment and restatement of the Plan is effective as of January 1, 2005.

1.3 *Participation.* Participation in this Plan is open only to employees of the Sponsor or any Affiliated Company who meet the requirements specified in Section 4.1 of the Plan and who are selected for participation in the Plan by the Committee. Participation in this Plan by any such employees, and the payment of any benefits under this Plan to any such employee, shall be governed by the terms of this Plan and by the terms of the Participation Agreement entered into with respect to this Plan by the Company and such employee pursuant to Section 1.4 hereof.

1.4 *Participation Agreement.* As a condition to the commencement of participation in this Plan, each employee approved for participation must enter into an agreement covering such employee's participation (a "Participation Agreement") which agreement shall be executed by the Sponsor and such employee and, if such employee is employed by an Affiliated Company, such Affiliated Company. Each Participation Agreement shall include such terms and conditions related to the employee's participation in the Plan as the Committee may deem appropriate.

1.5 *Applicability of ERISA.* This Plan is intended to be a "top-hat" plan—that is, an unfunded plan maintained primarily for the purpose of providing deferred compensation to a select group of management or highly compensated employees within the meaning of ERISA. As such, the Plan is exempt from the participation and vesting requirements of Part 2 of Title I of ERISA, the funding requirements of Part 3 of Title I of ERISA, and the fiduciary responsibility provisions of Part 4 of Title I of ERISA.

**ARTICLE II**

**DEFINITIONS**

2.1 *Account.* "Account" shall mean one of the separate Accounts maintained by the Committee pursuant to the provisions of Section 5.1.

2.2 *Active Participant.* "Active Participant" shall mean a Participant whose participation in this Plan has been approved pursuant to the provisions of Section 1.3, who has entered into a Participation Agreement pursuant to the provisions of Section 1.4, and whose active participation in the Plan has not been terminated pursuant to the provisions of Section 3.5.

2.3 *Affiliated Company.* "Affiliated Company" shall mean any of the following affiliates of the Sponsor which the Board expressly designates as having the status of an Affiliated Company for purpose of this Plan: (a) any corporation which is included in a controlled group of corporations, within the meaning of Section 414(b) of the Code, of which controlled group the Sponsor is also a member; (b) any trade or business which is under common control with the Sponsor within the meaning of Section 414(c) of the Code; (c) any service organization that is included in an affiliated service group, within the meaning of Section 414(m) of the Code, of which affiliated service group the Sponsor is also a member; (d) any other entity required to be aggregated with the Sponsor pursuant to

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regulations promulgated under Section 414(o) of the Code and (e) any other entity or entities which are designated by the Board as Affiliates as listed on Exhibit A hereto and which adopt this Plan.

2.4 *Beneficiary.* "Beneficiary" shall mean, with respect to any Participant, the person or persons and/or entity or entities designated or deemed designated by the Participant pursuant to Section 12.1 hereof to receive such Participant's Distributable Benefit payable under the Plan following such Participant's death.

2.5 *Board; Board of Directors.* "Board" and "Board of Directors" shall mean the board of directors of the Sponsor.

2.6 *Bonuses.* "Bonuses" shall mean bonus compensation which a Participant is entitled to receive from the Company, including but not limited to bonus compensation based on the performance of Sponsor and certain affiliates of Sponsor, such as bonuses to which a Participant may be entitled under an incentive plan. Bonuses shall not include any amounts not currently includible in such Participant's gross income by reason of Code Section 402(e)(3) and/or Code Section 125. Effective as of July 1, 2003, Bonuses shall include "Dividend Equivalency Rights" actually paid during the Plan Year, which are amounts paid in the form of cash pursuant to certain Participants' employment contracts.

2.7 *Bonus Deferrals.* "Bonus Deferrals" shall mean Bonuses deferred at the election of the Participant pursuant to a Compensation Deferral Agreement under the provisions of Article IV.

2.8 *Code.* "Code" shall mean the Internal Revenue Code of 1986, as amended.

2.9 *Commissions.* "Commissions" shall mean fees paid to salespersons as compensation for their services as specified by the Company on its payroll records, provided that a substantial portion of the services provided consist of the direct sale of a product or service to the Company's customers, the compensation consists of either a portion of the purchase price or an amount calculated solely by reference to the volume of sales, and payment of the compensation is contingent on the employer receiving payment from an unrelated customer for the product or services. Commissions shall not include any amounts not currently includible in such Participant's gross income by reason of Code Section 402(e)(3) and/or Code Section 125. Commissions are deemed earned by the Participant in the Participant's taxable year in which the customer remits payment (upon which the commission is derived) to the Company.

2.10 *Commission Deferrals.* "Commission Deferrals" shall mean Commissions deferred at the election of the Participant pursuant to a Compensation Deferral Agreement under the provisions of Article IV.

2.11 *Committee.* "Committee" shall mean, as of any date of reference, the committee, if any, then authorized and appointed to administer this Plan as set forth in Section 3.1 hereof.

2.12 *Company.* "Company" shall mean the Sponsor or an Affiliated Company. A reference to the term "Company" shall be deemed to be (a) a reference to the Sponsor with respect to Participants who are employees of the Sponsor and (b) a reference to an Affiliated Company with respect to Participants who are employees of such Affiliated Company.

2.13 *Compensation.* "Compensation" shall mean the aggregate of Salary, and Bonuses and Commissions, including any amounts not currently includible in such Participant's taxable income by reason of Code Section 402 or Code Section 125. Compensation that is attributable to services performed during the final payroll period of a Participant's taxable year that is paid in the subsequent taxable year is deemed to have been earned in the subsequent taxable year.

2.14 *Compensation Deferrals.* "Compensation Deferrals" shall mean the Compensation amounts deferred at the election of the Participant pursuant to a Compensation Deferral Agreement under the provisions of Article IV (including Bonus Deferrals, Salary Deferral and Commission Deferrals).

2.15 *Compensation Deferral Agreement.* "Compensation Deferral Agreement" shall mean the agreement entered into by a Participant to defer Compensation pursuant to the provisions of Sections 4.2.

2.16 *Disability.* "Disability" is deemed to exist, with respect to a Participant, if and when, as a result of injury or sickness, the Participant is determined by the Social Security Administration to be totally disabled and qualifies for disability benefits under the Social Security Act as in effect on the date the Participant suffers the Disability.

2.17 *Distributable Benefit.* "Distributable Benefit" shall mean the vested interest of a Participant in his or her Account, which is determined and distributable to the Participant in accordance with the provisions of Articles V, VI, VIII and XI.

2.18 *Early Retirement.* "Early Retirement" shall mean retirement from service for the Sponsor and all Affiliates on or after the date that the sum of the Participant's age plus Years of Service equals or exceeds 65.

2.19 *Effective Date.* "Effective Date" shall mean February 1, 2000 and, as to this 2006 Amendment and Restatement, the effective date shall be January 1, 2005. Except as otherwise provided below, the provisions of this amendment and restatement shall apply only to benefits and contributions which accrued on or after December 31, 2004 and applicable earnings thereon. Except as otherwise provided below, amounts which had accrued and were vested on December 31, 2004 shall be subject only to the provisions of the Plan which were in effect on October 1, 2004.

2.20 *ERISA.* "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

2.21 *Investment.* "Investment" shall mean the one or more funds under one or more variable life insurance contracts or one or more mutual funds (or any other investment) deemed suitable by the Committee for purposes of determining the investment experience adjustments that shall be made to a Participant's Account pursuant to the provisions of Section 5.4.

2.22 *Normal Retirement.* "Normal Retirement" shall mean retirement from service for the Sponsor and all Affiliates on or after the date that the Participant attains age 65.

2.23 *Participant.* "Participant" shall mean any employee of the Company who is selected and approved for participation in this Plan as provided in Section 1.3 hereof and who has executed a Participation Agreement as required under Section 1.4 hereof.

2.24 *Plan Year.* "Plan Year" shall mean January 1 through December 31, provided, however, that the initial Plan Year shall be the period from February 1, 2000 until December 31, 2000.

2.25 *Salary.* "Salary" shall mean, with respect to any Participant, the base salary which such Participant is entitled to receive from the Company, excluding any amounts not currently includible in such Participant's gross income by reason of Code Section 402(e)(3) and/or Code Section 125. Salary shall not include any Bonuses or Commissions which a Participant is entitled to receive from the Company.

2.26 *Salary Deferrals.* "Salary Deferrals" shall mean Salary amounts deferred at the election of the Participant pursuant to a Compensation Deferral Agreement under the provisions of Article IV.

2.27 *Section 409A.* "Section 409A" shall mean Section 409A of the Code, as the same may be amended from time to time, and any successor statute thereto. References to Section 409A or any

requirement under Section 409A, as the same may be interpreted, construed or applied to this Plan at any particular time, shall be deemed to mean and include, to the extent then applicable and then in force and effect (but not to the extent overruled, limited or superseded), published guidance, regulations, notices, rulings and similar announcements issued by the Internal Revenue Service or by the Secretary of the Treasury under or interpreting Section 409A, decisions by any court of competent jurisdiction involving a Participant or a beneficiary and any closing agreement made under section 7121 of the Code that is approved by the Internal Revenue Service and involves a Participant, all as determined by the Committee in good faith, which determination may (but shall not be required to) be made in reliance on the advice of such tax counsel or other tax professional(s) with whom the Committee from time to time may elect to consult with respect to any such matter.

2.28 *Sponsor.* "Sponsor" shall Impac Funding Corporation, a California corporation.

2.29 *Termination.* "Termination" shall mean the voluntary or involuntary termination of a Participant's employment with the Sponsor and all Affiliated Companies for any reason (including Disability or death). A leave of absence shall not constitute a termination unless (i) the period of the leave exceeds 6 months and (ii) the Participant has no continued right to employment (either by contract or by operation of law).

2.30 *Valuation Date.* "Valuation Date" shall mean the last of each calendar quarter which is also a business day, as of which the fair market value of Participants' Accounts shall be determined.

2.31 *Year of Service.* "Year of Service" shall mean any completed 12 month Period of Service including periods prior to the Effective Date. A Period of Service begins on the date an employee first performs an hour of service and ends on the date his or her employment ends. Employment ends on the date that the employee quits, retires, is discharged, dies or (if earlier) the first anniversary of his or her absence for any other reason. Any Period of Service less than 12 months shall be disregarded.

### ARTICLE III

#### ADMINISTRATION OF THE PLAN

3.1 *Administration By Committee.* This Plan shall be administered by a committee composed of at least four (4) individuals appointed from time to time by the Board (the "Committee"); provided, however, that if the Board does not appoint a committee, the Board shall constitute the Committee. Any member of the Board or the Committee may be a Participant in this Plan, provided, however, that any action to be taken by the Board or Committee solely with respect to the particular interest in this Plan of a Board or Committee member who is also a Participant in this Plan shall be taken by the remaining members of the Board or Committee. Notwithstanding the foregoing, in the event of a Change in Control of the Sponsor, the members of the Committee shall be elected pursuant to a majority vote of the Participants. Each Participant shall have one vote in any such election, regardless of the value of their Accounts. An election to appoint new Committee members following a Change in Control of the Sponsor shall be held by the Committee within 60 days of the date of such Change in Control pursuant to procedures established by the Committee. At a minimum, such procedures shall provide that Participants shall have the right to submit written nominations of one or more persons to serve on the new Committee and all Participants shall be provided with written notice of any such election at their last known residence at least 30 days before the date of the election.

3.2 *Board and Committee Authority; Rules and Regulations.* The Committee shall have discretionary authority to (a) make, amend, interpret and enforce all appropriate rules and regulations for the administration of the Plan, and (b) decide or resolve, in its discretion, any and all questions, including interpretations of the Plan, as may arise in connection with the Plan. The Committee shall have authority to take or approve, in its discretion, all such actions in relation to the Plan (including, without limitation, actions described in the preceding sentence) as may be taken or approved by the

Board; provided, however, that, except as provided in Section 8.2, the Committee shall have no authority to (a) amend, suspend or terminate the Plan or (b) to designate or remove a Company from the list of Affiliates authorized to participate in the Plan. Notwithstanding the foregoing, but subject to the provisions of Section 8.2, the Board may, by written notice to the Committee, withdraw all or any part of the Committee's authority at any time, in which case such withdrawn authority shall immediately revert in the Board. The decision or action of the Committee in respect of any question arising out of or in connection with the administration, interpretation and application of the Plan and the rules and regulations promulgated hereunder shall be final, conclusive and binding upon all persons having any interest in the Plan.

3.3 *Appointment of Agents.* In the administration of the Plan, the Board and/or the Committee may from time to time employ agents (which may include officers and/or employees of the Sponsor or any Affiliated Company) and delegate to them such administrative duties as it sees fit and may from time to time consult with counsel who may be counsel to the Sponsor or any Affiliated Company.

3.4 *Reports.* Within a reasonable amount of time following each calendar quarter, the Committee shall cause to be given to each Participant a statement showing the dollar amount of his or her Account under the Plan as of the end of such calendar quarter.

3.5 *Termination of Active Participation.* In the event that the Committee determines that a Participant's employment performance is no longer at a level which merits continued active participation in the Plan, the Committee may terminate such Participant's active participation in the Plan (without necessarily terminating such Participant's employment) as of the date specified by the Committee. After the effective date of a Participant's termination of active participation in the Plan, such Participant shall not be eligible to make Compensation Deferrals under the Plan nor shall such Participant be entitled to have credited to his or her Account Compensation Deferrals pursuant to the provisions of Section 5.2; nevertheless, such a Participant shall be entitled to have his or her Account adjusted as provided in Section 5.3 hereof.

3.6 *Leave of Absence.* In the event the Participant takes a leave of absence from active employment with the Sponsor and all Affiliated Companies, the Committee shall determine, in its discretion, whether such leave of absence shall be deemed to constitute, a Termination for purposes of the Plan.

## ARTICLE IV

### COMPENSATION DEFERRALS AND COMPANY CONTRIBUTIONS

4.1 *Eligibility to Make Compensation Deferrals.* Subject to the limitations of this Article IV, each employee who, as of the last day of the Plan Year immediately preceding the Plan Year for which an eligibility determination is being made (the "Determination Date"), is expected to meet at least one of the following requirements in the following Plan Year, shall be eligible to enter into a Compensation Deferral Agreement to make Compensation Deferrals and become a Participant, effective as of first day of the following Plan Year, (or for new employees, and only in their first year of employment, effective as of the first day of the month following such employee's completion of one month of employment with the Company):

- (a) The employee is designated as, and performs the functions of an officer of the Company having the rank of at least a Vice President and the employee's annual base salary as of the Determination Date was at least the greater of: (i) \$80,000 or (ii) the amount specified in Section 414(q)(1)(B)(i) of the Internal Revenue Code; or
- (b) The employee is designated as, and performs the functions of an officer of the Company having the rank of at least a Vice President and the employee's Compensation actually received in the calendar year ending on the Determination Date was at least the greater of: (i) \$80,000 or (ii) the amount specified in Section 414(q)(1)(B)(i) of the Internal Revenue Code.

4.2 *Election to Make Compensation Deferrals.*

(a) *Salary Deferrals.* Each Active Participant who desires to make Salary Deferrals for a Plan Year shall enter into a Compensation Deferral Agreement for such year specifying the amount of Salary for such year to be deferred (stated in terms of a whole percentage of Salary not to exceed 50%) and such other information as the Committee shall determine. The amount of Salary Deferrals elected for a Plan Year shall not be less than 5% of Salary.

(b) *Monthly Bonus/Commission Deferrals.* Each Active Participant who desires to make Deferrals of monthly Bonuses or Commissions for a Plan Year shall enter into a Compensation Deferral Agreement for such year specifying the amount of monthly Bonuses or Commissions for such year to be deferred (stated after in terms of a whole percentage of Bonus or Commission Deferrals not to exceed 100%) and such other information as the Committee shall determine. The amount of monthly Bonus or Commission Deferrals elected for a Plan Year shall not be less than 5% of monthly Bonuses or Commissions.

(c) *Quarterly Bonus/Commission Deferrals.* Each Active Participant who desires to make Deferrals of quarterly Bonuses or Commissions for a Plan Year shall enter into a Compensation Deferral Agreement for such year specifying the amount of quarterly Bonuses or Commissions for such year to be deferred (stated in terms of a whole percentage not to exceed 100%) and such other information as the Committee shall determine. The amount of quarterly Bonus or Commission Deferrals elected for a Plan Year shall not be less than 5% of quarterly Bonuses or Commissions.

(d) *Annual Bonus/Commission Deferrals.* Each Active Participant who desires to make Deferrals of annual Bonuses or Commissions for a Plan Year shall enter into a Compensation Deferral Agreement for such year specifying the amount of annual Bonuses or Commissions for such year to be deferred (stated in terms of a whole percentage not to exceed 100%) and such other information as the Committee shall determine. The amount of annual Bonus or Commission Deferrals elected for a Plan Year shall not be less than 5% of annual Bonuses or Commissions.



(e) *Procedures.* Except as provided in subsection (f) regarding performance based compensation, a Compensation Deferral Agreement under this Section 4.2 shall not be effective unless it is executed by the Participant and returned to the Committee before the first day of the first Plan Year with respect to which the Agreement relates, or for new employees, and only during their first year of employment, before the date that is 30 days after first date on which the Participant becomes eligible to participate in the Plan. Once executed, a Compensation Deferral Agreement shall remain in effect for all subsequent Plan Years unless revoked or modified in writing by the Participant before the first day of the Plan Year for which the revocation or modification is to take effect. An election to make Compensation Deferrals for a Plan Year (including a failure to revoke or modify a prior election in a timely manner), shall be irrevocable after the beginning of the Plan Year with respect to which the election relates. A Participant's failure to revoke or modify his original deferral election in writing before the first day of the following Plan Year shall constitute a waiver by the Participant of the Participant's right to elect a different deferral amount and shall constitute an election to make deferrals as previously elected and shall apply as of the new Plan Year. A Participant shall commence participation in the Plan on the first day of the month following the month in which the Participant completes all enrollment requirements, including timely submission of all required enrollment documents. If a Participant fails to meet all such requirements within the 30 day period described above, that Participant shall not be eligible to participate in the Plan until the first day of the Plan Year following the delivery to and acceptance by the Committee (or its designee) of the required documents. In the event that a Bonus constitutes performance-based compensation based on services performed over a period of at least 12 months, the election to defer such Bonus must be made no later than 6 months before the end of the period.

(f) *Performance Based Compensation.* In the event that Compensation constitutes performance-based compensation as defined in Code Section 409A and the regulations thereunder, and provided that such Compensation is based on services performed over a period of at least 12 months, the election to defer such Bonus must be made no later than 6 months before the end of the service period.

4.3 *Continuing Participation.* Once an employee becomes eligible to participate in the Plan, the employee shall continue to be eligible to participate in the Plan until eligibility for participation is terminated as provided in Section 3.5.

4.4 *No Deferrals After a Termination.* No Compensation Deferrals shall be made after a Participant terminates employment with the Company.

4.5 *Spousal Consent.* Compensation Deferrals under this Article IV shall not be subject to the consent of the Participant's spouse, if any.

4.6 *Withholding.* For each Plan Year in which a Participant elects to make a Deferral, the Participant's employer shall ratably withhold, from that portion of the Participant's wages, salary, bonus or other compensation that is not being deferred, the Participant's share of taxes under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act ("FICA/FUTA Taxes") and any other taxes on deferred amounts which may be required or appropriate. If necessary, the Committee shall reduce the Deferral amount in order to comply with this paragraph. In addition, as Account balances become vested, to the extent that such amounts are subject to FICA/FUTA Taxes or any other taxes, the Participant's employer shall withhold from the Participant's wages, salary, bonus or other compensation for the year in which such vesting occurs the Participant's share of FICA/FUTA taxes and such other taxes on the amounts that have vested in such year, all to the extent necessary and appropriate to satisfy such tax obligations. If necessary, the Committee shall reduce the Deferral amount for the year in which FICA/FUTA or other taxes must be paid in order to comply with this paragraph.

4.7 *Company Contributions.* Each participating Company may, in its sole discretion, make a Company Contribution to the Plan in such amount as the Company, in its sole discretion determines. Company Contributions shall be allocated among the Accounts of Participants as specified by each Company in its sole discretion.

4.8 *Special Provisions for 2000 Salary Deferrals.* Notwithstanding the requirement of Section 4.2 that elections to defer Compensation must be made before the first day of the Plan Year, Participants shall be permitted to make Compensation Deferrals for the period beginning on February 1, 2000 and continuing through December 31, 2000 (the "2000 Deferral Period") pursuant to this Section 4.8. A Compensation Deferral Agreement under this Section 4.8 shall not be effective unless it is executed by the Participant and returned to the Committee before January 25, 2000. A Participant's election to make Compensation Deferrals for the 2000 Deferral Period shall be irrevocable after January 25, 2000.

## **ARTICLE V**

### **ACCOUNTS; VALUATION OF ACCOUNTS; VESTING**

5.1 *Separate Accounts for Participants.* The Committee shall have the responsibility to keep separate Accounts for each Participant in accordance with the provisions of this Article V reflecting amounts credited to the Participant under the Plan (subject to the restrictions set forth in Section 9.1 below). Each Participant's Account shall represent a book reserve in the name of the Participant.

5.2 *Crediting of Compensation Deferrals to Participants' Accounts.* All Compensation Deferrals and all Company Contributions and all deemed earnings thereon made for a particular year shall be credited to separate Accounts (the "Compensation Deferral Account" and the "Company Contribution Account") for each Participant by whom such deferrals are made. All amounts which were vested as of December 31, 2004 and all deemed earnings thereon shall be allocated to separate sub-accounts (the "Grandfathered Compensation Deferral Account" and the "Grandfathered Company Contribution Account").

5.3 *Adjustments for Investment Experience.* Each Participant's Account(s) shall be adjusted as of each Valuation Date. The adjustments made shall be those adjustments reflecting income, gains and losses that would have been made to the Participant's Account(s) had the dollar value of the Account been invested in the Investments selected by the Participant pursuant to the provisions of Section 5.4.

5.4 *Designation of Investments.* For purposes of determining the adjustments for investment experience set forth in Section 5.3 above, the dollar value of each Participant's Account(s) shall be deemed to be invested in accordance with the Participant's investment designation in one or more Investments established by the Committee pursuant to rules established by the Committee. The Committee may, at its discretion, establish alternative Investments or eliminate any previously established Investments at any time and from time to time. In accordance with rules established by the Committee, each Participant may elect the Investment in which his or her Account is deemed invested.

5.5 *Valuation of Accounts.* A Participant's Account(s) under the Plan shall be valued by the Committee as of each Valuation Date. A Participant's Account(s) shall be calculated by starting with the balance of the Account as of the prior Valuation Date (assuming a \$0 balance for the initial Valuation Date) and by (a) adding to the Participant's Account those amounts, if any, credited to the Account of such Participant under Section 5.2 above since the last Valuation date, (b) making the adjustments to such Participant's Account set forth in Section 5.3 above since the last Valuation Date, and (c) subtracting the aggregate amount of distributions or withdrawals made since the last Valuation Date to or with respect to such Participant.

5.6 *Vesting of Accounts.* Participant Accounts shall vest in accordance with the following provisions:

(a) *Compensation Deferrals Account.* A Participant shall be fully vested at all times in the amount of their Compensation Deferrals Account and Grandfathered Compensation Deferral Account.

(b) *Company Contributions Account.* A Participant's Company Contributions Account and Grandfathered Company Contributions Account shall become fully vested upon the Participant's Early Retirement, Normal Retirement, death or Disability while employed by the Company or upon a Change in Control as defined in Article XI. In addition, a Participant's Company Contributions Account and Grandfathered Company Contributions Account shall become vested in accordance with the following schedule:

<u>Years of Participation</u>	<u>Vested Percentage</u>
Less than 3	0%
3 or more	100%

(c) *Year of Participation.* For purposes of this Section 5.6(b), a "Year of Participation" shall be defined as a twelve consecutive month period beginning on the date that the Company Contribution is approved by the Board of Directors of the Company electing to make a Company Contribution and ending on the anniversary of such date. No credit shall be given for partial years of participation.

5.7 *Forfeitures.* Any amounts not vested at the time of a Participant's Termination or upon termination of the Plan as provided in Section 8.1 shall be forfeited.

## ARTICLE VI

### BENEFITS

6.1 *Eligibility.* Any Participant who incurs any Termination shall receive his or her Distributable Benefit in an amount equal to the vested balance of the Participant's Accounts as of the Valuation Date immediately following such Termination. Except as otherwise provided in Article XI hereof, a Participant's Distributable Benefit shall be paid at the times and in the amounts specified in this Article VI. A Participant's Distributable Benefit shall be paid (or commenced to be paid) within 30 days after the Valuation Date following such Termination (and such 30 day period shall be extended, in the case of Disability, by such reasonable period of time as the Committee may require to confirm the existence of such Disability) or as soon as practicable thereafter.

6.2 *Form of Plan Benefit.* Any Participant or Beneficiary who is entitled to receive his or her Distributable Benefit shall receive such Benefit in the form of a lump sum payment unless (a) the value of the Participant's Accounts exceeds \$100,000 in the aggregate, and (b) the Participant elects in accordance with the provisions of Section 6.3 to have his or her Distributable Benefit paid in substantially equal annual payments payable over fifteen (15) years. In the event a Participant elects to have his or her Distributable Benefit paid in substantially equal annual payments, the investment experience adjustments set forth in Section 5.3 shall continue to be made to the Participant's Account until the final payment is made to the Participant, reducing his or her Account balance to zero.

6.3 *Election of Form of Benefit.* A Participant shall elect the form in which his or her Distributable Benefit will be paid in the event the Participant's Benefit exceeds \$100,000 and the Participant has experienced a Termination on account of Early Retirement, Normal Retirement, or Disability in his or her Participation Agreements. Except to the extent that the Participant executes a new Participation Agreement (which shall be applicable only to amounts deferred in the calendar year following the year in which such new Participation Agreement is entered into), qualifies for a Hardship Withdrawal as provided in Section 6.4 or elects to further defer a distribution as provided in Section 6.9 of the Plan, the Participant's election as to the timing and form of distribution that is made on the Participant's Participation Agreement shall apply to all subsequent Compensation Deferrals (other than elections to receive Short-Term Payouts, as provided in Section 6.5 of the Plan, which shall apply only to the amounts specifically provided for in a Participant's Participation Agreement) and shall be irrevocable once made.

6.4 *Hardship Withdrawals.* A Participant may withdraw from his or her Compensation Deferral Account or Grandfathered Compensation Deferral Account any Participant Deferrals previously made, but only if the Committee determines that the Participant has an unforeseeable emergency and that a withdrawal is reasonably necessary in order to satisfy the emergency need.

(a) An "unforeseeable emergency," as used in this Section 6.4, shall mean severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or a spouse or dependent (as defined in Code Section 152(a)) of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

(b) The determination as to whether a withdrawal is reasonably necessary to satisfy an unforeseeable emergency need is to be made on the basis of all relevant facts and circumstances. However, a withdrawal shall be necessary in order to satisfy immediate and heavy financial need only if:

(i) The amount of the withdrawal is not in excess of the amount required to relieve the emergency need or in excess of the amount that such need could not be satisfied from other sources that are reasonably available to the Participant. The amount of any hardship

withdrawal may include any amounts necessary to pay federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution.

(ii) The Participant submits a signed statement to the Committee, on which the Committee can reasonably rely, to the extent that the need cannot be relieved:

(I) Through reimbursement or compensation by insurance or otherwise;

(II) By reasonable liquidation of the Participant's assets, to the extent such liquidation would not itself cause an immediate and heavy financial need;

(III) By cessation of deferrals under the Sponsor's Retirement Savings Plan; or

(IV) By other withdrawals, distributions or nontaxable loans from any plan maintained by the Company or any other employer, or by borrowing from commercial sources on reasonable commercial terms.

(iii) A Participant's resources shall be deemed to include those assets of his or her spouse and minor children that are reasonably available to the Participant.

(iv) A Participant who makes a hardship withdrawal pursuant to this Section 6.4 shall not be eligible to make Compensation Deferrals for the taxable year of the Participant immediately following the taxable year of such hardship withdrawal.

6.5 *Short Term Pay-Outs.* A Participant may designate in advance on his or her Compensation Deferral Agreement the time and amount of one or more withdrawals of Compensation Deferrals (plus, for elections made on or after July 1, 2003, any investment earnings thereon, if so elected) from his or her Account, subject to the following rules: (a) A Participant may designate a time for withdrawal not earlier than two years after the year that Compensation was deferred under such Compensation Deferral Agreement which otherwise would have been paid absent the deferral election (such amount to be designated as payable after 2, 3, 5 or 10 years); and (b) such election shall be irrevocable. Notwithstanding a Participant's election to receive a Short Term Pay-Out in a particular dollar amount, the maximum amount payable as a Short Term Pay-Out shall be limited to the lesser of (a) the account balance of the Participant's Compensation Deferrals Account and Grandfathered Compensation Deferrals Account or (b) the dollar value of the Compensation Deferrals with respect to the Plan Year for which the Deferral was elected, each determined as of the Valuation Date preceding the payment of such Short Term Pay-Out.

6.6 *Disputes.* In the event of a dispute between a Participant and the Company concerning the amount of the Participant's Distributable Benefit, the claims procedures and mandatory arbitration provisions of Article VII shall apply.

6.7 *Lump Sum Payment of Withdrawals.* All Short Term Pay-Outs shall be paid to Participants as soon as reasonably practicable following the approval by the Committee of a properly completed withdrawal request. All Short Term Pay-Outs shall be made in a single lump sum payment in cash.

6.8 *Termination of Plan.* Upon a termination of the Plan pursuant to Section 8.1 or Section 8.2, all Distributable Benefits shall be paid to Participants (including Participants receiving installment payments), in the form and at the times provided in this Plan. Except in the case of a Change in Control, a complete termination of all defined contribution non-qualified deferred compensation plans or the dissolution or bankruptcy of the Company (all as provided in Treasury Regulations under Code Section 409A), payments may not be accelerated upon termination of the Plan. Payments accelerated due to termination of the Plan on account of a Change in Control must be made within the period that begins 30 days before and ends 12 months following the date of the Change in Control.

6.9 *Subsequent Elections.* Participants may elect to change the date or form of a payment previously elected provided that (i) such election will not take effect until at least 12 months after the

date on which the election is made, (ii) the first payment with respect to which such election is made must be at least 5 years from the date the payment otherwise would have been made and (iii) any election related to a payment to be made at a specified time must be made at least 12 months prior to the date of the first scheduled payment. For purposes of the foregoing, to the extent permitted under Section 409A of the Code and the regulations thereunder, any distribution payment that a Participant elects to receive in a series of equal installments, rather than in a lump sum payment, shall be treated as a single payment as of the date of the first payment in such series. This provision shall not apply to amounts allocated to a Participant's Grandfathered Compensation Deferral Account. Such amounts remain subject to the provisions of the Plan as in effect on October 1, 2004.

6.10 *Acceleration of Payments.* Except as provided in paragraph 6.8 and paragraphs (a) through (e) of this Section 6.10, the Plan does not permit the acceleration of the time or schedule of any payment under the Plan:

(a) *Conflicts of interest.* The Plan does permit such acceleration of the time or schedule of a payment under the Plan as may be necessary to comply with a certificate of divestiture (as defined in Code Section 1043(b)(2)).

(b) *Small amounts.* The Plan does permit the acceleration of the time or schedule of a payment to a Participant under the Plan, provided that (i) the payment accompanies the termination of the entirety of the Participant's interest in the Plan; (ii) the payment is made on or before the later of (A) December 31 of the calendar year in which occurs the Participant's separation from service from the Company and all Affiliated Companies or (B) the date that is 2<sup>1</sup>/<sub>2</sub> months after the Participant's separation from service from the Company and all Affiliated Companies; and (iii) the payment is not greater than \$10,000.

(c) *Payment of employment taxes.* The Plan does permit the acceleration of the time or schedule of a payment in the discretion of the Committee to pay the Federal Insurance Contributions Act (FICA) tax imposed under section 3101 and section 3121(v)(2) on compensation deferred under the plan (the FICA Amount). Additionally, the Plan does permit the acceleration of the time or schedule of a payment to pay the income tax at source on wages imposed under section 3401 on the FICA Amount, and to pay the additional income tax at source on wages attributable to the pyramiding section 3401 wages and taxes. However, the total payment under this acceleration provision must not exceed the aggregate of the FICA Amount, and the income tax withholding related to such FICA amount.

(d) *Domestic relations order.* The Plan does not permit acceleration of the time or schedule of a payment under the Plan to Alternate Payees under domestic relations orders. Alternate Payees are entitled to distributions of Plan benefits only at the same time and in the same manner as the Participant.

(e) *Payment of income taxes.* The Plan does permit acceleration of the time or schedule of a payment to a Participant at any time the Plan fails to meet the requirements of section 4094 and these regulations. Such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of section 409A and the regulations.

6.11 *Payments to Key Employees.* If the Company's stock is publicly traded on an established securities market or otherwise, benefit payments that are payable to a Participant who is a Key Employee on account of separation from service shall be delayed for a period of 6 months. For purposes of this paragraph, a Participant shall be considered a Key Employee for the 12 month period that begins on April 1 and ends on March 31 of each year, provided that the Participant was considered to be a Key Employee (as defined in Section 416(i) of the Code), as of the immediately preceding December 31, based on the 12 month period ending on such December 31. In the event that

the Participant is receiving or entitled to receive a distribution in the form of installment payments, such amounts shall be accumulated and then paid at the expiration of the six-month period.

6.12 *Delay of Payments by Company.* Notwithstanding anything to the contrary, in accordance with Treasury Regulations under Section 409A of the Code, the Company shall delay payments or temporarily cease distributions to the extent that such payments would reasonably be expected to (a) not be deductible to the Company under the limitations imposed by Section 162(m) of the Code; (b) violate any securities or other applicable law; (c) violate any covenant or condition of another agreement of the Company, such as a loan condition or covenant; or (d) as otherwise provided in Treasury Regulations under Section 409A of the Code. Any such delay shall be permissible only to the minimum extent required and such payments shall resume as of the date specified in the regulations.

## ARTICLE VII

### APPLICATION FOR BENEFITS

7.1 *Initial Application.* In order for a Participant to receive or commence receiving his or her Distributable Benefit, such Participant (or, in the case of a Participant who incurs a Termination by reason of death, the Participant's Beneficiary) must file a written application for such Plan benefit (an "Initial Application for Benefits") with the Committee. The Initial Application for Benefits shall contain at least the following information:

- (a) The Participant's name;
- (b) The Participant's date of Termination and the reason for such Termination (that is, whether such Termination is on account of the Participant's death, Disability or Retirement);
- (c) A brief statement setting forth the basis (with references to pertinent Plan provisions where applicable) of the Participant's claim for his or her Distributable Benefit; and
- (d) Such other documents and information as the Committee may reasonably require.

Notwithstanding the foregoing, if the Committee determines, based on such evidence as it deems appropriate, that a Participant has incurred Termination (or that the Plan has been terminated) and that such Participant (or other person claiming benefits with respect to such Participant) would be entitled, but for the failure to file an application for benefits, to commence receiving benefit payments under this Plan, then the Committee may, in its discretion, deem an application for such benefits to have been filed.

7.2 *Action on Applications.* At such time as the Committee receives any Initial Application for Benefits (hereinafter shall be referred to as a "Claim," and the person filing any Claim shall be referred to hereinafter as a "Claimant"), the Committee shall review the Claim, together with other pertinent information (including any additional information the Committee may reasonably request from the Claimant), and shall allow or deny the Claim. The Committee shall provide written notice to the Claimant of the Committee's decision to allow or deny the Claim (a "Notice of Action on Claim") within 60 days after the Committee receives the Claim. If the Claim is denied, the Notice of Action on Claim shall include the following information:

- (a) The specific reasons for the denial;
- (b) Specific reference to pertinent Plan provisions on which the denial is based;
- (c) If applicable, a description of any additional information or material necessary to perfect the Claim, and an explanation of why such information or material is necessary; and
- (d) An explanation of the claims review procedure.

7.4 *Review Procedure.*

(a) A Claimant is entitled to request the Committee to review any denial by the Committee of his or her Claim. The request for review must be submitted in writing to the Committee within 60 days after the date the Notice of Action on Claim is deemed given pursuant to Section 12.6 hereof. If the Claimant fails to make a timely request for review, the Claim will be deemed conclusively to be denied. The Claimant or his or her representative shall be entitled to review all pertinent documents and to submit relevant issues and comments to the Committee in writing.

(b) The Committee shall review the Claim and shall render the final decision to allow or deny the Claim. The Committee shall give written notice of its decision to the Claimant within 60 days after it receives the written request for review. If the Claim is denied, such written notice shall recite the facts on which the Committee based its decision as well as its reasons therefore, with specific reference to pertinent Plan provisions where applicable.

7.5 *Mandatory Arbitration.* Following exhaustion of all administrative remedies as described in Sections 7.1-7.4, above, in the event of any unresolved dispute under the provisions of this Plan, such dispute shall be submitted to arbitration in accordance with the provisions of Section 12.12 of the Plan.

7.6 *Claims By Representative.* In the event that any person who is entitled (or required) to file a Claim under this Article VII is deceased or is mentally or physically incapacitated in a manner that prevents such person from filing such Claim, then such Claim may be filed by another person on behalf of such Claimant, subject to such other person's providing to the Committee or Committee, as applicable, reasonable verification of such other person's authorization to act on the Claimant's behalf.



## ARTICLE VIII

### CHANGES TO THE PLAN

8.1 *Termination, Suspension or Amendment of Plan by Board.* Subject to the provisions of Section 8.2 and Code Section 409A, the Board may, in its sole discretion, terminate or suspend this Plan at any time or from time to time, in whole or in part, and, except as otherwise provided by the Board, no further Compensation Deferrals or Company Contributions shall be credited to Participants' Accounts as of the date of such termination or suspension. Subject to the provisions of Section 8.3, the Board may amend this Plan at any time or from time to time, and any amendment may provide benefits different in kind and/or amount from those herein set forth. Notwithstanding the foregoing, in the case of any termination, suspension or amendment of this Plan, such termination, suspension or amendment shall not adversely affect (a) the Account balance of any such Participant as of the effective date of such termination, suspension or amendment, (b) the Participant's right to the investment experience adjustments after any suspension or amendment pursuant to the provisions of Section 5.3, (c) the Participant's right to investment experience adjustments after termination of the Plan, up to and including the effective date of such termination, pursuant to the provisions of Section 5.3, or (d) the right or ability of any such Participant (and, if applicable, such Participant's Beneficiary) to receive his or her vested Distributable Benefit in accordance with the terms of this Plan as in effect immediately prior to such termination, suspension or amendment. Any termination, suspension or amendment of this Plan by the Board shall be binding on each Affiliated Company, without further action by any such Affiliated Company.

8.2 *Termination of Plan Upon a Change in Control.* Notwithstanding the provisions of Section 8.1 of the Plan, upon the occurrence of a Change in Control, the Committee may, in its sole discretion, elect to terminate all or a portion of this Plan, in which case no further Compensation Deferrals or Company Contributions shall be credited to Participants' Accounts as of the date of such termination and benefits shall be paid out as soon as practicable thereafter as provided in Section 6.8. In the case of any termination of the Plan by the Committee, such termination shall not adversely affect (a) the Account balance of any such Participant as of the effective date of such termination, (b) the Participant's right to investment experience adjustments after termination of the Plan, up to and including the effective date of such termination, pursuant to the provisions of Section 5.3, or (c) subject to the provisions of Section 6.8, the right or ability of any such Participant (and, if applicable, such Participant's Beneficiary) to receive his or her vested Distributable Benefit in accordance with the terms of this Plan as in effect immediately prior to such termination. Any termination of this Plan by the Committee pursuant to this Section 8.2 shall be binding on each Affiliated Company, without further action by any such Affiliated Company.

8.3 *Amendment of Plan Following a Change in Control.* Notwithstanding the provisions of Section 8.1 of the Plan, upon the occurrence of a Change in Control of the Sponsor, if the Committee does not terminate the Plan as provided in Section 8.2, the Plan shall continue in force as provided in Section 12.4; provided, however, that for a period of 24 months following the date of a Change in Control of the Sponsor, no amendment to the Plan shall be effective unless such amendment is (a) consented to in writing by a majority of Plan Participants pursuant to procedures established by the Committee or (b) required to comply with Section 409A of the Internal Revenue Code and the regulations thereunder.

## ARTICLE IX

### FUNDING

9.1 *In General.* Benefits under this Plan shall be payable solely from the general assets of the Sponsor (and, with respect to any Participant who is an employee of an Affiliated Company, also from the general assets of such Affiliated Company), and no person shall be entitled to look to any other

source for payment of such benefits. The Sponsor (and, if applicable, any Affiliated Company) shall have and possess all title to, and beneficial interest in, any and all funds or reserves maintained or held by the Sponsor (or such Affiliated Company) on account of any obligation to pay benefits as required this Plan, whether or not earmarked as a fund or reserve for such purpose; any such funds, other property or reserves shall be subject to the claims of the creditors of the Sponsor (or such Affiliated Company), and the provisions of this Plan are not intended to create, and shall not be interpreted as vesting, in any Participant, Beneficiary or other person, any right to or beneficial interest in any such funds, other property or reserves. Nothing in this Section 9.1 shall be construed or interpreted as prohibiting or restricting the establishment of a grantor trust (within the mean of Code Section 671) from which benefits under this Plan may be payable, so long as such trust or contract does not cause the plan to be funded for purposes of Sections 201(a), 301(a) (3) or 401(a) (1) of ERISA.

9.2 *Establishment of Rabbi Trust.* The Sponsor has established (or will establish) a trust ("Trust") substantially in the form attached hereto as Exhibit B for the purpose of funding benefits under this Plan as provided in this Article IX and for the purpose of paying the reasonable legal and administration fees and expenses incurred by Participants and their Beneficiaries in connection with lawsuits, actions or other proceedings brought by such persons to enforce their rights under the Plan.

9.3 *Funding of Rabbi Trust.* Subject to the amendment or termination of this Plan and the restrictions set forth in Section 9.1, the Company shall contribute to the Trust, on behalf of each Participant, the amount of Compensation Deferrals made by such Participant and the amount of any Company Contribution allocated to such Participant's Account. Amounts corresponding to Salary Deferrals for each payroll period shall be contributed to the Trust as soon as reasonably practicable following the end of such payroll period. Bonus Deferrals for a Plan Year shall be contributed to the Trust as soon as reasonably practicable following the date on which such Bonus amounts otherwise would have been paid to the Participant.

## **ARTICLE X**

### **AFFILIATED COMPANIES**

10.1 *Affiliated Company Participation.* The Board of Directors may revoke or modify an Affiliated Company's participation in this Plan at any time and for any or no reason, or terminate this Plan with respect to such Affiliated Company's employees and Participants, subject to the provisions of Section 8.1 concerning changes in the Plan.

10.2 *Adoption Agreement.* Any Affiliated Company participating in the Plan shall adopt the Plan and shall agree to be bound by the terms and conditions of the Plan and any future changes made by the Board to the Plan.

## **ARTICLE XI**

### **CHANGE IN CONTROL**

11.1 *Change in Control.* As used in this Plan, "Change in Control" shall mean the following and shall be deemed to occur with respect to each respective Company that is a corporation (and shall be referred to herein as the "Corporation") if any of the following events occur: a change in the ownership of the corporation, a change in the effective control of the corporation, or a change in the ownership of a substantial portion of the assets of the corporation.

(a) *Change in the ownership of a corporation.* A change in the ownership of a corporation occurs on the date that any one person, or more than one person acting as a group (as defined in Section (d)), other than other than any person who was the beneficial owners of securities of such corporation as of January 1, 2005, acquire ownership of stock of the corporation that, together with stock held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of such corporation.

(b) *Change in the effective control of the corporation.* A change in the effective control of a corporation occurs on the date that either—

(i) Any one person, or more than one person acting as a group (as determined under Section (d), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the corporation possessing 35% or more of the total voting power of the stock of such corporation; or

(ii) a majority of members of the corporation's board of directors is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the corporation's board of directors prior to the date of the appointment or election, provided that for purposes of this Section (ii) the term corporation refers solely to the relevant corporation identified in Section (e) for which no other corporation is a majority shareholder for purposes of that Section.

A change in effective control also may occur in any transaction in which either of the two corporations involved in the transaction has a Change in Control event under Section (a) or (c). If any one person, or more than one person acting as a group, is considered to effectively control a corporation, the acquisition of additional control of the corporation by the same person or persons is not considered to cause a change in the effective control of the corporation (or to cause a change in the ownership of the corporation) within the meaning of Section (a).

(c) *Change in the ownership of a substantial portion of a corporation's assets.* A change in the ownership of a substantial portion of a corporation's assets occurs on the date that any one person, or more than one person acting as a group (as determined in Section (d), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the corporation that have a total gross fair market value equal to or more than 40% of the total gross fair market value of all of the assets of the corporation immediately prior to such acquisition or acquisitions. For this purpose, gross fair market value means the value of the assets of the corporation, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets. There is no Change in Control under this Section (c) when there is a transfer to an entity that is controlled by the shareholders of the transferring corporation immediately after the transfer, as provided in this Section (c). A transfer of assets by a corporation is not treated as a change in the ownership of such assets if the assets are transferred to—

(i) A shareholder of the corporation (immediately before the asset transfer) in exchange for or with respect to its stock;

(ii) An entity, 50% or more of the total value or voting power of which is owned, directly or indirectly, by the corporation;

(iii) A person, or more than one person acting as a group, that owns, directly or indirectly, 50% or more of the total value or voting power of all the outstanding stock of the corporation; or

(iv) An entity, at least 50% of the total value or voting power of which is owned, directly or indirectly, by a person described in Section (iii).

For purposes of this Section (c) and except as otherwise provided, a person's status is determined immediately after the transfer of the assets.

(d) *Persons acting as a group.* Persons will not be considered to be acting as a group solely because they purchase assets or own stock of the same corporation at the same time, or as a result of the same public offering. However, persons will be considered to be acting as a group if they

are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of assets or stock or similar business transaction with the corporation.

(i) For purposes of Section (a), if a person, including an entity or entity shareholder, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

(ii) For purposes of Sections (b) and (c), if a person, including an entity or entity shareholder, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation only to the extent of the ownership of assets of that corporation or with respect to stock ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

(e) *Construction.* To constitute a Change in Control as to a Plan Participant, the relevant event described in Sections (a), (b) or (c) above must relate to (i) the corporation for whom the Participant is performing services at the time of the event, (ii) the corporation that is liable for the payment of the deferred compensation (or all corporations liable for the payment if more than one corporation is liable), or (iii) a corporation that is a majority shareholder of a corporation identified in (i) or (ii), or any corporation in a chain of corporations in which each corporation is a majority shareholder of another corporation in the chain, ending in a corporation identified in (i) or (ii). For purposes of this Article 11, Code Sections 409A and 318(a) apply to determine stock ownership and the definition of Change in Control.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

12.1 *Designation of Beneficiary.* A Participant shall be entitled to designate one or more individuals or entities (including a trust or trusts), in any combination, as his or her "Beneficiary" or "Beneficiaries" to receive any Plan benefit payments to which such Participant is entitled as of, or by reason of, his or her death; provided, however, that the designation of any individual or entity other than the Participant's spouse shall be effective only with the consent of the Participant's spouse. Any such designation may be made or changed at any time prior to the Participant's death by written notice filed with the Committee, with such written notice to be in such form and contain such information as the Committee may from time to time determine. In the event that (a) a Beneficiary designation is not on file or is not effective at the date of a Participant's death, (b) no Beneficiary survives the Participant, or (c) no Beneficiary is living at the time any payment becomes payable under this Plan, then, for purposes of making any further payment of any unpaid benefits under the Plan, such Participant's Beneficiary or Beneficiaries shall be deemed to be the Participant's estate. A Beneficiary entitled to receive any Plan Benefit payments pursuant to this Section 12.1 shall receive such payments at the time(s) and in the manner elected by the Participant in his or her Participation Agreement.

12.2 *Payments During Incapacity.* The Committee shall have no duty or obligation to determine the competence or capacity of any Participant or Beneficiary. However, in the event that the Committee is made aware that a Participant (or Beneficiary) is under mental or physical incapacity at the time of any payment to be made to such Participant (or Beneficiary) pursuant to this Plan, any such payment may be made to the conservator or other legally appointed personal representative having authority over and responsibility for the person or estate of such Participant (or Beneficiary), as the case may be, and for purposes of such payment references in this Plan to the Participant (or Beneficiary) shall mean and refer to such conservator or other personal representative of the person or

estate of the Participant (or Beneficiary), any such payment may be made to any person or institution that has apparent responsibility for the person and/or estate of the Participant (or Beneficiary) as determined by the Committee. Any payment made in accordance with the provisions of this Section 12.2 to a person or institution other than the Participant (or Beneficiary) shall be deemed for all purposes of this Plan as the equivalent of a payment to such Participant (or Beneficiary), and the Company shall have no further obligation or responsibility with respect to such payment.

12.3 *Prohibition Against Assignment.* Except as otherwise expressly provided in Section 12.1 and Section 12.2 hereof, the rights, interests and benefits of a Participant under this Plan (a) may not be sold, assigned, transferred, pledged, hypothecated, gifted, bequeathed or otherwise disposed of to any other party by such Participant or any Beneficiary, executor, administrator, heir, distribute or other person claiming under such Participant, and (b) shall not be subject to execution, attachment or similar process. Any attempted sale, assignment, transfer, pledge, hypothecation, gift, bequest or other disposition of such rights, interests or benefits contrary to the foregoing provisions of this Section 12.3 shall be null and void and without effect.

12.4 *Assumption of Plan.* The Company expressly agrees that it shall not merge or consolidate into or with another corporation, or sell substantially all of its assets to another corporation, firm or person until such corporation, firm or person expressly agrees in writing to assume and discharge the duties and obligations of the Company under this Plan. The powers, duties, rights and obligations of the Company under this Plan may be assigned (i) to any company into which the Company may be merged, or with which it may be consolidated, or (ii) to any company resulting from any merger, reorganization or consolidation to which the Company is a party, or (iii) to any company to which the business of the Company may be transferred, to the extent affected Participants transfer their employment to such company. If such an assignment occurs, the successor-in-interest to the Company shall assume the powers, duties, rights and obligations of the Company in writing.

12.5 *Binding Effect.* The provisions of this Plan shall be binding upon the Sponsor, the Participants, all Affiliated Companies employing any Participants, and any successor-in-interest, beneficiary, heir or personal representative to the Sponsor, any Participant or any such Affiliated Company.

12.6 *No Right to Employment.* This Plan is voluntary on the part of the Sponsor and its Affiliated Companies, and shall not be deemed to constitute an employment contract between any Participant and the Sponsor or any Affiliated Company, nor shall the adoption or existence of the Plan or any provision contained in the Plan be deemed to be a required condition of the employment of any Participant. Nothing contained in this Plan shall be deemed to give any Participant the right to continued employment with the Sponsor or any Affiliated Company, and the Sponsor and its Affiliated Companies may terminate any Participant at any time, in which case the Participant's rights arising under this Plan shall be only those expressly provided under the terms of this Plan.

12.7 *Notices.* All notices, requests, or other communications (hereinafter collectively referred to as "Notices") required or permitted to be given hereunder or which are given with respect to this Plan

shall be in writing and may be personally delivered, or may be sent by United States registered mail, postage prepaid, return receipt requested and addressed as follows:

To the Sponsor,  
and Affiliated Company  
or the Committee at:

Impac Funding Corporation  
1401 Dove Street  
Newport Beach, CA 92660

To Participant at:

The Participant's residential  
mailing address as reflected  
in the Sponsor's or Affiliated  
Company's employment records

A Notice which is delivered personally shall be deemed given as of the date of personal delivery, and a Notice mailed as provided herein shall be deemed given on the date received. Any Participant may change his or her address for purposes of Notices hereunder pursuant to a Notice to the Committee, given as provided herein, advising the Committee of such change. The Sponsor, any Affiliated Company and/or the Committee may at any time change its address for purposes of Notices hereunder pursuant to a Notice to all affected Participants, given as provided herein, advising such Participants of such change. Notwithstanding the foregoing, the Committee may specify that any election, form, designation, agreement or communication by a Participant under the Plan shall be made or submitted online at a site on the World Wide Web designated for such purpose, or by other reasonable electronic means to which Participants have reasonable access.

12.8 *Governing Law.* This Plan shall be governed by, interpreted under and construed and enforced in accordance with the internal laws, and not the laws pertaining to conflicts or choice of laws, of the State of California applicable to agreements made and to be performed wholly within the State of California.

12.9 *Titles and Headings; Gender of Terms.* Article and Section headings herein are for reference purposes only and shall not be deemed to be part of the substance of this Plan or in any way to enlarge or limit the meaning or interpretation of any provision in this Plan. Use in this Plan of the masculine, feminine or neuter gender shall be deemed to include each of the omitted genders if the context so requires.

12.10 *Severability.* In the event that any provision of this Plan is found to be invalid or otherwise unenforceable by a court or other tribunal of competent jurisdiction, such invalidity or unenforceability shall not be construed as rendering any other provision contained herein invalid or unenforceable, and all such other provisions shall be given full force and effect to the same extent as though the invalid and unenforceable provision was not contained herein.

12.11 *Tax Effect of Plan.* Neither the Sponsor nor any Affiliated Company warrants any tax benefit or any financial benefit under this Plan. Without limiting the foregoing, the Sponsor and each Affiliated Company and their directors, officers, employees and agents shall be held harmless by the Participant from, and shall not be subject to any liability on account of, any Federal or State tax consequences or any consequences under ERISA of any determination as to the amount of plan

benefits to be paid, the method by which plan benefits are paid, the persons to whom plan benefits are paid, or the commencement or termination of the payment of plan benefits.

12.12 *Mandatory Arbitration.* In the event of any unresolved dispute between a Participant or Beneficiary and the Company or the Trustee regarding this Plan following completion of the claims review process, such dispute shall be submitted to arbitration in accordance with the rules and regulations of the American Arbitration Association for the arbitration of employee benefit plan claim disputes (including the rules contained therein for the selection of an arbitrator who is familiar with employee benefit plans). The written determination of the arbitrator shall be final, binding and conclusive on the Parties and judgment on the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The prevailing party or parties of any arbitration of legal or equitable proceeding shall be entitled to have and recover his or their attorney's fees, costs and expenses as determined by the arbitrator.

12.13 *Illegal Provisions.* The Company intends that this Plan will be established, construed, administered and applied in compliance with Section 409A of the Internal Revenue Code, and if any provision of this Plan is determined by the Committee to be in violation of such requirements, or if any provision of this Plan shall be held illegal or invalid for any other reason, the illegality or invalidity shall not affect the remaining parts of this Plan, but this Plan shall, to the extent possible, be construed and enforced in compliance with Section 409A of the Code and other legal requirements or, if that is not possible, as if the illegal or violating provisions were invalid and had never been included in the Plan.

IN WITNESS WHEREOF, the Sponsor has caused this Plan to be executed by its duly authorized officer effective as of the Effective Date hereof.

IMPAC FUNDING CORPORATION

By: /s/ RICHARD J. JOHNSON

Title: EVP CFO

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**Exhibit 10.29**

**EXECUTION COPY**

**AMENDED AND RESTATED DECLARATION**

**OF TRUST**

**IMPAC CAPITAL TRUST #4**

**Dated as of October 18, 2005**

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AMENDED AND RESTATED DECLARATION OF TRUST

OF

Impac Capital Trust #4

October 18, 2005

AMENDED AND RESTATED DECLARATION OF TRUST (this "Declaration"), dated and effective as of October 18, 2005, by the Trustees (as defined herein), the Administrators (as defined herein), the Sponsor (as defined herein) and the holders from time to time of undivided beneficial interests in the assets of the Trust (as defined herein) to be issued pursuant to this Declaration.

WHEREAS, certain of the Trustees and the Sponsor established Impac Capital Trust #4 (the "Trust"), a statutory trust under the Statutory Trust Act (as defined herein), pursuant to a Declaration of Trust, dated as of October 13, 2005, (the "Original Declaration"), and a Certificate of Trust filed with the Secretary of State of the State of Delaware on October 13, 2005, for the sole purpose of issuing and selling certain securities representing undivided beneficial interests in the assets of the Trust and investing the proceeds thereof in certain debentures of the Debenture Issuer (as defined herein) and participating in the REIT TRUPS Offering transaction or other pooled trust preferred program;

WHEREAS, as of the date hereof, no interests in the assets of the Trust have been issued; and

WHEREAS, all of the Trustees, the Administrators and the Sponsor, by this Declaration, amend and restate each and every term and provision of the Original Declaration.

NOW, THEREFORE, it being the intention of the parties hereto to continue the Trust as a statutory trust under the Statutory Trust Act and that this Declaration constitutes the governing instrument of such statutory trust, and that all assets contributed to the Trust will be held in trust for the benefit of the holders, from time to time, of the securities representing undivided beneficial interests in the assets of the Trust issued hereunder, subject to the provisions of this Declaration, and, 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 and restate in its entirety the Original Declaration and agree as follows:

ARTICLE I

INTERPRETATION AND DEFINITIONS

SECTION 1.1. *Definitions.* Unless the context otherwise requires:

(a) capitalized terms used in this Declaration but not defined in the preamble above or elsewhere herein have the respective meanings assigned to them in this Section 1.1 or, if not defined in this Section 1.1 or elsewhere herein, in the Indenture;

(b) a term defined anywhere in this Declaration has the same meaning throughout;

(c) all references to "the Declaration" or "this Declaration" are to this Declaration as modified, supplemented or amended from time to time;

(d) all references in this Declaration to Articles and Sections and Annexes and Exhibits are to Articles and Sections of and Annexes and Exhibits to this Declaration unless otherwise specified;

(e) a term defined in the Trust Indenture Act (as defined herein) has the same meaning when used in this Declaration unless otherwise defined in this Declaration or unless the context otherwise requires; and

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

"Additional Amounts": has the meaning set forth in Section 3.06 of the Indenture.

"*Administrative Action*": has the meaning set forth in paragraph 4(a) of Annex I.

"*Administrators*": means each of Gretchen Verdugo and Ron Morrison, solely in such Person's capacity as Administrator of the Trust continued hereunder and not in such Person's individual capacity, or such Administrator's successor in interest in such capacity, or any successor appointed as herein provided.

"*Affiliate*": has the same meaning as given to that term in Rule 405 of the Securities Act or any successor rule thereunder.

"*Authorized Officer*": of a Person means any Person that is authorized to bind such Person.

"*Bankruptcy Event*": means, with respect to any Person:

(g) a court having jurisdiction in the premises enters a decree or order for relief in respect of such Person in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appoints a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of such Person or for any substantial part of its property, or orders the winding-up or liquidation of its affairs, and such decree, appointment or order remains unstayed and in effect for a period of 90 consecutive days; or

(h) such Person commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, consents to the entry of an order for relief in an involuntary case under any such law, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of such Person of any substantial part of its property, or makes any general assignment for the benefit of creditors, or fails generally to pay its debts as they become due.

"*Business Day*": means any day other than Saturday, Sunday or any other day on which banking institutions in Wilmington, Delaware, New York City or Newport Beach, California are permitted or required by any applicable law or executive order to close.

"*Calculation Agent*": has the meaning set forth in Section 1.01 of the Indenture.

"*Capital Securities*": has the meaning set forth in Section 6.1(a).

"*Capital Security Certificate*": means a definitive Certificate registered in the name of the Holder representing a Capital Security substantially in the form of Exhibit A-1.

"*Certificate*": means any certificate evidencing Securities.

"*Certificate of Trust*": means the certificate of trust filed with the Secretary of State of the State of Delaware with respect to the Trust, as amended and restated from time to time.

"*Clearstream*": means Citibank, N.A., as operator of Clearstream Banking, société anonyme.

"*Closing Date*": has the meaning set forth in the Purchase Agreement.

"*Code*": means the Internal Revenue Code of 1986, as amended from time to time, or any successor legislation.

"*Commission*": means the United States Securities and Exchange Commission.

"*Common Securities*": has the meaning set forth in Section 6.1(a).

"*Common Security Certificate*": means a definitive Certificate registered in the name of the Holder representing a Common Security substantially in the form of Exhibit A-2.

"*Company Indemnified Person*": means (a) any Administrator; (b) any Affiliate of any Administrator; (c) any officers, directors, shareholders, members, partners, employees, representatives or agents of any Administrator; or (d) any officer, employee or agent of the Trust or its Affiliates.

"*Corporate Trust Office*": means the office of the Institutional Trustee at which the corporate trust business of the Institutional Trustee shall, at any particular time, be principally administered, which office shall at all times be located in the United States and at the date of execution of this Declaration is located at Rodney Square North 1100 North Market Street, Wilmington, DE 19890-0001, Attention: Corporate Trust Administrator.

"*Coupon Rate*": has the meaning set forth in paragraph 2(a) of Annex I.

"*Covered Person*": means: (a) any Administrator, officer, director, shareholder, partner, member, representative, employee or agent of (i) the Trust or (ii) any of the Trust's Affiliates; and (b) any Holder of Securities.

"*Debenture Issuer*": means Impac Mortgage Holdings, Inc., a Maryland corporation, in its capacity as issuer of the Debentures under the Indenture.

"*Debenture Trustee*" means Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity but solely as trustee under the Indenture until a successor is appointed thereunder, and thereafter means such successor trustee.

"*Debentures*": means the Fixed/Floating Rate Junior Subordinated Debt Securities due 2035 to be issued by the Debenture Issuer under the Indenture.

"*Deferred Interest*": means any interest on the Debentures that would have been overdue and unpaid for more than one Distribution Payment Date but for the imposition of an Extension Period, and the interest that shall accrue (to the extent that the payment of such interest is legally enforceable) on such interest at the Coupon Rate in effect for each such Extension Period, compounded quarterly from the date on which such Deferred Interest would otherwise have been due and payable until paid or made available for payment.

"*Definitive Capital Securities*": means any Capital Securities in definitive form issued by the Trust.

"*Delaware Trustee*": has the meaning set forth in Section 4.2.

"*Direct Action*": has the meaning set forth in Section 2.8(e).

"*Distribution*": means a distribution payable to Holders of Securities in accordance with Section 5.1.

"*Distribution Payment Date*": has the meaning set forth in paragraph 2(e) of Annex I.

"*Distribution Period*": has the meaning set forth in paragraph 2(a) of Annex I.

"*Euroclear*": Euroclear Bank S.A./N.V. as operator and depository of the Euroclear system.

"*Event of Default*": means the occurrence of an Indenture Event of Default.

"*Exchange Act*": means the Securities Exchange Act of 1934, as amended from time to time, or any successor legislation.

"*Extension Period*": has the meaning set forth in paragraph 2(e) of Annex I.

"*Fiduciary Indemnified Person*": shall mean each of the Institutional Trustee (including in its individual capacity), the Delaware Trustee (including in its individual capacity), any Affiliate of the Institutional Trustee or the Delaware Trustee, and any officers, directors, shareholders, members, partners, employees, representatives, custodians, nominees or agents of the Institutional Trustee or the Delaware Trustee.



"*Fiscal Year*": has the meaning set forth in Section 10.1

"*Holder*": means a Person in whose name a Certificate representing a Security is registered on the register maintained by or on behalf of the Registrar, such Person being a beneficial owner within the meaning of the Statutory Trust Act.

"*Holders of 10% in liquidation amount of the Securities*": means Holders of outstanding Securities voting together as a single class who are the record owners of 10% or more of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class and, "Holders of not less than 10% in liquidation amount of the Securities" and "Holders of not less than 10% in liquidation amount of the Capital Securities" shall have meaning correlative to the foregoing.

"*Holders of a Majority in liquidation amount of the Securities*": means Holders of outstanding Securities voting together as a single class who are the record owners of more than 50% of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class, and "Holders of a Majority in liquidation amount of the Capital Securities," "Holders in liquidation amount of the Common Securities" and "Holders of not less than a Majority in liquidation amount of the Securities" shall have meanings correlative to the foregoing.

"*Indemnified Person*": means a Company Indemnified Person or a Fiduciary Indemnified Person.

"*Indenture*": means the Indenture, dated as of October 18, 2005, among the Debenture Issuer and the Debenture Trustee, and any indenture supplemental thereto pursuant to which the Debentures are to be issued.

"*Indenture Event of Default*": means an "Event of Default" as defined in the Indenture.

"*Initial Purchaser*": has the meaning set forth in the Purchase Agreement.

"*Institutional Trustee*": means the Trustee meeting the eligibility requirements set forth in Section 4.3.

"*Investment Company*": means an investment company as defined in the Investment Company Act.

"*Investment Company Act*": means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.

"*Investment Company Event*": has the meaning set forth in paragraph 4(a) of Annex I.

"*Legal Action*": has the meaning set forth in Section 2.8(e).

"*LIBOR*": means the London Interbank Offered Rate for U.S. Dollar deposits in Europe as determined by the Calculation Agent according to paragraph 2(b) of Annex I.

"*LIBOR Banking Day*": has the meaning set forth in paragraph 2(b)(1) of Annex I.

"*LIBOR Business Day*": has the meaning set forth in paragraph 2(b)(1) of Annex I.

"*LIBOR Determination Date*": has the meaning set forth in paragraph 2(b)(1) of Annex I.

"*Liquidation*": has the meaning set forth in paragraph 3 of Annex I.

"*Liquidation Distribution*": has the meaning set forth in paragraph 3 of Annex I.

"*Officers' Certificate*": means, with respect to any Person, a certificate signed by two Authorized Officers of such Person. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Declaration shall include:

- (a) a statement that each officer signing the Officers' Certificate has read the covenant or condition and the definitions relating thereto;
- (b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers' Certificate;
- (c) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

"*Paying Agent*": has the meaning set forth in Section 6.2.

"*Payment Amount*": has the meaning set forth in Section 5.1.

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

"*PORTAL*": has the meaning set forth in Section 2.6(a)(i).

"*Property Account*": has the meaning set forth in Section 2.8(c).

"*Pro Rata*": has the meaning set forth in paragraph 8 of Annex I.

"*Purchase Agreement*": means the Purchase Agreement relating to the offering and sale of Capital Securities.

"*QIB*": means a "qualified institutional buyer" as defined under Rule 144A.

"*Quorum*": means a majority of the Administrators or, if there are only two Administrators, both of them.

"*Redemption/Distribution Notice*": has the meaning set forth in paragraph 4(e) of Annex I.

"*Redemption Price*": has the meaning set forth in paragraph 4(a) of Annex I.

"*Registrar*": has the meaning set forth in Section 6.2.

"*Regulation S Transferee*": means a non-U.S. Person acquiring Capital Securities in accordance with Regulation S under the Securities Act.

"*Relevant Trustee*": has the meaning set forth in Section 4.7(a).

"*Responsible Officer*": means, with respect to the Institutional Trustee, any officer within the Corporate Trust Office of the Institutional Trustee with direct responsibility for the administration of this Declaration, including any vice-president, any assistant vice-president, any secretary, any assistant secretary, the treasurer, any assistant treasurer, any trust officer or other officer of the Corporate Trust Office of the Institutional Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

"*Restricted Securities Legend*": has the meaning set forth in Section 8.2(c).

"Rule 144A": means Rule 144A under the Securities Act.

"Rule 3a-5": means Rule 3a-5 under the Investment Company Act.

"Rule 3a-7": means Rule 3a-7 under the Investment Company Act.

"Securities" means the Common Securities and the Capital Securities.

"Securities Act": means the Securities Act of 1933, as amended from time to time, or any successor legislation.

"Sponsor": means Impac Mortgage Holdings, Inc., a corporation that is a U.S. Person incorporated in Maryland, or any successor entity in a merger, consolidation or amalgamation that is a U.S. Person, in its capacity as sponsor of the Trust.

"Statutory Trust Act": means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code § 3801 et seq., as it may be amended from time to time, or any successor legislation.

"Successor Delaware Trustee": has the meaning set forth in Section 4.7(e).

"Successor Entity": has the meaning set forth in Section 2.15(b).

"Successor Institutional Trustee": has the meaning set forth in Section 4.7(b).

"Successor Securities": has the meaning set forth in Section 2.15(b).

"Super Majority": has the meaning set forth in paragraph 5(b) of Annex I.

"Tax Event": has the meaning set forth in paragraph 4(a) of Annex I.

"Transfer Agent": has the meaning set forth in Section 6.2.

"Treasury Regulations": means the income tax regulations, including temporary and proposed regulations, promulgated under the Code by the United States Treasury, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Trust Indenture Act": means the Trust Indenture Act of 1939, as amended from time-to-time, or any successor legislation.

"Trustee" or "Trustees": means each Person who has signed this Declaration as a trustee, so long as such Person shall continue in office in accordance with the terms hereof, and all other Persons who may from time to time be duly appointed, qualified and serving as Trustees in accordance with the provisions hereof, and references herein to a Trustee or the Trustees shall refer to such Person or Persons solely in their capacity as trustees hereunder.

"Trust Property": means (a) the Debentures, (b) any cash on deposit in, or owing to, the Property Account and (c) all proceeds and rights in respect of the foregoing and any other property and assets for the time being held or deemed to be held by the Institutional Trustee pursuant to the trusts of this Declaration.

"U.S. Person": means a United States Person as defined in Section 7701(a)(30) of the Code.

## ARTICLE II

### ORGANIZATION

SECTION 2.1. *Name.* The Trust is named "Impac Capital Trust #4," as such name may be modified from time to time by the Administrators following written notice to the Institutional Trustee and the Holders of the Securities. The Trust's activities may be conducted under the name of the Trust or any other name deemed advisable by the Administrators.

SECTION 2.2. *Office.* The address of the principal office of the Trust, which shall be in a state of the United States or the District of Columbia, is 1401 Dove Street, Newport Beach, California, 92660. On ten Business Days' written notice to the Institutional Trustee and the Holders of the Securities, the Administrators may designate another principal office, which shall be in a state of the United States or the District of Columbia.

SECTION 2.3. *Purpose.* The exclusive purposes and functions of the Trust are (a) to issue and sell the Securities representing undivided beneficial interests in the assets of the Trust, (b) to invest the gross proceeds from such sale in the Debentures and (c) except as otherwise limited herein, to engage in only those other activities incidental thereto that are deemed necessary or advisable by the Institutional Trustee, including, without limitation, those activities specified in this Declaration. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets, or otherwise undertake (or permit to be undertaken) any activity that would cause the Trust not to be classified for United States federal income tax purposes as a grantor trust.

SECTION 2.4. *Authority.* Except as specifically provided in this Declaration, the Institutional Trustee shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by a Trustee on behalf of the Trust and in accordance with such Trustee's powers shall constitute the act of and serve to bind the Trust. In dealing with the Trustees acting on behalf of the Trust, no Person shall be required to inquire into the authority of the Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the Trustees as set forth in this Declaration. The Administrators shall have only those ministerial duties set forth herein with respect to accomplishing the purposes of the Trust and are not intended to be trustees or fiduciaries with respect to the Trust or the Holders. The Institutional Trustee shall have the right, but shall not be obligated except as provided in Section 2.6, to perform those duties assigned to the Administrators.

SECTION 2.5. *Title to Property of the Trust.* Except as provided in Section 2.8 with respect to the Debentures and the Property Account or as otherwise provided in this Declaration, legal title to all assets of the Trust shall be vested in the Trust. The Holders shall not have legal title to any part of the assets of the Trust, but shall have an undivided beneficial interest in the assets of the Trust.

SECTION 2.6. *Powers and Duties of the Trustees and the Administrators.*

(a) The Trustees and the Administrators shall conduct the affairs of the Trust in accordance with the terms of this Declaration. Subject to the limitations set forth in paragraph (b) of this Section, and in accordance with the following provisions (i) and (ii), the Administrators and, at the direction of the Administrators, the Trustees, shall have the authority to enter into all transactions and agreements determined by the Administrators to be appropriate in exercising the authority, express or implied, otherwise granted to the Trustees or the Administrators, as the case may be, under this Declaration, and to perform all acts in furtherance thereof, including without limitation, the following:

(i) Each Administrator shall have the power, duty and authority, and is hereby authorized, to act on behalf of the Trust with respect to the following matters:

(A) the issuance and sale of the Securities;

(B) to cause the Trust to enter into, and to execute, deliver and perform on behalf of the Trust, such agreements as may be necessary or desirable in connection with the purposes and function of the Trust, including agreements with the Paying Agent, a Debenture subscription agreement between the Trust and the Sponsor and a Common Securities subscription agreement between the Trust and the Sponsor;

(C) ensuring compliance with the Securities Act and applicable state securities or blue sky laws;

(D) assisting with providing book-entry clearance for the Capital Securities pursuant to Section 8.2(e) and if and at such time determined solely by the Sponsor at the request of the Holders, assisting in the designation of the Capital Securities for trading in the Private Offering, Resales and Trading through the Automatic Linkages ("PORTAL") system if available;

(E) the sending of notices (other than notices of default) and other information regarding the Securities and the Debentures to the Holders in accordance with this Declaration, including notice of any notice received from the Debenture Issuer of its election to defer payments of interest on the Debentures by extending the interest payment period under the Indenture;

(F) the appointment of a Paying Agent, Transfer Agent and Registrar in accordance with this Declaration;

(G) execution and delivery of the Securities in accordance with this Declaration;

(H) execution and delivery of closing certificates pursuant to the Purchase Agreement and the application for a taxpayer identification number;

(I) unless otherwise determined by the Holders of a Majority in liquidation amount of the Securities or as otherwise required by the Statutory Trust Act, to execute on behalf of the Trust (either acting alone or together with any or all of the Administrators) any documents that the Administrators have the power to execute pursuant to this Declaration;

(J) the taking of any action incidental to the foregoing as the Sponsor or an Administrator may from time to time determine is necessary or advisable to give effect to the terms of this Declaration for the benefit of the Holders (without consideration of the effect of any such action on any particular Holder);

(K) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including Distributions, voting rights, redemptions and exchanges, and to issue relevant notices to the Holders of Capital Securities and Holders of Common Securities as to such actions and applicable record dates;

(L) to duly prepare and file on behalf of the Trust all applicable tax returns and tax information reports that are required to be filed with respect to the Trust;

(M) to negotiate the terms of, and the execution and delivery of, the Purchase Agreement and any subscription agreements or other agreements providing for the sale of the Capital Securities or resale by the Initial Purchaser and other related agreements;

(N) to employ or otherwise engage employees, agents (who may be designated as officers with titles), managers, contractors, advisors, attorneys and consultants and pay reasonable compensation for such services;

(O) to incur expenses that are necessary or incidental to carry out any of the purposes of the Trust;

(P) to give the certificate required by § 314(a)(4) of the Trust Indenture Act to the Institutional Trustee, which certificate may be executed by an Administrator; and

(Q) to take all action that may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a statutory trust under the laws of each jurisdiction (other than the State of Delaware) in which such existence is necessary to protect the limited liability of the Holders of the Capital Securities or to enable the Trust to effect the purposes for which the Trust was created.

(ii) As among the Trustees and the Administrators, the Institutional Trustee shall have the power, duty and authority, and is hereby authorized, to act on behalf of the Trust with respect to the following matters:

(A) the establishment of the Property Account;

(B) the receipt of the Debentures;

(C) the collection of interest, principal and any other payments made in respect of the Debentures in the Property Account;

(D) the distribution through the Paying Agent of amounts owed to the Holders in respect of the Securities;

(E) the exercise of all of the rights, powers and privileges of a holder of the Debentures;

(F) the sending of notices of default and other information regarding the Securities and the Debentures to the Holders in accordance with this Declaration;

(G) the distribution of the Trust Property in accordance with the terms of this Declaration;

(H) to the extent provided in this Declaration, the winding up of the affairs of and liquidation of the Trust and the preparation, execution and filing of the certificate of cancellation with the Secretary of State of the State of Delaware;

(I) after any Event of Default (of which the Institutional Trustee has knowledge (as provided in Section 2.10(m) hereof)) (*provided*, that such Event of Default is not by or with respect to the Institutional Trustee), the taking of any action incidental to the foregoing as the Institutional Trustee may from time to time determine is necessary or advisable to give effect to the terms of this Declaration and protect and conserve the Trust Property for the benefit of the Holders (without consideration of the effect of any such action on any particular Holder);

(J) to take all action that may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a statutory trust under the laws of the State of Delaware to protect the limited liability of the Holders of the Capital Securities or to enable the Trust to effect the purposes for which the Trust was created; and

(K) to undertake any actions set forth in § 317(a) of the Trust Indenture Act.

(iii) The Institutional Trustee shall have the power and authority, and is hereby authorized, to act on behalf of the Trust with respect to any of the duties, liabilities, powers or the authority of the Administrators set forth in Section 2.6(a)(i)(E) and (F) herein but shall not have a duty to do any such act unless specifically requested to do so in writing by the Sponsor, and shall then be fully protected in acting pursuant to such written request; and in the event of a conflict between the action of the Administrators and the action of the Institutional Trustee, the action of the Institutional Trustee shall prevail.

(b) So long as this Declaration remains in effect, the Trust (or the Trustees or Administrators acting on behalf of the Trust) shall not undertake any business, activities or transaction except as expressly provided herein or contemplated hereby. In particular, neither the Trustees nor the Administrators may cause the Trust to (i) acquire any investments or engage in any activities not authorized by this Declaration; (ii) sell, assign, transfer, exchange, mortgage, pledge, set-off or otherwise dispose of any of the Trust Property or interests therein, including to Holders, except as expressly provided herein; (iii) take any action that would cause (or in the case of the Institutional Trustee, to the actual knowledge of a Responsible Officer would cause) the Trust to fail or cease to

qualify as a "grantor trust" for United States federal income tax purposes; (iv) incur any indebtedness for borrowed money or issue any other debt; or (v) take or consent to any action that would result in the placement of a lien on any of the Trust Property. The Institutional Trustee shall, at the sole cost and expense of the Trust subject to reimbursement under Section 9.6(a), defend all claims and demands of all Persons at any time claiming any lien on any of the Trust Property adverse to the interest of the Trust or the Holders in their capacity as Holders.

(c) In connection with the issuance and sale of the Capital Securities, the Sponsor shall have the right and responsibility to assist the Trust with respect to, or effect on behalf of the Trust, the following (and any actions taken by the Sponsor in furtherance of the following prior to the date of this Declaration are hereby ratified and confirmed in all respects):

(i) the taking of any action necessary to obtain an exemption from the Securities Act;

(ii) the determination of the States in which to take appropriate action to qualify or register for sale all or part of the Capital Securities and the determination of any and all such acts, other than actions which must be taken by or on behalf of the Trust, and the advisement of and direction to the Trustees of actions they must take on behalf of the Trust, and the preparation for execution and filing of any documents to be executed and filed by the Trust or on behalf of the Trust, as the Sponsor deems necessary or advisable in order to comply with the applicable laws of any such States in connection with the sale of the Capital Securities; and

(iii) the taking of any other actions necessary or desirable to carry out any of the foregoing activities.

(d) Notwithstanding anything herein to the contrary, the Administrators, the Institutional Trustee and the Holders of a Majority in liquidation amount of the Common Securities are authorized and directed to conduct the affairs of the Trust and to operate the Trust so that (i) the Trust will not be deemed to be an "investment company" required to be registered under the Investment Company Act (in the case of the Institutional Trustee, to the actual knowledge of a Responsible Officer); (ii) the Trust will not fail to be classified as a grantor trust for United States federal income tax purposes (in the case of the Institutional Trustee, to the actual knowledge of a Responsible Officer); and (iii) the Trust will not take any action inconsistent with the treatment of the Debentures as indebtedness of the Debenture Issuer for United States federal income tax purposes (in the case of the Institutional Trustee, to the actual knowledge of a Responsible Officer). In this connection, the Institutional Trustee, the Administrators and the Holders of a Majority in liquidation amount of the Common Securities are authorized to take any action, not inconsistent with applicable laws or this Declaration, as amended from time to time, that each of the Institutional Trustee, the Administrators and such Holders determine in their discretion to be necessary or desirable for such purposes, even if such action adversely affects the interests of the Holders of the Capital Securities.

(e) All expenses incurred by the Administrators or the Trustees pursuant to this Section 2.6 shall be reimbursed by the Sponsor, and the Trustees shall have no obligations with respect to such expenses.

(f) The assets of the Trust shall consist of the Trust Property.

(g) The Trust Property shall be held and administered by the Institutional Trustee for the benefit of the Trust in accordance with this Declaration.

(h) If the Institutional Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Declaration and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Institutional Trustee or to such Holder, then and in every such case the Sponsor, the Institutional Trustee and the 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 Institutional Trustee and the Holders shall continue as though no such proceeding had been instituted.

SECTION 2.7. *Prohibition of Actions by the Trust and the Trustees.*

The Trust shall not, and the Institutional Trustee and the Administrators shall not, and the Administrators shall cause the Trust not to, engage in any activity other than as required or authorized by this Declaration. In particular, the Trust shall not, and the Institutional Trustee and the Administrators shall not cause the Trust to:

- (a) invest any proceeds received by the Trust from holding the Debentures, but shall distribute all such proceeds to Holders of the Securities pursuant to the terms of this Declaration and of the Securities;
- (b) acquire any assets other than as expressly provided herein;
- (c) possess Trust Property for other than a Trust purpose;
- (d) make any loans or incur any indebtedness other than loans represented by the Debentures;
- (e) possess any power or otherwise act in such a way as to vary the Trust Property or the terms of the Securities;
- (f) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Securities; or
- (g) other than as provided in this Declaration (including Annex I), (i) direct the time, method and place of exercising any trust or power conferred upon the Debenture Trustee with respect to the Debentures, (ii) waive any past default that is waivable under the Indenture, (iii) exercise any right to rescind or annul any declaration that the principal of all the Debentures shall be due and payable, or (iv) consent to any amendment, modification or termination of the Indenture or the Debentures where such consent shall be required unless the Trust shall have received a written opinion of counsel experienced in such matters to the effect that such amendment, modification or termination will not cause the Trust to cease to be classified as a grantor trust for United States federal income tax purposes.

SECTION 2.8. *Powers and Duties of the Institutional Trustee.*

(a) The legal title to the Debentures shall be owned by and held of record in the name of the Institutional Trustee in trust for the benefit of the Trust. The right, title and interest of the Institutional Trustee to the Debentures shall vest automatically in each Person who may hereafter be appointed as Institutional Trustee in accordance with Section 4.7. Such vesting and cessation of title shall be effective whether or not conveyancing documents with regard to the Debentures have been executed and delivered.

(b) The Institutional Trustee shall not transfer its right, title and interest in the Debentures to the Administrators or to the Delaware Trustee.

(c) The Institutional Trustee shall:

- (i) establish and maintain a segregated non-interest bearing trust account (the "Property Account") in the United States (as defined in Treasury Regulations § 301.7701-7), in the name of and under the exclusive control of the Institutional Trustee, and maintained in the Institutional Trustee's trust department, on behalf of the Holders of the Securities and, upon the receipt of payments of funds made in respect of the Debentures held by the Institutional Trustee, deposit such funds into the Property Account and make payments to the Holders of the Capital Securities and Holders of the Common Securities from the Property Account in accordance with Section 5.1. Funds in the Property Account shall be held uninvested until disbursed in accordance with this Declaration;



(ii) engage in such ministerial activities as shall be necessary or appropriate to effect the redemption of the Capital Securities and the Common Securities to the extent the Debentures are redeemed or mature; and

(iii) upon written notice of distribution issued by the Administrators in accordance with the terms of the Securities, engage in such ministerial activities as shall be necessary or appropriate to effect the distribution of the Debentures to Holders of Securities upon the occurrence of certain circumstances pursuant to the terms of the Securities.

(d) The Institutional Trustee shall take all actions and perform such duties as may be specifically required of the Institutional Trustee pursuant to the terms of the Securities.

(e) The Institutional Trustee may bring or defend, pay, collect, compromise, arbitrate, resort to legal action with respect to, or otherwise adjust claims or demands of or against, the Trust (a "Legal Action") which arise out of or in connection with an Event of Default of which a Responsible Officer of the Institutional Trustee has actual knowledge or the Institutional Trustee's duties and obligations under this Declaration or the Trust Indenture Act; *provided, however,* that if an Event of Default has occurred and is continuing and such event is attributable to the failure of the Debenture Issuer to pay interest or principal on the Debentures on the date such interest or principal is otherwise payable (or in the case of redemption, on the redemption date), then a Holder of the Capital Securities may directly institute a proceeding for enforcement of payment to such Holder of the principal of or interest on the Debentures having a principal amount equal to the aggregate liquidation amount of the Capital Securities of such Holder (a "Direct Action") on or after the respective due date specified in the Debentures. In connection with such Direct Action, the rights of the Holders of the Common Securities will be subrogated to the rights of such Holder of the Capital Securities to the extent of any payment made by the Debenture Issuer to such Holder of the Capital Securities in such Direct Action; *provided, however,* that a Holder of the Common Securities may exercise such right of subrogation only if no Event of Default with respect to the Capital Securities has occurred and is continuing.

(f) The Institutional Trustee shall continue to serve as a Trustee until either:

(i) the Trust has been completely liquidated and the proceeds of the liquidation distributed to the Holders of the Securities pursuant to the terms of the Securities and this Declaration (including Annex I); or

(ii) a Successor Institutional Trustee has been appointed and has accepted that appointment in accordance with Section 4.7.

(g) The Institutional Trustee shall have the legal power to exercise all of the rights, powers and privileges of a holder of the Debentures under the Indenture and, if an Event of Default occurs and is continuing, the Institutional Trustee may, for the benefit of Holders of the Securities, enforce its rights as holder of the Debentures subject to the rights of the Holders pursuant to this Declaration (including Annex I) and the terms of the Securities.

(h) The Institutional Trustee must exercise the powers set forth in this Section 2.8 in a manner that is consistent with the purposes and functions of the Trust set out in Section 2.3, and the Institutional Trustee shall not take any action that is inconsistent with the purposes and functions of the Trust set out in Section 2.3.

#### SECTION 2.9. *Certain Duties and Responsibilities of the Trustees and the Administrators.*

(a) The Institutional Trustee, before the occurrence of any Event of Default (of which the Institutional Trustee has knowledge (as provided in Section 2.10(m) hereof)) and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Declaration and no implied covenants shall be read into this Declaration against the Institutional Trustee. In case an Event of Default (of which the Institutional Trustee has

knowledge (as provided in Section 2.10(m) hereof)), has occurred (that has not been cured or waived pursuant to Section 6.7), the Institutional Trustee shall exercise such of the rights and powers vested in it by this Declaration, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) The duties and responsibilities of the Trustees and the Administrators shall be as provided by this Declaration and, in the case of the Institutional Trustee, by the Trust Indenture Act. Notwithstanding the foregoing, no provision of this Declaration shall require any Trustee or Administrator 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 satisfactory to it against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Declaration relating to the conduct or affecting the liability of or affording protection to the Trustees or the Administrators shall be subject to the provisions of this Article. Nothing in this Declaration shall be construed to release a Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct. Nothing in this Declaration shall be construed to release an Administrator from liability for its own gross negligent action, its own gross negligent failure to act, or its own willful misconduct. To the extent that, at law or in equity, a Trustee or an Administrator has duties and liabilities relating to the Trust or to the Holders, such Trustee or Administrator shall not be liable to the Trust or to any Holder for such Trustee's or Administrator's good faith reliance on the provisions of this Declaration. The provisions of this Declaration, to the extent that they restrict the duties and liabilities of the Administrators or the Trustees otherwise existing at law or in equity, are agreed by the Sponsor and the Holders to replace such other duties and liabilities of the Administrators or the Trustees.

(c) All payments made by the Institutional Trustee or a Paying Agent in respect of the Securities shall be made only from the revenue and proceeds from the Trust Property and only to the extent that there shall be sufficient revenue or proceeds from the Trust Property to enable the Institutional Trustee or a Paying Agent to make payments in accordance with the terms hereof. Each Holder, by its acceptance of a Security, agrees that it will look solely to the revenue and proceeds from the Trust Property to the extent legally available for distribution to it as herein provided and that the Trustees and the Administrators are not personally liable to it for any amount distributable in respect of any Security or for any other liability in respect of any Security. This Section 2.9(c) does not limit the liability of the Trustees expressly set forth elsewhere in this Declaration or, in the case of the Institutional Trustee, in the Trust Indenture Act.

(d) No provision of this Declaration shall be construed to relieve the Institutional Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct with respect to matters that are within the authority of the Institutional Trustee under this Declaration, except that:

(i) the Institutional Trustee shall not be liable for any error or judgment made in good faith by an Authorized Officer of the Institutional Trustee, unless it shall be proved that the Institutional Trustee was negligent in ascertaining the pertinent facts;

(ii) the Institutional 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 not less than a Majority in liquidation amount of the Capital Securities or the Common Securities, as applicable, relating to the time, method and place of conducting any proceeding for any remedy available to the Institutional Trustee, or exercising any trust or power conferred upon the Institutional Trustee under this Declaration;

(iii) the Institutional Trustee's sole duty with respect to the custody, safe keeping and physical preservation of the Debentures and the Property Account shall be to deal with such property in a

similar manner as the Institutional Trustee deals with similar property for its own account, subject to the protections and limitations on liability afforded to the Institutional Trustee under this Declaration and the Trust Indenture Act;

(iv) the Institutional Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree in writing with the Sponsor; and money held by the Institutional Trustee need not be segregated from other funds held by it except in relation to the Property Account maintained by the Institutional Trustee pursuant to Section 2.8(c)(i) and except to the extent otherwise required by law; and

(v) the Institutional Trustee shall not be responsible for monitoring the compliance by the Administrators or the Sponsor with their respective duties under this Declaration, nor shall the Institutional Trustee be liable for any default or misconduct of the Administrators or the Sponsor.

SECTION 2.10. *Certain Rights of Institutional Trustee.* Subject to the provisions of Section 2.9:

(a) the Institutional Trustee may conclusively rely and shall fully be protected in acting or refraining from acting in good faith upon any resolution, written opinion of counsel, certificate, written representation of a Holder or transferee, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, appraisal, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed, sent or presented by the proper party or parties;

(b) if (i) in performing its duties under this Declaration, the Institutional Trustee is required to decide between alternative courses of action, (ii) in construing any of the provisions of this Declaration, the Institutional Trustee finds the same ambiguous or inconsistent with any other provisions contained herein, or (iii) the Institutional Trustee is unsure of the application of any provision of this Declaration, then, except as to any matter as to which the Holders of Capital Securities are entitled to vote under the terms of this Declaration, the Institutional Trustee may deliver a notice to the Sponsor requesting the Sponsor's opinion as to the course of action to be taken and the Institutional Trustee shall take such action, or refrain from taking such action, as the Institutional Trustee in its sole discretion shall deem advisable and in the best interests of the Holders, in which event the Institutional Trustee shall have no liability except for its own negligence or willful misconduct;

(c) any direction or act of the Sponsor or the Administrators contemplated by this Declaration shall be sufficiently evidenced by an Officers' Certificate;

(d) whenever in the administration of this Declaration, the Institutional Trustee shall deem it desirable that a matter be proved or established before undertaking, suffering or omitting any action hereunder, the Institutional Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Sponsor or the Administrators;

(e) the Institutional Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement or any filing under tax or securities laws) or any rerecording, refiling or reregistration thereof;

(f) the Institutional Trustee may consult with counsel of its selection (which counsel may be counsel to the Sponsor or any of its Affiliates) and the advice of such 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 and in accordance with such advice; the Institutional Trustee shall have the right at any time to seek instructions concerning the administration of this Declaration from any court of competent jurisdiction;

(g) the Institutional Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Declaration at the request or direction of any of the Holders pursuant to this

Declaration, unless such Holders shall have offered to the Institutional Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction; *provided*, that nothing contained in this Section 2.10(g) shall be taken to relieve the Institutional Trustee, upon the occurrence of an Event of Default (of which the Institutional Trustee has knowledge (as provided in Section 2.10(m) hereof)) that has not been cured or waived, of its obligation to exercise the rights and powers vested in it by this Declaration;

(h) the Institutional 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, consent, order, approval, bond, debenture, note or other evidence of indebtedness or other paper or document, unless requested in writing to do so by one or more Holders, but the Institutional Trustee may make such further inquiry or investigation into such facts or matters as it may see fit;

(i) the Institutional Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys and the Institutional Trustee shall not be responsible for any misconduct or negligence on the part of, or for the supervision of, any such agent or attorney appointed with due care by it hereunder;

(j) whenever in the administration of this Declaration the Institutional Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Institutional Trustee (i) may request instructions from the Holders of the Common Securities and the Capital Securities, which instructions may be given only by the Holders of the same proportion in liquidation amount of the Common Securities and the Capital Securities as would be entitled to direct the Institutional Trustee under the terms of the Common Securities and the Capital Securities in respect of such remedy, right or action, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be fully protected in acting in accordance with such instructions;

(k) except as otherwise expressly provided in this Declaration, the Institutional Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Declaration;

(l) when the Institutional Trustee incurs expenses or renders services in connection with a Bankruptcy Event, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally;

(m) the Institutional Trustee shall not be charged with knowledge of an Event of Default unless a Responsible Officer of the Institutional Trustee has actual knowledge of such event or the Institutional Trustee receives written notice of such event from any Holder, except with respect to an Event of Default pursuant to Sections 5.01(c), 5.01(d) or 5.01(e) of the Indenture (other than an Event of Default resulting from the default in the payment of Additional Amounts or premium, if any, if the Institutional Trustee does not have actual knowledge or written notice that such payment is due and payable), of which the Institutional Trustee shall be deemed to have knowledge;

(n) any action taken by the Institutional Trustee or its agents hereunder shall bind the Trust and the Holders of the Securities, and the signature of the Institutional Trustee or its agents alone shall be sufficient and effective to perform any such action and no third party shall be required to inquire as to the authority of the Institutional Trustee to so act or as to its compliance with any of the terms and provisions of this Declaration, both of which shall be conclusively evidenced by the Institutional Trustee or its agent taking such action; and

(o) no provision of this Declaration shall be deemed to impose any duty or obligation on the Institutional Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it, in any jurisdiction in which it shall be illegal, or in which the Institutional Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act

or acts, or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Institutional Trustee shall be construed to be a duty.

SECTION 2.11. *Delaware Trustee.* Notwithstanding any other provision of this Declaration other than Section 4.2, the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of any of the Trustees or the Administrators described in this Declaration (except as may be required under the Statutory Trust Act). Except as set forth in Section 4.2, the Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of § 3807 of the Statutory Trust Act.

SECTION 2.12. *Execution of Documents.* Unless otherwise determined in writing by the Institutional Trustee, and except as otherwise required by the Statutory Trust Act, the Institutional Trustee, or any one or more of the Administrators, as the case may be, is authorized to execute and deliver on behalf of the Trust any documents, agreements, instruments or certificates that the Trustees or the Administrators, as the case may be, have the power and authority to execute pursuant to Section 2.6.

SECTION 2.13. *Not Responsible for Recitals or Issuance of Securities.* The recitals contained in this Declaration and the Securities shall be taken as the statements of the Sponsor, and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Declaration, the Debentures or the Securities.

SECTION 2.14. *Duration of Trust.* The Trust, unless dissolved pursuant to the provisions of Article VII hereof, shall have existence for thirty-five (35) years from the Closing Date.

SECTION 2.15. *Mergers.* (a) The Trust may not consolidate, amalgamate, merge with or into, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any corporation or other Person, except as described in this Section 2.15 and except with respect to the distribution of Debentures to Holders of Securities pursuant to Section 7.1(a)(iv) of the Declaration or Section 4 of Annex I.

(b) The Trust may, with the consent of the Administrators (which consent will not be unreasonably withheld) and without the consent of the Institutional Trustee, the Delaware Trustee or the Holders of the Capital Securities, consolidate, amalgamate, merge with or into, or be replaced by, or convey, transfer or lease its properties and assets as an entirety or substantially as an entirety to a trust organized as such under the laws of any state; *provided*, that:

(i) if the Trust is not the survivor, such successor entity (the "Successor Entity") either:

(A) expressly assumes all of the obligations of the Trust under the Securities; or

(B) substitutes for the Securities other securities having substantially the same terms as the Securities (the "Successor Securities") so that the Successor Securities rank the same as the Securities rank with respect to Distributions and payments upon Liquidation, redemption and otherwise;

(ii) the Sponsor expressly appoints, as the holder of the Debentures, a trustee of the Successor Entity that possesses the same powers and duties as the Institutional Trustee;

(iii) the Capital Securities or any Successor Securities (excluding any securities substituted for the Common Securities) are listed or quoted, or any Successor Securities will be listed or quoted upon notification of issuance, on any national securities exchange or with another organization on which the Capital Securities are then listed or quoted, if any;

(iv) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not cause the Capital Securities (including any Successor Securities) to be downgraded by any nationally recognized statistical rating organization, if the Capital Securities are then rated;

(v) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Securities (including any Successor Securities) in any material respect (other than with respect to any dilution of such Holders' interests in the Successor Entity as a result of such merger, consolidation, amalgamation or replacement);

(vi) such Successor Entity has a purpose substantially identical to that of the Trust;

(vii) prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Trust has received a written opinion of a nationally recognized independent counsel to the Trust experienced in such matters to the effect that:

(A) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Securities (including any Successor Securities) in any material respect (other than with respect to any dilution of the Holders' interests in the Successor Entity);

(B) following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, neither the Trust nor the Successor Entity will be required to register as an Investment Company; and

(C) following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Trust (or the Successor Entity) will continue to be classified as a grantor trust for United States federal income tax purposes;

(viii) the Sponsor guarantees the obligations of such Successor Entity under the Successor Securities to the same extent provided by the Debentures and this Declaration; and

(ix) prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Institutional Trustee shall have received an Officers' Certificate of the Administrators and an opinion of counsel, each to the effect that all conditions precedent of this paragraph (b) to such transaction have been satisfied.

(c) Notwithstanding Section 2.15(b), the Trust shall not, except with the consent of Holders of 100% in liquidation amount of the Securities, consolidate, amalgamate, merge with or into, or be replaced by, or convey, transfer or lease its properties and assets as an entirety or substantially as an entirety to, any other Person or permit any other Person to consolidate, amalgamate, merge with or into, or replace it if such consolidation, amalgamation, merger, replacement, conveyance, transfer or lease would cause the Trust or Successor Entity to be classified as other than a grantor trust for United States federal income tax purposes.

## ARTICLE III

### SPONSOR

SECTION 3.1. *Sponsor's Purchase of Common Securities.* On the Closing Date, the Sponsor will purchase all of the Common Securities issued by the Trust, in an amount at least equal to 3% of the capital of the Trust, at the same time as the Capital Securities are sold.

SECTION 3.2. *Responsibilities of the Sponsor.* In connection with the issue and sale of the Capital Securities, the Sponsor shall have the exclusive right and responsibility and sole decision to engage in, or direct the Administrators to engage in, the following activities:

(a) determining the States in which to take appropriate action to qualify or register for sale all or part of the Capital Securities and doing any and all such acts, other than actions which must be taken by the Trust, and advising the Trust of actions it must take, and preparing for execution and filing any documents to be executed and filed by the Trust, as the Sponsor deems necessary or advisable in order to comply with the applicable laws of any such States;

(b) preparing for filing and requesting the Administrators to cause the filing by the Trust, as may be appropriate, of an application to the PORTAL system, for listing or quotation upon notice of issuance of any Capital Securities, as requested by the Holders of not less than a Majority in liquidation amount of the Capital Securities; and

(c) negotiating the terms of, and the execution and delivery, on behalf of the Trust, of the Purchase Agreement and any subscription agreements or other agreements providing for the sale of the Capital Securities or resale by the Initial Purchaser and other related agreements.

## ARTICLE IV

### TRUSTEES AND ADMINISTRATORS

SECTION 4.1. *Number of Trustees.* The number of Trustees initially shall be two, and:

(a) at any time before the issuance of any Securities, the Sponsor may, by written instrument, increase or decrease the number of Trustees; and

(b) after the issuance of any Securities, the number of Trustees may be increased or decreased by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities; *provided, however*, that there shall be a Delaware Trustee if required by Section 4.2; and there shall always be one Trustee who shall be the Institutional Trustee, and such Trustee may also serve as Delaware Trustee if it meets the applicable requirements, in which case Section 2.11 shall have no application to such entity in its capacity as Institutional Trustee.

SECTION 4.2. *Delaware Trustee.* If required by the Statutory Trust Act, one Trustee (the "Delaware Trustee") shall be:

(a) a natural person who is a resident of the State of Delaware; or

(b) if not a natural person, an entity which is organized under the laws of the United States or any state thereof or the District of Columbia, has its principal place of business in the State of Delaware, and otherwise meets the requirements of applicable law, including §3807 of the Statutory Trust Act.

SECTION 4.3. *Institutional Trustee; Eligibility.* (a) There shall at all times be one Trustee that shall act as Institutional Trustee which shall:

(i) not be an Affiliate of the Sponsor;

(ii) not offer or provide credit or credit enhancement to the Trust; and

(iii) be a banking corporation or national association organized and doing business under the laws of the United States of America or any state thereof or of the District of Columbia and authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least fifty million U.S. dollars (\$50,000,000), and subject to supervision or examination by federal, state or District of Columbia authority. If such corporation or national association publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 4.3(a)(iii), the combined capital and surplus of such corporation or national association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Institutional Trustee shall cease to be eligible to so act under Section 4.3(a), the Institutional Trustee shall immediately resign in the manner and with the effect set forth in Section 4.7.

(c) If the Institutional Trustee has or shall acquire any "conflicting interest" within the meaning of § 310(b) of the Trust Indenture Act, the Institutional Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to this Declaration.

(d) The initial Institutional Trustee shall be Wilmington Trust Company.

SECTION 4.4. *Certain Qualifications of the Delaware Trustee Generally.* The Delaware Trustee shall be a U.S. Person and either a natural person who is at least 21 years of age or a legal entity that shall act through one or more Authorized Officers.

SECTION 4.5. *Administrators.* Each Administrator shall be a U.S. Person. There shall at all times be at least one Administrator. Except where a requirement for action by a specific number of Administrators is expressly set forth in this Declaration and except with respect to any action the taking of which is the subject of a meeting of the Administrators, any action required or permitted to be taken by the Administrators may be taken by, and any power of the Administrators may be exercised by, or with the consent of, any one such Administrator acting alone.

SECTION 4.6. *Initial Delaware Trustee.* The initial Delaware Trustee shall be Wilmington Trust Company.

SECTION 4.7. *Appointment, Removal and Resignation of the Trustees and the Administrators.*

(a) No resignation or removal of any Trustee (the "Relevant Trustee") and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of this Section 4.7.

(b) Subject to Section 4.7(a), a Relevant Trustee may resign at any time by giving written notice thereof to the Holders of the Securities and by appointing a successor Relevant Trustee. Upon the resignation of the Institutional Trustee, the Institutional Trustee shall appoint a successor by requesting from at least three Persons meeting the eligibility requirements their expenses and charges to serve as the successor Institutional Trustee on a form provided by the Administrators, and selecting the Person who agrees to the lowest expense and charges (the "Successor Institutional Trustee"). If the instrument of acceptance by the successor Relevant Trustee required by this Section 4.7 shall not have been delivered to the Relevant Trustee within 60 days after the giving of such notice of resignation or delivery of the instrument of removal, the Relevant Trustee may petition, at the expense of the Trust, any federal, state or District of Columbia court of competent jurisdiction for the appointment of a successor Relevant Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Relevant Trustee. The Institutional Trustee shall have no liability for the selection of such successor pursuant to this Section 4.7.



(c) Unless an Event of Default shall have occurred and be continuing, any Trustee may be removed at any time by an act of the Holders of a Majority in liquidation amount of the Common Securities. If any Trustee shall be so removed, the Holders of the Common Securities, by act of the Holders of a Majority in liquidation amount of the Common Securities delivered to the Relevant Trustee, shall promptly appoint a successor Relevant Trustee, and such successor Trustee shall comply with the applicable requirements of this Section 4.7. If an Event of Default shall have occurred and be continuing, the Institutional Trustee or the Delaware Trustee, or both of them, may be removed by the act of the Holders of a Majority in liquidation amount of the Capital Securities, delivered to the Relevant Trustee (in its individual capacity and on behalf of the Trust). In addition, if the Institutional Trustee fails to distribute funds available in the Property Account to Holders of the Capital Securities in accordance with Section 5.1, the Institutional Trustee may be removed by the act of the Holders of a Majority in liquidation amount of the Capital Securities, delivered to the Institutional Trustee (in its individual capacity and on behalf of the Trust). If any Trustee shall be so removed, the Holders of Capital Securities, by act of the Holders of a Majority in liquidation amount of the Capital Securities then outstanding delivered to the Relevant Trustee, shall promptly appoint a successor Relevant Trustee or Trustees, and such successor Trustee shall comply with the applicable requirements of this Section 4.7. If no successor Relevant Trustee shall have been so appointed by the Holders of a Majority in liquidation amount of the Capital Securities and accepted appointment in the manner required by this Section 4.7 within 30 days after delivery of an instrument of removal, the Relevant Trustee or any Holder who has been a Holder of the Securities for at least six months may, on behalf of himself and all others similarly situated, petition any federal, state or District of Columbia court of competent jurisdiction for the appointment of a successor Relevant Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a successor Relevant Trustee or Trustees.

(d) The Institutional Trustee shall give notice of each resignation and each removal of a Trustee and each appointment of a successor Trustee to all Holders and to the Sponsor. Each notice shall include the name of the successor Relevant Trustee and the address of its Corporate Trust Office if it is the Institutional Trustee.

(e) Notwithstanding the foregoing or any other provision of this Declaration, in the event a Delaware Trustee who is a natural person dies or is adjudged by a court to have become incompetent or incapacitated, the vacancy created by such death, incompetence or incapacity may be filled by the Institutional Trustee following the procedures in this Section 4.7 (with the successor being a Person who satisfies the eligibility requirement for a Delaware Trustee set forth in this Declaration) (the "Successor Delaware Trustee").

(f) In case of the appointment hereunder of a successor Relevant Trustee, the retiring Relevant Trustee and each successor Relevant Trustee with respect to the Securities shall execute and deliver an amendment hereto wherein each successor Relevant Trustee shall accept such appointment and which (i) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Relevant Trustee all the rights, powers, trusts and duties of the retiring Relevant Trustee with respect to the Securities and the Trust and (ii) shall add to or change any of the provisions of this Declaration as shall be necessary to provide for or facilitate the administration of the Trust by more than one Relevant Trustee, it being understood that nothing herein or in such amendment shall constitute such Relevant Trustees co-trustees and upon the execution and delivery of such amendment the resignation or removal of the retiring Relevant Trustee shall become effective to the extent provided therein and each such successor Relevant Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Relevant Trustee; but, on request of the Trust or any successor Relevant Trustee, such retiring Relevant Trustee shall duly assign, transfer and deliver to such successor Relevant Trustee all Trust Property, all proceeds thereof and money held by such retiring Relevant Trustee hereunder with respect to the Securities and

the Trust subject to the payment of all unpaid fees, expenses and indemnities of such retiring Relevant Trustee.

(g) No Institutional Trustee or Delaware Trustee shall be liable for the acts or omissions to act of any Successor Institutional Trustee or Successor Delaware Trustee, as the case may be.

(h) The Holders of the Capital Securities will have no right to vote to appoint, remove or replace the Administrators, which voting rights are vested exclusively in the Holders of the Common Securities.

(i) Any successor Delaware Trustee shall file an amendment to the Certificate of Trust with the Secretary of State of the State of Delaware identifying the name and principal place of business of such Delaware Trustee in the State of Delaware.

SECTION 4.8. *Vacancies Among Trustees.* If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 4.1, or if the number of Trustees is increased pursuant to Section 4.1, a vacancy shall occur. A resolution certifying the existence of such vacancy by the Trustees or, if there are more than two, a majority of the Trustees shall be conclusive evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with Section 4.7.

SECTION 4.9. *Effect of Vacancies.* The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence or incapacity to perform the duties of a Trustee shall not operate to dissolve, terminate or annul the Trust or terminate this Declaration. Whenever a vacancy in the number of Trustees shall occur, until such vacancy is filled by the appointment of a Trustee in accordance with Section 4.7, the Institutional Trustee shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Declaration.

SECTION 4.10. *Meetings of the Trustees and the Administrators.* Meetings of the Trustees or the Administrators shall be held from time to time upon the call of any Trustee or Administrator, as applicable. Regular meetings of the Trustees and the Administrators, respectively, may be in person in the United States or by telephone, at a place (if applicable) and time fixed by resolution of the Trustees or the Administrators, as applicable. Notice of any in-person meetings of the Trustees or the Administrators shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 48 hours before such meeting. Notice of any telephonic meetings of the Trustees or the Administrators or any committee thereof shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 24 hours before a meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. The presence (whether in person or by telephone) of a Trustee or an Administrator, as the case may be, at a meeting shall constitute a waiver of notice of such meeting except where a Trustee or an Administrator, as the case may be, attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Unless provided otherwise in this Declaration, any action of the Trustees or the Administrators, as the case may be, may be taken at a meeting by vote of a majority of the Trustees or the Administrators present (whether in person or by telephone) and eligible to vote with respect to such matter; *provided*, that, in the case of the Administrators, a Quorum is present, or without a meeting by the unanimous written consent of the Trustees or the Administrators, as the case may be. Meetings of the Trustees and the Administrators together shall be held from time to time upon the call of any Trustee or Administrator.

SECTION 4.11. *Delegation of Power.* (a) Any Trustee or any Administrator, as the case may be, may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 that is a U.S. Person his or her power for the purpose of executing any documents, instruments or other writings contemplated in Section 2.6.

(b) The Trustees shall have power to delegate from time to time to such of their number or to any officer of the Trust that is a U.S. Person, the doing of such things and the execution of such instruments or other writings either in the name of the Trust or the names of the Trustees or otherwise as the Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein.

SECTION 4.12. *Merger, Conversion, Consolidation or Succession to Business.* Any Person into which the Institutional Trustee or the Delaware Trustee, as the case may be, may be merged or converted or with which either may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Institutional Trustee or the Delaware Trustee, as the case may be, shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Institutional Trustee or the Delaware Trustee, as the case may be, shall be the successor of the Institutional Trustee or the Delaware Trustee, as the case may be, hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided such Person shall be otherwise qualified and eligible under this Article and, *provided, further*, that such Person shall file an amendment to the Certificate of Trust with the Secretary of State of the State of Delaware as contemplated in Section 4.7(i).

## ARTICLE V

### DISTRIBUTIONS

SECTION 5.1. *Distributions.* Holders shall receive Distributions in accordance with the applicable terms of the relevant Holder's Securities. Distributions shall be made on the Capital Securities and the Common Securities in accordance with the preferences set forth in their respective terms. If and to the extent that the Debenture Issuer makes a payment of interest (including any Additional Amounts or Deferred Interest) and/or principal on the Debentures held by the Institutional Trustee (the amount of any such payment being a "Payment Amount"), the Institutional Trustee shall and is directed, to the extent funds are available in the Property Account for that purpose, to make a distribution (a "Distribution") of the Payment Amount to Holders. For the avoidance of doubt, funds in the Property Account shall not be distributed to Holders to the extent of any taxes payable by the Trust, in the case of withholding taxes, as determined by the Institutional Trustee or any Paying Agent and, in the case of taxes other than withholding taxes, as determined by the Administrators in a written notice to the Institutional Trustee.

## ARTICLE VI

### ISSUANCE OF SECURITIES

SECTION 6.1. *General Provisions Regarding Securities.* (a) The Administrators shall on behalf of the Trust issue one series of capital securities, subject to Section 8.2, evidenced by a certificate substantially in the form of Exhibit A-1, representing undivided beneficial interests in the assets of the Trust and having such terms as are set forth in Annex I (the "Capital Securities"), and one series of common securities, evidenced by a certificate substantially in the form of Exhibit A-2, representing undivided beneficial interests in the assets of the Trust and having such terms as are set forth in Annex I (the "Common Securities"). The Trust shall issue no securities or other interests in the assets of the Trust other than the Capital Securities and the Common Securities. The Capital Securities rank *pari passu* and payment thereon shall be made Pro Rata with the Common Securities except that, where an Event of Default has occurred and is continuing, the rights of Holders of the Common Securities to payment in respect of Distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights to payment of the Holders of the Capital Securities.

(b) The Certificates shall be signed on behalf of the Trust by one or more Administrators. Such signature shall be the facsimile or manual signature of any Administrator. In case any Administrator of

the Trust who shall have signed any of the Securities shall cease to be such Administrator before the Certificates so signed shall be delivered by the Trust, such Certificates nevertheless may be delivered as though the person who signed such Certificates had not ceased to be such Administrator. Any Certificate may be signed on behalf of the Trust by such person who, at the actual date of execution of such Security, shall be an Administrator of the Trust, although at the date of the execution and delivery of the Declaration any such person was not such an Administrator. A Capital Security shall not be valid until authenticated by the manual signature of an Authorized Officer of the Institutional Trustee. Such signature shall be conclusive evidence that the Capital Security has been authenticated under this Declaration. Upon written order of the Trust signed by one Administrator, the Institutional Trustee shall authenticate the Capital Securities for original issue. The Institutional Trustee may appoint an authenticating agent that is a U.S. Person acceptable to the Trust to authenticate the Capital Securities. A Common Security need not be so authenticated and shall be valid upon execution by one or more Administrators.

(c) The consideration received by the Trust for the issuance of the Securities shall constitute a contribution to the capital of the Trust and shall not constitute a loan to the Trust.

(d) Upon issuance of the Securities as provided in this Declaration, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable, and each Holder thereof shall be entitled to the benefits provided by this Declaration.

(e) Every Person, by virtue of having become a Holder in accordance with the terms of this Declaration, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, this Declaration.

SECTION 6.2. *Paying Agent, Transfer Agent, Calculation Agent and Registrar.* (a) The Trust shall maintain in Wilmington, Delaware, an office or agency where the Securities may be presented for payment (the "Paying Agent"), and an office or agency where Securities may be presented for registration of transfer or exchange (the "Transfer Agent"). The Trust shall keep or cause to be kept at such office or agency a register for the purpose of registering Securities and transfers and exchanges of Securities, such register to be held by a registrar (the "Registrar"). The Administrators may appoint the Paying Agent, the Registrar and the Transfer Agent, and may appoint one or more additional Paying Agents, one or more co-Registrars, or one or more co-Transfer Agents in such other locations as it shall determine. The term "Paying Agent" includes any additional Paying Agent, the term "Registrar" includes any additional Registrar or co-Registrar and the term "Transfer Agent" includes any additional Transfer Agent or co-Transfer Agent. The Administrators may change any Paying Agent, Transfer Agent or Registrar at any time without prior notice to any Holder. The Administrators shall notify the Institutional Trustee of the name and address of any Paying Agent, Transfer Agent and Registrar not a party to this Declaration. The Administrators hereby initially appoint the Institutional Trustee to act as Paying Agent, Transfer Agent and Registrar for the Capital Securities and the Common Securities at its Corporate Trust Office. The Institutional Trustee or any of its Affiliates in the United States may act as Paying Agent, Transfer Agent or Registrar.

(b) The Trust shall also appoint a Calculation Agent, which shall determine the Coupon Rate in accordance with the terms of the Securities. The Trust initially appoints the Institutional Trustee as Calculation Agent.

SECTION 6.3. *Form and Dating.* (a) Subject to Section 8.2, the Capital Securities and the Institutional Trustee's certificate of authentication thereon shall be substantially in the form of Exhibit A-1, and the Common Securities shall be substantially in the form of Exhibit A-2, each of which is hereby incorporated in and expressly made a part of this Declaration. Certificates may be typed, printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Administrators, as conclusively evidenced by their execution thereof. The Securities may have letters, numbers, notations or other marks of identification or designation and such legends or endorsements required by law, stock exchange rule, agreements to which the Trust is subject, if any, or usage (*provided*, that any such notation, legend or endorsement is in a form acceptable to the Sponsor). The Trust at the direction of the Sponsor shall furnish any such legend not contained in Exhibit A-1 to the Institutional Trustee in writing. Each Capital Security shall be dated the date of its authentication. The terms and provisions of the Securities set forth in Annex I and, subject to Section 8.2, the forms of Securities set forth in Exhibits A-1 and A-2 are part of the terms of this Declaration and to the extent applicable, the Institutional Trustee, the Delaware Trustee, the Administrators and the Sponsor, by their execution and delivery of this Declaration, expressly agree to such terms and provisions and to be bound thereby. Capital Securities will be issued only in blocks having a stated liquidation amount of not less than \$100,000.

(b) Subject to Section 8.2, the Capital Securities are being offered and sold by the Trust pursuant to the Purchase Agreement in definitive form, registered in the name of the Holder thereof, without coupons and with the Restricted Securities Legend.

SECTION 6.4. *Mutilated, Destroyed, Lost or Stolen Certificates.* If:

(a) any mutilated Certificates should be surrendered to the Registrar, or if the Registrar shall receive evidence to its satisfaction of the destruction, loss or theft of any Certificate; and

(b) there shall be delivered to the Registrar, the Administrators and the Institutional Trustee such security or indemnity as may be required by them to keep each of them harmless;

then, in the absence of notice that such Certificate shall have been acquired by a bona fide purchaser, an Administrator on behalf of the Trust shall execute (and in the case of a Capital Security Certificate, the Institutional Trustee shall authenticate) and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like denomination. In connection with the issuance of any new Certificate under this Section 6.4, the Registrar or the Administrators may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Certificate issued pursuant to this Section shall constitute conclusive evidence of an ownership interest in the relevant Securities, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

SECTION 6.5. *Temporary Securities.* Until definitive Securities are ready for delivery, the Administrators may prepare and, in the case of the Capital Securities, the Institutional Trustee shall authenticate, temporary Securities. Temporary Securities shall be substantially in form of definitive Securities but may have variations that the Administrators consider appropriate for temporary Securities. Without unreasonable delay, the Administrators shall prepare and, in the case of the Capital Securities, the Institutional Trustee shall authenticate definitive Securities in exchange for temporary Securities.

SECTION 6.6. *Cancellation.* The Administrators at any time may deliver Securities to the Institutional Trustee for cancellation. The Registrar shall forward to the Institutional Trustee any Securities surrendered to it for registration of transfer, redemption or payment. The Institutional Trustee shall promptly cancel all Securities surrendered for registration of transfer, payment, replacement or cancellation and shall dispose of such canceled Securities as the Administrators direct.

The Administrators may not issue new Securities to replace Securities that have been paid or that have been delivered to the Institutional Trustee for cancellation.

SECTION 6.7. *Rights of Holders; Waivers of Past Defaults.* (a) The legal title to the Trust Property is vested exclusively in the Institutional Trustee (in its capacity as such) in accordance with Section 2.5, and the Holders shall not have any right or title therein other than the undivided beneficial interest in the assets of the Trust conferred by their Securities and they shall have no right to call for any partition or division of property, profits or rights of the Trust except as described below. The Securities shall be personal property giving only the rights specifically set forth therein and in this Declaration. The Securities shall have no, and the issuance of the Securities shall not be subject to, preemptive or other similar rights and when issued and delivered to Holders against payment of the purchase price therefor, the Securities will be fully paid and nonassessable by the Trust.

(b) For so long as any Capital Securities remain outstanding, if, upon an Event of Default, the Debenture Trustee fails or the holders of not less than 25% in principal amount of the outstanding Debentures fail to declare the principal of all of the Debentures to be immediately due and payable, the Holders of not less than a Majority in liquidation amount of the Capital Securities then outstanding shall have the right to make such declaration by a notice in writing to the Institutional Trustee, the Sponsor and the Debenture Trustee.

(c) At any time after a declaration of acceleration with respect to the Debentures has been made and before a judgment or decree for payment of the money due has been obtained by the Debenture Trustee as provided in the Indenture, if the Institutional Trustee, subject to the provisions hereof, fails to annul any such declaration and waive such default, the Holders of not less than a Majority in liquidation amount of the Capital Securities, by written notice to the Institutional Trustee, the Sponsor and the Debenture Trustee, may rescind and annul such declaration and its consequences if:

(i) the Sponsor has paid or deposited with the Debenture Trustee a sum sufficient to pay

(A) all overdue installments of interest on all of the Debentures,

(B) any accrued Deferred Interest on all of the Debentures,

(C) all payments on any Debentures that have become due otherwise than by such declaration of acceleration and interest and Deferred Interest thereon at the rate borne by the Debentures, and

(D) all sums paid or advanced by the Debenture Trustee under the Indenture and the reasonable compensation, documented expenses, disbursements and advances of the Debenture Trustee and the Institutional Trustee, their agents and counsel; and

(ii) all Events of Default with respect to the Debentures, other than the non-payment of the principal of the Debentures that has become due solely by such acceleration, have been cured or waived as provided in Section 5.07 of the Indenture.

(d) The Holders of not less than a Majority in liquidation amount of the Capital Securities may, on behalf of the Holders of all the Capital Securities, waive any past default or Event of Default, except a default or Event of Default in the payment of principal or interest (unless such default or Event of Default has been cured and a sum sufficient to pay all matured installments of interest and principal due otherwise than by acceleration has been deposited with the Debenture Trustee) or a default or Event of Default in respect of a covenant or provision that under the Indenture cannot be modified or amended without the consent of the holder of each outstanding Debenture. No such rescission shall affect any subsequent default or impair any right consequent thereon.

(e) Upon receipt by the Institutional Trustee of written notice declaring such an acceleration, or rescission and annulment thereof, by Holders of any part of the Capital Securities, a record date shall

be established for determining Holders of outstanding Capital Securities entitled to join in such notice, which record date shall be at the close of business on the day the Institutional Trustee receives such notice. The Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to join in such notice, whether or not such Holders remain Holders after such record date; *provided*, that, unless such declaration of acceleration, or rescission and annulment, as the case may be, shall have become effective by virtue of the requisite percentage having joined in such notice prior to the day that is 90 days after such record date, such notice of declaration of acceleration, or rescission and annulment, as the case may be, shall automatically and without further action by any Holder be canceled and of no further effect. Nothing in this paragraph shall prevent a Holder, or a proxy of a Holder, from giving, after expiration of such 90-day period, a new written notice of declaration of acceleration, or rescission and annulment thereof, as the case may be, that is identical to a written notice that has been canceled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 6.7.

(f) Except as otherwise provided in this Section 6.7, the Holders of not less than a Majority in liquidation amount of the Capital Securities may, on behalf of the Holders of all the Capital Securities, waive any past default or Event of Default and its consequences. Upon such waiver, any such default or Event of Default shall cease to exist, and any default or Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

## ARTICLE VII

### DISSOLUTION AND TERMINATION OF TRUST

SECTION 7.1. *Dissolution and Termination of Trust.* (a) The Trust shall dissolve on the first to occur of:

- (i) unless earlier dissolved, on July 30, 2040, the expiration of the term of the Trust;
- (ii) a Bankruptcy Event with respect to the Sponsor, the Trust or the Debenture Issuer;
- (iii) other than in connection with a merger, consolidation or similar transaction not prohibited by the Indenture or this Declaration, as the case may be, the filing of a certificate of dissolution or its equivalent with respect to the Sponsor or upon the revocation of the charter of the Sponsor and the expiration of 90 days after the date of revocation without a reinstatement thereof;
- (iv) the distribution of the Debentures to the Holders of the Securities, upon exercise of the right of the Holders of all of the outstanding Common Securities to dissolve the Trust as provided in Annex I hereto;
- (v) the entry of a decree of judicial dissolution of any Holder of the Common Securities, the Sponsor, the Trust or the Debenture Issuer;
- (vi) the date when all of the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders in accordance with the terms of the Securities; or
- (vii) before the issuance of any Securities, with the consent of all of the Trustees and the Sponsor.

(b) As soon as is practicable after the occurrence of an event referred to in Section 7.1(a), and after satisfaction of liabilities to creditors of the Trust as required by applicable law, including Section 3808 of the Statutory Trust Act, and subject to the terms set forth in Annex I, the Institutional

Trustee shall terminate the Trust by filing a certificate of cancellation with the Secretary of State of the State of Delaware.

(c) The provisions of Section 2.9 and Article IX shall survive the termination of the Trust.

## ARTICLE VIII

### TRANSFER OF INTERESTS

SECTION 8.1. *General.* (a) Where Capital Securities are presented to the Registrar with a request to register a transfer or to exchange them for an equal number of Capital Securities represented by different Certificates, the Registrar shall register the transfer or make the exchange if its requirements for such transactions are met. To permit registrations of transfers and exchanges, the Trust shall issue and the Institutional Trustee shall authenticate Capital Securities at the Registrar's request.

(b) Upon issuance of the Common Securities, the Sponsor shall acquire and retain beneficial and record ownership of the Common Securities and, for so long as the Securities remain outstanding, the Sponsor shall maintain 100% ownership of the Common Securities; *provided, however*, that any permitted successor of the Sponsor under the Indenture that is a U.S. Person may succeed to the Sponsor's ownership of the Common Securities.

(c) Capital Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Declaration and in the terms of the Capital Securities. To the fullest extent permitted by applicable law, any transfer or purported transfer of any Security not made in accordance with this Declaration shall be null and void and will be deemed to be of no legal effect whatsoever and any such transferee shall be deemed not to be the holder of such Capital Securities for any purpose, including but not limited to the receipt of Distributions on such Capital Securities, and such transferee shall be deemed to have no interest whatsoever in such Capital Securities.

(d) The Registrar shall provide for the registration of Securities and of transfers of Securities, which will be effected without charge but only upon payment (with such indemnity as the Registrar may require) in respect of any tax or other governmental charges that may be imposed in relation to it. Upon surrender for registration of transfer of any Securities, the Registrar shall cause one or more new Securities to be issued in the name of the designated transferee or transferees. Any Security issued upon any registration of transfer or exchange pursuant to the terms of this Declaration shall evidence the same Security and shall be entitled to the same benefits under this Declaration as the Security surrendered upon such registration of transfer or exchange. Every Security surrendered for registration of transfer shall be accompanied by a written instrument of transfer in form similar to Exhibit B or C attached hereto satisfactory to the Registrar duly executed by the Holder or such Holder's attorney duly authorized in writing. Each Security surrendered for registration of transfer shall be canceled by the Institutional Trustee pursuant to Section 6.6. A transferee of a Security shall be entitled to the rights and subject to the obligations of a Holder hereunder upon the receipt by such transferee of a Security. By acceptance of a Security, each transferee shall be deemed to have agreed to be bound by this Declaration as amended, revised or supplemented from time to time.

(e) Neither the Trust nor the Registrar shall be required (i) to issue, register the transfer of, or exchange any Securities during a period beginning at the opening of business 15 days before the day of any selection of Securities for redemption and ending at the close of business on the earliest date on which the relevant notice of redemption is deemed to have been given to all Holders of the Securities to be redeemed, or (ii) to register the transfer or exchange of any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

SECTION 8.2. *Transfer Procedures and Restrictions.* (a) The Capital Securities shall bear the Restricted Securities Legend (as defined below), which shall not be removed unless there is delivered



to the Trust such satisfactory evidence, which may include an opinion of counsel, as may be reasonably required by the Trust, that neither the legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of the Securities Act or that such Securities are not "restricted" within the meaning of Rule 144 under the Securities Act. Upon provision of such satisfactory evidence, the Institutional Trustee, at the written direction of the Trust, shall authenticate and deliver Capital Securities that do not bear the Restricted Securities Legend.

(b) When Capital Securities are presented to the Registrar (x) to register the transfer of such Capital Securities, or (y) to exchange such Capital Securities for an equal number of Capital Securities represented by different Certificates, the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; *provided, however*, that the Capital Securities surrendered for registration of transfer or exchange, other than in connection with the initial transfer by the Initial Purchaser, pursuant to Section 8.4, shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Trust and the Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing and (i) if such Capital Securities are being transferred to a QIB or a Regulation S Transferee, accompanied by a certificate of the transferor substantially in the form set forth as Exhibit C hereto or (ii) if such Capital Securities are being transferred otherwise than to a QIB or a Regulation S Transferee, accompanied by a certificate of the transferee substantially in the form set forth as Exhibit B hereto.

(c) Except as permitted by Section 8.2(a) or as otherwise provided in Section 8.2(e), each Capital Security shall bear a legend (the "Restricted Securities Legend") in substantially the following form:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS OR ANY OTHER APPLICABLE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY ONLY (A) TO THE DEBENTURE ISSUER OR THE TRUST, (B) PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON THE HOLDER REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO A "NON-U.S. PERSON" IN AN "OFFSHORE TRANSACTION" PURSUANT TO REGULATION S UNDER THE SECURITIES ACT, (D) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF SUBPARAGRAPH (a) (1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT THAT IS ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF AN "ACCREDITED INVESTOR," FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE DEBENTURE ISSUER'S AND THE TRUST'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM IN ACCORDANCE WITH THE AMENDED AND RESTATED DECLARATION OF TRUST, A COPY OF WHICH MAY BE OBTAINED FROM THE DEBENTURE ISSUER OR THE TRUST. THE HOLDER OF

THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES THAT IT WILL COMPLY WITH THE FOREGOING RESTRICTIONS.

THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES, REPRESENTS AND WARRANTS THAT IT WILL NOT ENGAGE IN HEDGING TRANSACTIONS INVOLVING THIS SECURITY UNLESS SUCH TRANSACTIONS ARE IN COMPLIANCE WITH THE SECURITIES ACT.

THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF 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, UNLESS SUCH PURCHASER OR HOLDER IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION OR ITS PURCHASE AND HOLDING OF THIS SECURITY IS NOT PROHIBITED BY SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE WITH RESPECT TO SUCH PURCHASE OR HOLDING. ANY PURCHASER OR HOLDER OF THIS SECURITY OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT EITHER (i) 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, OR (ii) SUCH PURCHASE WILL NOT RESULT IN A PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE FOR WHICH THERE IS NO APPLICABLE STATUTORY OR ADMINISTRATIVE EXEMPTION.

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS MAY BE REQUIRED BY THE AMENDED AND RESTATED DECLARATION OF TRUST TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

THIS SECURITY WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN BLOCKS HAVING A LIQUIDATION AMOUNT OF NOT LESS THAN \$100,000 AND MULTIPLES OF \$1,000 IN EXCESS THEREOF. ANY ATTEMPTED TRANSFER OF THIS SECURITY IN A BLOCK HAVING A LIQUIDATION AMOUNT OF LESS THAN \$100,000 SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF THIS SECURITY FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF DISTRIBUTIONS ON THIS SECURITY, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN THIS SECURITY.

(d) Capital Securities may only be transferred in minimum blocks of \$100,000 aggregate liquidation amount (100 Capital Securities) and multiples of \$1,000 in excess thereof. Any attempted transfer of Capital Securities in a block having an aggregate liquidation amount of less than \$100,000 shall be deemed to be void and of no legal effect whatsoever. Any such purported transferee shall be deemed not to be a Holder of such Capital Securities for any purpose, including, but not limited to, the receipt of Distributions on such Capital Securities, and such purported transferee shall be deemed to have no interest whatsoever in such Capital Securities.

(e) The Trust, upon the request of the Initial Purchaser, shall provide for some or all of the Capital Securities to be transferred and held through the facilities of The Depository Trust Company, the Euroclear, Clearstream or similar book-entry system for holders and transferees who are QIBs or Regulation S Transferees or, consistent with an opinion of counsel, other holders or transferees. The Administrators on behalf of the Trust shall cause appropriate revisions to the form of Capital Securities necessary to facilitate book-entry transfers and holding.

Any person acquiring an interest in a Capital Security through a book-entry facility will be deemed to represent the following:

1. We are:

(ii) a "qualified institutional buyer" as defined in Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act") and are acquiring the Capital Securities in reliance on Rule 144A; or

(iii) a person that is not a "U.S. person" as defined in Regulation S under the Securities Act, and are acquiring the Fixed/Floating Rate TruPS® (the "Capital Securities") of Impac Capital Trust #4 (the "Trust") in reliance on the exemption from registration provided by Regulation S thereunder.

2. We understand that the Capital Securities and the Fixed/Floating Rate Junior Subordinated Debt Securities due 2035 of Impac Mortgage Holdings, Inc (the "Company") (the "Subordinated Debt Securities") (the Capital Securities, and the Subordinated Debt Securities together being referred to herein as the "Offered Securities"), have not been registered under the Securities Act, and may not be offered or sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing the Capital Securities that, if we decide to offer, sell or otherwise transfer any such Capital Securities, such offer, sale or transfer will be made only (a) to the Company or the Trust, (b) pursuant to Rule 144A under the Securities Act, to a person we reasonably believe is a qualified institutional buyer under Rule 144A (a "QIB") that purchases for its own account or for the account of a QIB and to whom notice is given that the transfer is being made in reliance on Rule 144A, (c) pursuant to Regulation S under the Securities Act, (d) pursuant to an exemption from registration, to an "accredited investor" within the meaning of subparagraph (a) (1), (2), (3) or (7) of Rule 501 under the Securities Act that is acquiring Capital Securities for its own account or for the account of such an accredited investor for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act, or (e) pursuant to another available exemption from the registration requirements of the Securities Act, and in each of the foregoing cases in accordance with any applicable state securities laws and any requirements of law that govern the disposition of our property. The foregoing restrictions on resale will not apply subsequent to the date on which, in the written opinion of counsel, the Capital Securities are not "restricted securities" within the meaning of Rule 144 under the Securities Act. If any resale or other transfer of the Capital Securities is proposed to be made pursuant to clause (d) or (e) above, the transferor shall deliver a letter from the transferee substantially in the form of Exhibit B hereto to the Institutional Trustee as Transfer Agent, which shall provide as applicable, among other things, that the transferee is an "accredited investor" within the meaning of subparagraph (a)(1), (2), (3) or (7) of Rule 501 under the Securities Act that is acquiring such Securities for investment purposes and not for

distribution in violation of the Securities Act. We acknowledge on our behalf and on behalf of any investor account for which we are purchasing Capital Securities that the Trust and the Company reserve the right prior to any offer, sale or other transfer pursuant to clause (d) or (e) to require the delivery of any opinion of counsel, certifications and/or other information satisfactory to the Trust and the Company. We understand that the certificates for the Capital Securities will bear a legend substantially to the effect of the foregoing.

3. We are acquiring the Capital Securities for investment purposes and not with view to, or for offer or sale in connection with, any distribution in violation of the Securities Act, and we have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Capital Securities, and we and any account for which we are acting are each able to bear the economic risks of our or its investment.

4. We are a sophisticated institutional investor, have knowledge and experience in financial matters and are capable of independently evaluating the merits and risks of our investment decision with respect to the Capital Securities, and we have conducted, to the extent we deemed necessary, an independent investigation of such matters, as, in our judgment, is necessary for us to make an informed investment decision with respect to the acquisition of an interest in the Capital Securities.

5. We are acquiring the Capital Securities purchased by us for our own account (or for one or more accounts as to each of which we exercise sole investment discretion and have authority to make, and do make, the statements contained herein) and not with a view to any distribution of the Capital Securities, subject, nevertheless, to the understanding that the disposition of our property will at all times be and remain within our control.

6. In the event that we purchase any Capital Securities, we will acquire such Capital Securities having an aggregate stated liquidation amount of not less than \$100,000, for our own account and for each separate account for which we are acting.

7. We acknowledge that we either (A) are not a fiduciary of a pension, profit-sharing or other employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (a "Plan"), or an entity whose assets include "plan assets" by reason of any Plan's investment in the entity and are not purchasing the Capital Securities on behalf of or with "plan assets" by reason of any Plan's investment in the entity and are not purchasing the Capital Securities on behalf of or with "plan assets" of any Plan or (B) are eligible for the exemptive relief available under one or more of the following prohibited transaction class exemptions ("PTCEs") issued by the U.S. Department of Labor: PTCE 96-23, 95-60, 91-38, 90-1 or 84-14.

8. We acknowledge that the Trust and the Company and others will rely upon the truth and accuracy of the foregoing acknowledgments, representations, warranties and agreements and agree that if any of the acknowledgments, representations, warranties and agreements deemed to have been made by our purchase of the Capital Securities are no longer accurate, we shall promptly notify the Initial Purchaser. If we are acquiring any Capital Securities as a fiduciary or agent for one or more investor accounts, we represent that we have sole discretion with respect to each such investor account and that we have full power to make the foregoing acknowledgments, representations and agreement on behalf of each such investor account.

The above deemed representations may be modified consistent with an opinion of counsel.

SECTION 8.3. *Deemed Security Holders.* The Trust, the Administrators, the Trustees, the Paying Agent, the Transfer Agent or the Registrar may treat the Person in whose name any Certificate shall be registered on the books and records of the Trust as the sole holder of such Certificate and of the Securities represented by such Certificate for purposes of receiving Distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Certificate or in the Securities represented by such Certificate on the part of any

Person, whether or not the Trust, the Administrators, the Trustees, the Paying Agent, the Transfer Agent or the Registrar shall have actual or other notice thereof.

SECTION 8.4. *Initial Transfer of Capital Securities.* Notwithstanding the foregoing provisions of this Article VIII or any other provision of this Declaration (including all Annexes and Exhibits hereto) to the contrary, any or all of the Capital Securities issued to the Initial Purchaser on the date of this Declaration (the "Initial Securities") may be transferred by the Initial Purchaser to the pooled trust preferred vehicle or such other transferees as the Initial Purchaser may select, and such transfer of the Initial Securities shall be accomplished as follows and no other conditions, restrictions or other provisions of this Declaration or any other document shall apply to such transfer: (i) the Certificate(s) evidencing the Initial Securities issued to the Initial Purchaser to be transferred shall be surrendered to the Registrar for registration of transfer and shall be accompanied by an assignment, executed by the Initial Purchaser, in the form attached to Exhibit A-1 hereof, except that no signature guarantee shall be required, and (ii) in the case of the transfer to the REIT TRUPS Offering or other pooled trust preferred vehicle designated by the Initial Purchaser, such surrendered Certificate shall be cancelled by the Institutional Trustee pursuant to Section 6.6 and a new Certificate, registered in the name of the trustee (with appropriate language indicating the status of such trustee as a trustee and any beneficiaries) for such pooled vehicle as directed by such trustee, in accordance with an indenture under which such pooled vehicle will pledge such Certificate or as directed by the Initial Purchaser, and if directed by the Initial Purchaser such Certificate shall be designated as Certificate No. P-1, evidencing the number of Capital Securities to be transferred to such pooled vehicle and, if applicable, another new Certificate, registered as directed by the Initial Purchaser, evidencing any remaining Capital Securities represented by such cancelled Certificate, shall be executed by an Administrator on behalf of the Trust and, upon receipt of such executed Certificate(s), the Institutional Trustee is hereby authorized and directed to execute the certificate of authentication thereon and deliver such new Certificate(s) to the Holder(s) thereof.

## ARTICLE IX

### LIMITATION OF LIABILITY OF HOLDERS OF SECURITIES, TRUSTEES OR OTHERS

SECTION 9.1. *Liability.* (a) Except as expressly set forth in this Declaration and the terms of the Securities, the Sponsor shall not be:

(i) personally liable for the return of any portion of the capital contributions (or any return thereon) of the Holders of the Securities which shall be made solely from assets of the Trust; and

(ii) required to pay to the Trust or to any Holder of the Securities any deficit upon dissolution of the Trust or otherwise.

(b) The Holder of the Common Securities shall be liable for all of the debts and obligations of the Trust (other than with respect to the Securities) to the extent not satisfied out of the Trust's assets.

(c) Pursuant to § 3803(a) of the Statutory Trust Act, the Holders of the Securities shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware, except as otherwise specifically set forth herein.

SECTION 9.2. *Exculpation.* (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Declaration or by law, except that an Indemnified Person (other than an Administrator) shall be liable for any such loss, damage or

claim incurred by reason of such Indemnified Person's negligence or willful misconduct with respect to such acts or omissions and except that an Administrator shall be liable for any such loss, damage or claim incurred by reason of such Administrator's gross negligence or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Trust and upon such information, opinions, reports or statements presented to the Trust by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and, if selected by such Indemnified Person, has been selected by such Indemnified Person with reasonable care by or on behalf of the Trust, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses or any other facts pertinent to the existence and amount of assets from which Distributions to Holders of Securities might properly be paid.

SECTION 9.3. *Fiduciary Duty.* (a) To the extent that, at law or in equity, an Indemnified Person has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to any other Covered Person, an Indemnified Person acting under this Declaration shall not be liable to the Trust or to any other Covered Person for its good faith reliance on the provisions of this Declaration. The provisions of this Declaration, to the extent that they restrict the duties and liabilities of an Indemnified Person otherwise existing at law or in equity (other than the duties imposed on the Institutional Trustee under the Trust Indenture Act), are agreed by the parties hereto to replace such other duties and liabilities of the Indemnified Person.

(b) Whenever in this Declaration an Indemnified Person is permitted or required to make a decision:

(i) in its "discretion" or under a grant of similar authority, the Indemnified Person shall be entitled to consider such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust or any other Person; or

(ii) in its "good faith" or under another express standard, the Indemnified Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Declaration or by applicable law.

SECTION 9.4. *Indemnification.* (a) (i) The Sponsor shall indemnify, to the fullest extent permitted by law, any Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Trust) by reason of the fact that such Person is or was an Indemnified Person against expenses (including attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Person in connection with such action, suit or proceeding if such Person acted in good faith and in a manner such Person reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Indemnified Person did not act in good faith and in a manner which such Person reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.

(ii) The Sponsor shall indemnify, to the fullest extent permitted by law, any Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Trust to procure a judgment in its favor by reason of the fact that such Person is or was an Indemnified Person against expenses (including

attorneys' fees and expenses) actually and reasonably incurred by such Person in connection with the defense or settlement of such action or suit if such Person acted in good faith and in a manner such Person reasonably believed to be in or not opposed to the best interests of the Trust and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such Indemnified Person shall have been adjudged to be liable to the Trust unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which such Court of Chancery or such other court shall deem proper.

(iii) To the extent that an Indemnified Person shall be successful on the merits or otherwise (including dismissal of an action without prejudice or the settlement of an action without admission of liability) in defense of any action, suit or proceeding referred to in paragraphs (i) and (ii) of this Section 9.4(a), or in defense of any claim, issue or matter therein, such Person shall be indemnified, to the fullest extent permitted by law, against expenses (including attorneys' fees and expenses) actually and reasonably incurred by such Person in connection therewith.

(iv) Any indemnification of an Administrator under paragraphs (i) and (ii) of this Section 9.4(a) (unless ordered by a court) shall be made by the Sponsor only as authorized in the specific case upon a determination that indemnification of the Indemnified Person is proper in the circumstances because such Person has met the applicable standard of conduct set forth in paragraphs (i) and (ii). Such determination shall be made (A) by the Administrators by a majority vote of a Quorum consisting of such Administrators who were not parties to such action, suit or proceeding, (B) if such a Quorum is not obtainable, or, even if obtainable, if a Quorum of disinterested Administrators so directs, by independent legal counsel in a written opinion, or (C) by the Common Security Holder of the Trust.

(v) To the fullest extent permitted by law, expenses (including attorneys' fees and expenses) incurred by an Indemnified Person in defending a civil, criminal, administrative or investigative action, suit or proceeding referred to in paragraphs (i) and (ii) of this Section 9.4(a) shall be paid by the Sponsor in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall ultimately be determined that such Person is not entitled to be indemnified by the Sponsor as authorized in this Section 9.4(a). Notwithstanding the foregoing, no advance shall be made by the Sponsor if a determination is reasonably and promptly made (1) in the case of a Company Indemnified Person (A) by the Administrators by a majority vote of a Quorum of disinterested Administrators, (B) if such a Quorum is not obtainable, or, even if obtainable, if a Quorum of disinterested Administrators so directs, by independent legal counsel in a written opinion or (C) by the Common Security Holder of the Trust, that, based upon the facts known to the Administrators, counsel or the Common Security Holder at the time such determination is made, such Indemnified Person acted in bad faith or in a manner that such Person either believed to be opposed to or did not believe to be in the best interests of the Trust, or, with respect to any criminal proceeding, that such Indemnified Person believed or had reasonable cause to believe such conduct was unlawful, or (2) in the case of a Fiduciary Indemnified Person, by independent legal counsel in a written opinion that, based upon the facts known to the counsel at the time such determination is made, such Indemnified Person acted in bad faith or in a manner that such Indemnified Person either believed to be opposed to or did not believe to be in the best interests of the Trust, or, with respect to any criminal proceeding, that such Indemnified Person believed or had reasonable cause to believe such conduct was unlawful. In no event shall any advance be made (i) to a Company Indemnified Person in instances where the Administrators, independent legal counsel or the Common Security Holder reasonably determine that such Person deliberately breached such Person's duty to the Trust or its Common or Capital Security Holders or (ii) to a Fiduciary

Indemnified Person in instances where independent legal counsel promptly and reasonably determines in a written opinion that such Person deliberately breached such Person's duty to the Trust or its Common or Capital Security Holders.

(b) The Sponsor shall indemnify, to the fullest extent permitted by applicable law, each Indemnified Person from and against any and all loss, damage, liability, tax (other than taxes based on the income of such Indemnified Person), penalty, expense or claim of any kind or nature whatsoever incurred by such Indemnified Person arising out of or in connection with or by reason of the creation, administration or termination of the Trust, or any act or omission of such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Declaration, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage, liability, tax, penalty, expense or claim incurred by such Indemnified Person by reason of negligence or willful misconduct with respect to such acts or omissions.

(c) The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Section 9.4 shall not be deemed exclusive of any other rights to which those seeking indemnification and advancement of expenses may be entitled under any agreement, vote of stockholders or disinterested directors of the Sponsor or Capital Security Holders of the Trust or otherwise, both as to action in such Person's official capacity and as to action in another capacity while holding such office. All rights to indemnification under this Section 9.4 shall be deemed to be provided by a contract between the Sponsor and each Indemnified Person who serves in such capacity at any time while this Section 9.4 is in effect. Any repeal or modification of this Section 9.4 shall not affect any rights or obligations then existing.

(d) The Sponsor or the Trust may purchase and maintain insurance on behalf of any Person who is or was an Indemnified Person against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as such, whether or not the Sponsor would have the power to indemnify such Person against such liability under the provisions of this Section 9.4.

(e) For purposes of this Section 9.4, references to "the Trust" shall include, in addition to the resulting or surviving entity, any constituent entity (including any constituent of a constituent) absorbed in a consolidation or merger, so that any Person who is or was a director, trustee, officer or employee of such constituent entity, or is or was serving at the request of such constituent entity as a director, trustee, officer, employee or agent of another entity, shall stand in the same position under the provisions of this Section 9.4 with respect to the resulting or surviving entity as such Person would have with respect to such constituent entity if its separate existence had continued.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 9.4 shall, unless otherwise provided when authorized or ratified, continue as to a Person who has ceased to be an Indemnified Person and shall inure to the benefit of the heirs, executors and administrators of such a Person.

(g) The provisions of this Section 9.4 shall survive the termination of this Declaration or the earlier resignation or removal of the Institutional Trustee. The obligations of the Sponsor under this Section 9.4 to compensate and indemnify the Trustees and to pay or reimburse the Trustees for expenses, disbursements and advances shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Securities upon all property and funds held or collected by the Trustees as such, except funds held in trust for the benefit of the holders of particular Capital Securities, *provided*, that the Sponsor is the holder of the Common Securities.

SECTION 9.5. *Outside Businesses.* Any Covered Person, the Sponsor, the Delaware Trustee and the Institutional Trustee (subject to Section 4.3(c)) may engage in or possess an interest in other



business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. None of any Covered Person, the Sponsor, the Delaware Trustee or the Institutional Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Sponsor, the Delaware Trustee and the Institutional Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Covered Person, the Delaware Trustee and the Institutional Trustee may engage or be interested in any financial or other transaction with the Sponsor or any Affiliate of the Sponsor, or may act as depositary for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Sponsor or its Affiliates.

SECTION 9.6. *Compensation; Fee.* (a) The Sponsor agrees:

(i) to pay to the Trustees from time to time such compensation for all services rendered by them hereunder as the parties shall agree in writing 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); and

(ii) except as otherwise expressly provided herein, to reimburse the Trustees upon request for all reasonable, documented expenses, disbursements and advances incurred or made by the Trustees in accordance with any provision of this Declaration (including the reasonable compensation and the expenses and disbursements of their respective agents and counsel), except any such expense, disbursement or advance attributable to their negligence or willful misconduct.

(b) The provisions of this Section 9.6 shall survive the dissolution of the Trust and the termination of this Declaration and the removal or resignation of any Trustee.

## ARTICLE X

### ACCOUNTING

SECTION 10.1. *Fiscal Year.* The fiscal year (the "Fiscal Year") of the Trust shall be the calendar year, or such other year as is required by the Code.

SECTION 10.2. *Certain Accounting Matters.* (a) At all times during the existence of the Trust, the Administrators shall keep, or cause to be kept at the principal office of the Trust in the United States, as defined for purposes of Treasury Regulations § 301.7701-7, full books of account, records and supporting documents, which shall reflect in reasonable detail each transaction of the Trust. The books of account shall be maintained on the accrual method of accounting, in accordance with generally accepted accounting principles, consistently applied.

(b) The Administrators shall either (i) cause each Form 10-K and Form 10-Q prepared by the Sponsor and filed with the Commission in accordance with the Exchange Act to be delivered to each Holder of Securities, within 90 days after the filing of each Form 10-K and within 30 days after the filing of each Form 10-Q or (ii) cause to be prepared at the principal office of the Trust in the United States, as defined for purposes of Treasury Regulations § 301.7701-7, and delivered to each of the Holders of Securities, within 90 days after the end of each Fiscal Year of the Trust, annual financial statements of the Trust, including a balance sheet of the Trust as of the end of such Fiscal Year, and the related statements of income or loss.

(c) The Administrators shall cause to be duly prepared and delivered to each of the Holders of Securities Form 1099 or such other annual United States federal income tax information statement required by the Code, containing such information with regard to the Securities held by each Holder as is required by the Code and the Treasury Regulations. Notwithstanding any right under the Code to deliver any such statement at a later date, the Administrators shall endeavor to deliver all such statements within 30 days after the end of each Fiscal Year of the Trust.

(d) The Administrators shall cause to be duly prepared in the United States, as defined for purposes of Treasury Regulations § 301.7701-7, and filed an annual United States federal income tax return on a Form 1041 or such other form required by United States federal income tax law, and any other annual income tax returns required to be filed by the Administrators on behalf of the Trust with any state or local taxing authority.

SECTION 10.3. *Banking.* The Trust shall maintain one or more bank accounts in the United States, as defined for purposes of Treasury Regulations § 301.7701-7, in the name and for the sole benefit of the Trust; *provided, however*, that all payments of funds in respect of the Debentures held by the Institutional Trustee shall be made directly to the Property Account and no other funds of the Trust shall be deposited in the Property Account. The sole signatories for such accounts (including the Property Account) shall be designated by the Institutional Trustee.

SECTION 10.4. *Withholding.* The Institutional Trustee or any Paying Agent and the Administrators shall comply with all withholding requirements under United States federal, state and local law. The Institutional Trustee or any Paying Agent shall request, and each Holder shall provide to the Institutional Trustee or any Paying Agent, such forms or certificates as are necessary to establish an exemption from withholding with respect to the Holder, and any representations and forms as shall reasonably be requested by the Institutional Trustee or any Paying Agent to assist it in determining the extent of, and in fulfilling, its withholding obligations. The Administrators shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, shall remit amounts withheld with respect to the Holder to applicable jurisdictions. To the extent that the Institutional Trustee or any Paying Agent is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Holder, the amount withheld shall be deemed to be a Distribution to the Holder in the amount of the withholding. In the event of any

claimed overwithholding, Holders shall be limited to an action against the applicable jurisdiction. If the amount required to be withheld was not withheld from actual Distributions made, the Institutional Trustee or any Paying Agent may reduce subsequent Distributions by the amount of such withholding.

## ARTICLE XI AMENDMENTS AND MEETINGS

SECTION 11.1. *Amendments.* (a) Except as otherwise provided in this Declaration or by any applicable terms of the Securities, this Declaration may only be amended by a written instrument approved and executed by

- (i) the Institutional Trustee,
- (ii) if the amendment affects the rights, powers, duties, obligations or immunities of the Delaware Trustee, the Delaware Trustee,
- (iii) if the amendment affects the rights, powers, duties, obligations or immunities of the Administrators, the Administrators, and
- (iv) the Holders of a Majority in liquidation amount of the Common Securities.

(b) Notwithstanding any other provision of this Article XI, no amendment shall be made, and any such purported amendment shall be void and ineffective:

- (i) unless the Institutional Trustee shall have first received

(A) an Officers' Certificate from each of the Trust and the Sponsor that such amendment is permitted by, and conforms to, the terms of this Declaration (including the terms of the Securities); and

(B) an opinion of counsel (who may be counsel to the Sponsor or the Trust) that such amendment is permitted by, and conforms to, the terms of this Declaration (including the terms of the Securities) and that all conditions precedent to the execution and delivery of such amendment have been satisfied; or

- (ii) if the result of such amendment would be to

(A) cause the Trust to cease to be classified for purposes of United States federal income taxation as a grantor trust;

(B) reduce or otherwise adversely affect the powers of the Institutional Trustee in contravention of the Trust Indenture Act; or

(C) cause the Trust to be deemed to be an Investment Company required to be registered under the Investment Company Act.

(c) Except as provided in Section 11.1(d), (e) or (g), no amendment shall be made, and any such purported amendment shall be void and ineffective, unless the Holders of a Majority in liquidation amount of the Capital Securities shall have consented to such amendment.

(d) In addition to and notwithstanding any other provision in this Declaration, without the consent of each affected Holder, this Declaration may not be amended to (i) change the amount or timing of any Distribution on the Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Securities as of a specified date or (ii) restrict the right of a Holder to institute suit for the enforcement of any such payment on or after such date.

(e) Sections 9.1(b) and 9.1(c) and this Section 11.1 shall not be amended without the consent of all of the Holders of the Securities.

(f) The rights of the Holders of the Capital Securities and Common Securities, as applicable, under Article IV to increase or decrease the number of, and appoint and remove, Trustees shall not be amended without the consent of the Holders of a Majority in liquidation amount of the Capital Securities or Common Securities, as applicable.

(g) This Declaration may be amended by the Institutional Trustee and the Holder of a Majority in liquidation amount of the Common Securities without the consent of the Holders of the Capital Securities to:

- (i) cure any ambiguity;
- (ii) correct or supplement any provision in this Declaration that may be defective or inconsistent with any other provision of this Declaration;
- (iii) add to the covenants, restrictions or obligations of the Sponsor;
- (iv) modify, eliminate or add to any provision of this Declaration to such extent as may be necessary or desirable, including, without limitation, to ensure that the Trust will be classified for United States federal income tax purposes at all times as a grantor trust and will not be required to register as an Investment Company under the Investment Company Act (including without limitation to conform to any change in Rule 3a-5, Rule 3a-7 or any other applicable rule under the Investment Company Act or written change in interpretation or application thereof by any legislative body, court, government agency or regulatory authority) which amendment does not have a material adverse effect on the right, preferences or privileges of the Holders of Securities; or
- (v) facilitate the clearance of the Capital Securities through the facilities of The Depository Trust Company or other book-entry system.

*provided, however*, that no such modification, elimination or addition referred to in clause (i), (ii), (iii), (iv) or (v) shall adversely affect the powers, preferences or rights of Holders of Capital Securities (it being understood, for purposes of this proviso, that providing for transfer of the Capital Securities in global or book-entry form shall not be deemed to adversely affect the powers, preferences or rights of Holders of the Capital Securities).

SECTION 11.2. *Meetings of the Holders of the Securities; Action by Written Consent.* (a) Meetings of the Holders of any class of Securities may be called at any time by the Administrators (or as provided in the terms of the Securities) to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Declaration, the terms of the Securities or the rules of any stock exchange on which the Capital Securities are listed or admitted for trading, if any. The Administrators shall call a meeting of the Holders of such class if directed to do so by the Holders of not less than 10% in liquidation amount of such class of Securities. Such direction shall be given by delivering to the Administrators one or more calls in a writing stating that the signing Holders of the Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called. Any Holders of the Securities calling a meeting shall specify in writing the Certificates held by the Holders of the Securities exercising the right to call a meeting and only those Securities represented by such Certificates shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

(b) Except to the extent otherwise provided in the terms of the Securities, the following provisions shall apply to meetings of Holders of the Securities:

- (i) notice of any such meeting shall be given to all the Holders of the Securities having a right to vote thereat at least 7 days and not more than 60 days before the date of such meeting. Whenever a vote, consent or approval of the Holders of the Securities is permitted or required under this Declaration or the rules of any stock exchange on which the Capital Securities are listed

or admitted for trading, if any, such vote, consent or approval may be given at a meeting of the Holders of the Securities. Any action that may be taken at a meeting of the Holders of the Securities may be taken without a meeting if a consent in writing setting forth the action so taken is signed by the Holders of the Securities owning not less than the minimum amount of Securities that would be necessary to authorize or take such action at a meeting at which all Holders of the Securities having a right to vote thereon were present and voting. Prompt notice of the taking of action without a meeting shall be given to the Holders of the Securities entitled to vote who have not consented in writing. The Administrators may specify that any written ballot submitted to the Holders of the Securities for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Administrators;

(ii) each Holder of a Security may authorize any Person to act for it by proxy on all matters in which a Holder of Securities is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Holder of the Securities executing it. Except as otherwise provided herein, all matters relating to the giving, voting or validity of proxies shall be governed by the General Corporation Law of the State of Delaware relating to proxies, and judicial interpretations thereunder, as if the Trust were a Delaware corporation and the Holders of the Securities were stockholders of a Delaware corporation; each meeting of the Holders of the Securities shall be conducted by the Administrators or by such other Person that the Administrators may designate; and

(iii) unless the Statutory Trust Act, this Declaration, the terms of the Securities, the Trust Indenture Act or the listing rules of any stock exchange on which the Capital Securities are then listed for trading, if any, otherwise provides, the Administrators, in their sole discretion, shall establish all other provisions relating to meetings of Holders of Securities, including notice of the time, place or purpose of any meeting at which any matter is to be voted on by any Holders of the Securities, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote; provided, however, that each meeting shall be conducted in the United States (as that term is defined in Treasury Regulations § 301.7701-7).

## ARTICLE XII

### REPRESENTATIONS OF INSTITUTIONAL TRUSTEE AND DELAWARE TRUSTEE

SECTION 12.1. *Representations and Warranties of Institutional Trustee.* The Trustee that acts as initial Institutional Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, and each Successor Institutional Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Institutional Trustee's acceptance of its appointment as Institutional Trustee, that:

(a) the Institutional Trustee is a banking corporation or national association with trust powers, duly organized, validly existing and in good standing under the laws of the State of Delaware or the United States of America, respectively, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration;

(b) the Institutional Trustee has a combined capital and surplus of at least fifty million U.S. dollars (\$50,000,000);

(c) the Institutional Trustee is not an affiliate of the Sponsor, nor does the Institutional Trustee offer or provide credit or credit enhancement to the Trust;

(d) the execution, delivery and performance by the Institutional Trustee of this Declaration has been duly authorized by all necessary action on the part of the Institutional Trustee. This Declaration has been duly executed and delivered by the Institutional Trustee, and under Delaware law (excluding any securities laws) constitutes a legal, valid and binding obligation of the Institutional Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether considered in a proceeding in equity or at law);

(e) the execution, delivery and performance of this Declaration by the Institutional Trustee does not conflict with or constitute a breach of the charter or by-laws of the Institutional Trustee; and

(f) no consent, approval or authorization of, or registration with or notice to, any state or federal banking authority governing the trust powers of the Institutional Trustee is required for the execution, delivery or performance by the Institutional Trustee of this Declaration.

SECTION 12.2. *Representations and Warranties of Delaware Trustee.* The Trustee that acts as initial Delaware Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, and each Successor Delaware Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Delaware Trustee's acceptance of its appointment as Delaware Trustee that:

(a) if it is not a natural person, the Delaware Trustee is duly organized, validly existing and in good standing under the laws of the State of Delaware;

(b) if it is not a natural person, the execution, delivery and performance by the Delaware Trustee of this Declaration has been duly authorized by all necessary corporate action on the part of the Delaware Trustee. This Declaration has been duly executed and delivered by the Delaware Trustee, and under Delaware law (excluding any securities laws) constitutes a legal, valid and binding obligation of the Delaware Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether considered in a proceeding in equity or at law);

(c) if it is not a natural person, the execution, delivery and performance of this Declaration by the Delaware Trustee does not conflict with or constitute a breach of the charter or by-laws of the Delaware Trustee;

(d) it has trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration;

(e) no consent, approval or authorization of, or registration with or notice to, any state or federal banking authority governing the trust powers of the Delaware Trustee is required for the execution, delivery or performance by the Delaware Trustee of this Declaration; and

(f) the Delaware Trustee is a natural person who is a resident of the State of Delaware or, if not a natural person, it is an entity which has its principal place of business in the State of Delaware and, in either case, a Person that satisfies for the Trust the requirements of Section 3807 of the Statutory Trust Act.

**ARTICLE XIII**

**MISCELLANEOUS**

SECTION 13.1. *Notices.* All notices provided for in this Declaration shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied (which telecopy shall be followed by notice delivered or mailed by first class mail) or mailed by first class mail, as follows:

(a) if given to the Trust, in care of the Administrators at the Trust's mailing address set forth below (or such other address as the Trust may give notice of to the Holders of the Securities):

Impac Capital Trust #4  
c/o Impac Mortgage Holdings, Inc.  
1401 Dove Street  
Newport Beach, California, 92660  
Attention: Gretchen Verdugo  
Telecopy: (949) 475-3967  
Telephone: (949) 475-3600

(b) if given to the Delaware Trustee, at the mailing address set forth below (or such other address as the Delaware Trustee may give notice of to the Holders of the Securities):

Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, DE 19890-0001  
Attention: Corporate Trust Administrator  
Telecopy: (302) 636-4140  
Telephone: (302) 636-6410

(c) if given to the Institutional Trustee, at the Institutional Trustee's mailing address set forth below (or such other address as the Institutional Trustee may give notice of to the Holders of the Securities):

Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, DE 19890-0001  
Attention: Corporate Trust Administrator  
Telecopy: (302) 636-4140  
Telephone: (302) 636-6410

(d) if given to the Holder of the Common Securities, at the mailing address of the Sponsor set forth below (or such other address as the Holder of the Common Securities may give notice of to the Trust):

Impac Mortgage Holdings, Inc.  
1401 Dove Street  
Newport Beach, California, 92660  
Attention: Gretchen Verdugo  
Telecopy: (949) 475-3967  
Telephone: (949) 475-3600

(e) if given to any other Holder, at the address set forth on the books and records of the Trust.

All such notices shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid, except that if a notice or other document is

refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 13.2. *Governing Law.* This Declaration and the rights and obligations of the parties hereunder shall be governed by and interpreted in accordance with the law of the State of Delaware and all rights, obligations and remedies shall be governed by such laws without regard to the principles of conflict of laws of the State of Delaware or any other jurisdiction that would call for the application of the law of any jurisdiction other than the State of Delaware.

SECTION 13.3. *Submission to Jurisdiction.* (a) Each of the parties hereto agrees that any suit, action or proceeding arising out of or based upon this Declaration, or the transactions contemplated hereby, may be instituted in any of the courts of the State of New York and the United States District Courts, in each case located in the Borough of Manhattan, City and State of New York, and further agrees to submit to the jurisdiction of any competent court in the place of its corporate domicile in respect of actions brought against it as a defendant. In addition, each such party irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of such suit, action or proceeding brought in any such court and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum and irrevocably waives any right to which it may be entitled on account of its place of corporate domicile. Each such party hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Declaration or the transactions contemplated hereby. Each such party agrees that final judgment in any proceedings brought in such a court shall be conclusive and binding upon it and may be enforced in any court to the jurisdiction of which it is subject by a suit upon such judgment.

(b) Each of the Sponsor, the Trustees, the Administrators and the Holder of the Common Securities irrevocably consents to the service of process on it in any such suit, action or proceeding by the mailing thereof by registered or certified mail, postage prepaid, to it at its address given in or pursuant to Section 13.1 hereof.

(c) To the extent permitted by law, nothing herein contained shall preclude any party from effecting service of process in any lawful manner or from bringing any suit, action or proceeding in respect of this Declaration in any other state, country or place.

SECTION 13.4. *Intention of the Parties.* It is the intention of the parties hereto that the Trust be classified for United States federal income tax purposes as a grantor trust. The provisions of this Declaration shall be interpreted to further this intention of the parties.

SECTION 13.5. *Headings.* Headings contained in this Declaration are inserted for convenience of reference only and do not affect the interpretation of this Declaration or any provision hereof.

SECTION 13.6. *Successors and Assigns.* Whenever in this Declaration any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Declaration by the Sponsor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether or not so expressed.

SECTION 13.7. *Partial Enforceability.* If any provision of this Declaration, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Declaration, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION 13.8. *Counterparts.* This Declaration may contain more than one counterpart of the signature page and this Declaration may be executed by the affixing of the signature of each of the Trustees and Administrators to any of such counterpart signature pages. All of such counterpart



signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the undersigned have caused this Declaration to be duly executed as of the day and year first above written.

Wilmington Trust Company,  
as Delaware Trustee

By: /s/ MICHELE C. HARRA

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Name: Michele C. Harra  
Title: Financial Services Officer

Wilmington Trust Company,  
as Institutional Trustee

By: /s/ MICHELE C. HARRA

Name: Michele C. Harra  
Title: Financial Services Officer

Impac Mortgage Holdings, Inc.  
as Sponsor

By: /s/ GRETCHEN VERDUGO

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Name: Gretchen Verdugo  
Title: EVP/Chief Accounting Officer

/s/ GRETCHEN VERDUGO

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Administrator

/s/ RONALD MORRISON

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Administrator

## ANNEX I

### TERMS OF FIXED/FLOATING RATE TruPS® AND FIXED/FLOATING RATE COMMON SECURITIES

Pursuant to Section 6.1 of the Amended and Restated Declaration of Trust, dated as of October 18, 2005 (as amended from time to time, the "Declaration"), the designation, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities and the Common Securities are set out below (each capitalized term used but not defined herein has the meaning set forth in the Declaration):

1. *Designation and Number.* (a) Capital Securities. 20,000 Capital Securities of Impac Capital Trust #4 (the "Trust"), with an aggregate stated liquidation amount with respect to the assets of the Trust of Twenty Million Dollars (\$20,000,000) and a stated liquidation amount with respect to the assets of the Trust of \$1,000 per Capital Security, are hereby designated for the purposes of identification only as the "Fixed/Floating Rate TruPS®" (the "Capital Securities"). Subject to Section 8.2 of the Declaration, the Capital Security Certificates evidencing the Capital Securities shall be substantially in the form of Exhibit A-1 to the Declaration, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange on which the Capital Securities are listed, if any.

(b) Common Securities. 620 Common Securities of the Trust (the "Common Securities") will be evidenced by Common Security Certificates substantially in the form of Exhibit A-2 to the Declaration, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice. In the absence of an Event of Default, the Common Securities will have an aggregate stated liquidation amount with respect to the assets of the Trust of Six-Hundred Twenty Thousand Dollars (\$620,000) and a stated liquidation amount with respect to the assets of the Trust of \$1,000 per Common Security.

2. *Distributions.* (a) Distributions payable on each Security will be payable (i) until July 30, 2010, at a fixed rate per annum equal to 8.55% and (ii) from and including July 30, 2010, at a floating rate of interest per annum, reset quarterly, equal to LIBOR, as determined on the LIBOR Determination Date for such Distribution Period (as defined herein), plus 3.75% (the "Coupon Rate") of the stated liquidation amount of \$1,000 per Security, such rate being the rate of interest payable on the Debentures to be held by the Institutional Trustee. Except as set forth below in respect of an Extension Period, Distributions in arrears for more than one quarterly period will bear interest thereon compounded quarterly at the applicable Coupon Rate for each such quarterly period (to the extent permitted by applicable law). The term "Distributions" as used herein includes cash distributions, any such compounded distributions and any Additional Amounts payable on the Debentures unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Institutional Trustee and to the extent the Institutional Trustee has funds legally available in the Property Account therefor. The amount of Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of (i) until July 30, 2010, a 360-day year consisting of twelve 30-day months and (ii) from and including July 30, 2010, a 360-day year and the actual number of days elapsed in the relevant Distribution Period.

The term "Distribution Period" means the period from and including the immediately preceding Distribution Payment Date or in the case of the first Distribution Period, the date of the original issuance of the securities to, but excluding, the next applicable Distribution Payment Date or in the case of the last Distribution Period, the date of redemption.

(b) LIBOR for a given Distribution Period shall be determined by the Calculation Agent in accordance with the following provisions:

(i) On the second LIBOR Business Day (provided, that on such day commercial banks are open for business (including dealings in foreign currency deposits) in London (a "LIBOR Banking Day"), and otherwise the next preceding LIBOR Business Day that is also a LIBOR Banking Day) prior to April 30, July 30, October 30 and January 30, as the case may be, immediately prior to the commencement of such Distribution Period (each such day, a "LIBOR Determination Date"), LIBOR shall equal the rate, as obtained by the Calculation Agent, for three-month U.S. Dollar deposits in Europe which appears on 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 Telerate Page 3750, as of 11:00 a.m. (London time) on such LIBOR Determination Date, as reported by Bloomberg Financial Markets Commodities News. "LIBOR Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banking institutions in New York, New York or Wilmington, Delaware are authorized or obligated by law or executive order to be closed. If such rate is superseded on Telerate Page 3750 by a corrected rate before 12:00 noon (London time) on the same LIBOR Determination Date, the corrected rate as so substituted will be the applicable LIBOR for that LIBOR Determination Date.

(ii) If, on any LIBOR Determination Date, such rate does not appear on Telerate Page 3750 as reported by Bloomberg Financial Markets Commodities News or such other page as may replace such Telerate 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 U.S. Dollar deposits in Europe (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 the arithmetic mean of such quotations. If, on any LIBOR Determination Date, only one or none of the Reference Banks provides such a quotation, LIBOR shall be deemed to be the arithmetic mean of the offered quotations that at least two leading banks in the City of New York (as selected by the Calculation Agent) are quoting on the relevant LIBOR Determination Date for three-month U.S. Dollar deposits in Europe at approximately 11:00 a.m. (London time) in an amount determined by the Calculation Agent. As used herein, "Reference Banks" means four major banks in the London interbank market selected by the Calculation Agent.

(iii) 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 for such Distribution Period shall be LIBOR in effect during the immediately preceding Distribution Period.

(c) All percentages resulting from any calculations on the Securities will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with five one-millionths of a percentage point rounded upward (e.g., 9.876545% (or .09876545) being rounded to 9.87655% (or .0987655)), and all dollar amounts used in or resulting from such calculation will be rounded to the nearest cent (with one-half cent being rounded upward).

(d) On each LIBOR Determination Date, the Calculation Agent shall notify, in writing, the Sponsor and the Paying Agent of the applicable Coupon Rate in effect for the related Distribution payment period. The Calculation Agent shall, upon the request of the Holder of any Securities, provide the Coupon Rate then in effect. All calculations made by the Calculation Agent in the absence of manifest error shall be conclusive for all purposes and binding on the Sponsor and the Holders of the Securities. The Paying Agent shall be entitled to rely on information received from the Calculation

Agent or the Sponsor as to the Coupon Rate. The Sponsor shall, from time to time, provide any necessary information to the Paying Agent relating to any original issue discount and interest on the Securities that is included in any payment and reportable for taxable income calculation purposes.

(e) Distributions on the Securities will be cumulative, will accrue from the date of original issuance, and will be payable, subject to extension of Distribution payment periods as described herein, 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"). The Debenture Issuer has the right under the Indenture to defer payments of interest on the Debentures by extending the interest payment period for up to 20 consecutive quarterly periods (each, an "Extension Period") at any time and from time to time on the Debentures, subject to the conditions described below, during which Extension Period no interest shall be due and payable. During any Extension Period, interest will continue to accrue on the Debentures, and interest on such accrued interest (such accrued interest and interest thereon referred to herein as "Deferred Interest") will accrue at an annual rate equal to the applicable Coupon Rate in effect for each such Extension Period, compounded quarterly from the date such Deferred Interest would have been payable were it not for the Extension Period, to the extent permitted by law. No Extension Period may end on a date other than a Distribution Payment Date. At the end of any such Extension Period, the Debenture Issuer shall pay all Deferred Interest then accrued and unpaid on the Debentures; *provided, however*, that no Extension Period may extend beyond the Maturity Date, Redemption Date or Special Redemption Date and *provided, further*, that, during any such Extension Period, the Debenture Issuer may 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 Debenture Issuer's capital stock or (ii) make any payment due on or repay, repurchase or redeem any debt securities of the Debenture Issuer that rank *pari passu* in all respects with or junior in interest to the Debentures (other than (a) repurchases, redemptions or other acquisitions of shares of capital stock of the Debenture Issuer (1) 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, (2) in connection with a dividend reinvestment or stockholder stock purchase plan or (3) in connection with the issuance of capital stock of the Debenture Issuer (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 any exchange or conversion of any class or series of the Debenture Issuer's capital stock (or any capital stock of a subsidiary of the Debenture Issuer) for any class or series of the Debenture Issuer's capital stock or of any class or series of the Debenture Issuer's indebtedness for any class or series of the Debenture Issuer's capital stock, (c) the purchase of fractional interests in shares of the Debenture Issuer'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). Prior to the termination of any Extension Period, the Debenture Issuer may further extend such period, *provided*, that such period together with all such previous and further consecutive extensions thereof shall not exceed 20 consecutive quarterly periods, or extend beyond the Maturity Date, Redemption Date or Special Redemption Date. Upon the termination of any Extension Period and upon the payment of all Deferred Interest, the Debenture Issuer may commence a new Extension Period, subject to the foregoing requirements. No interest or Deferred Interest shall be due and payable during an Extension Period, except at the end thereof, but Deferred Interest shall accrue upon each installment of interest that would otherwise have been due and payable during such Extension Period until such installment is paid. The deferral of the payment of interest during an Extension Period shall not defer the payment of any Additional Amounts that may be due. If Distributions are deferred, the Distributions due shall

be paid on the date that the related Extension Period terminates, or, if such date is not a Distribution Payment Date, on the immediately following Distribution Payment Date, to Holders of the Securities as they appear on the books and records of the Trust on the record date immediately preceding such 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 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.

(f) Distributions on the Securities will be payable to the Holders thereof as they appear on the books and records of the Registrar on the relevant record dates. The relevant record dates shall be selected by the Administrators, which dates shall be 15 days before the relevant payment dates. Distributions payable on any Securities that are not punctually paid on any Distribution Payment Date, as a result of the Debenture Issuer having failed to make a payment under the Debentures, as the case may be, when due (taking into account any Extension Period), will cease to be payable to the Person in whose name such Securities are registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Securities are registered on the special record date or other specified date determined in accordance with the Indenture. If any Distribution Payment Date falls on a day that is not a Business Day, then Distributions payable on such date will be made on the next succeeding Business Day, in each case with the same force and effect as if made on the applicable Distribution Payment Date.

(g) In the event that there is any money or other property held by or for the Trust that is not accounted for hereunder, such property shall be distributed pro rata (as defined herein) among the Holders of the Securities.

3. *Liquidation Distribution upon Dissolution.* In the event of the voluntary or involuntary liquidation, dissolution, winding-up or termination of the Trust (each, a "Liquidation") other than in connection with a redemption of the Debentures, the Holders of the Securities will be entitled to receive out of the assets of the Trust available for distribution to Holders of the Securities, after satisfaction of liabilities to creditors of the Trust (to the extent not satisfied by the Debenture Issuer), distributions equal to the aggregate of the stated liquidation amount of \$1,000 per Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless in connection with such Liquidation, the Debentures in an aggregate stated principal amount equal to the aggregate stated liquidation amount of such Securities, with an interest rate equal to the Coupon Rate of, and bearing accrued and unpaid interest in an amount equal to the accrued and unpaid Distributions on, and having the same record date as, such Securities, after paying or making reasonable provision to pay all claims and obligations of the Trust in accordance with Section 3808(e) of the Statutory Trust Act, shall be distributed on a Pro Rata basis to the Holders of the Securities in exchange for such Securities.

The Sponsor, as the Holder of all of the Common Securities, has the right at any time, upon receipt of an opinion of nationally recognized tax counsel that Holders will not recognize any gain or loss for United States Federal income tax purposes as a result of the distribution of Debentures, to dissolve the Trust (including without limitation upon the occurrence of a Tax Event or an Investment Company Event), and, after satisfaction of liabilities to creditors of the Trust, cause the Debentures to be distributed to the Holders of the Securities on a Pro Rata basis in accordance with the aggregate stated liquidation amount thereof.

The Trust shall dissolve on the first to occur of (i) July 30, 2040, the expiration of the term of the Trust, (ii) a Bankruptcy Event with respect to the Sponsor, the Trust or the Debenture Issuer, (iii) (other than in connection with a merger, consolidation or similar transaction not prohibited by the Indenture or this Declaration, as the case may be) the filing of a certificate of dissolution of the Sponsor or upon the revocation of the charter of the Sponsor and the expiration of 90 days after the

date of revocation without a reinstatement thereof, (iv) the distribution to the Holders of the Securities of the Debentures, upon exercise of the right of the Holder of all of the outstanding Common Securities to dissolve the Trust as described above, (v) the entry of a decree of a judicial dissolution of the Sponsor or the Trust, or (vi) the date when all of the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders in accordance with the terms of the Securities. As soon as practicable after the dissolution of the Trust and upon completion of the winding up of the Trust, the Trust shall terminate upon the filing of a certificate of cancellation with the Secretary of State of the State of Delaware.

If a Liquidation of the Trust occurs as described in clause (i), (ii), (iii) or (v) in the immediately preceding paragraph, the Trust shall be liquidated by the Institutional Trustee of the Trust as expeditiously as such Trustee determines to be possible by distributing, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, to the Holders of the Securities, the Debentures on a Pro Rata basis to the extent not satisfied by the Debenture Issuer, unless such distribution is determined by the Institutional Trustee not to be practical, in which event such Holders will be entitled to receive out of the assets of the Trust available for distribution to the Holders, after satisfaction of liabilities to creditors of the Trust to the extent not satisfied by the Debenture Issuer, an amount equal to the Liquidation Distribution. An early Liquidation of the Trust pursuant to clause (iv) of the immediately preceding paragraph shall occur if the Institutional Trustee determines that such Liquidation is possible by distributing, after satisfaction of liabilities to creditors of the Trust, to the Holders of the Securities on a Pro Rata basis, the Debentures, and such distribution occurs.

If, upon any such Liquidation, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on such Capital Securities shall be paid to the Holders of the Securities on a Pro Rata basis, except that if an Event of Default has occurred and is continuing, the Capital Securities shall have a preference over the Common Securities with regard to such distributions.

Upon any such Liquidation of the Trust involving a distribution of the Debentures, if at the time of such Liquidation, the Capital Securities were rated by at least one nationally-recognized statistical rating organization, the Debenture Issuer will use its reasonable best efforts to obtain from at least one such or other rating organization a rating for the Debentures.

After the date for any distribution of the Debentures upon dissolution of the Trust, (i) the Securities of the Trust will be deemed to be no longer outstanding, (ii) any certificates representing the Capital Securities will be deemed to represent undivided beneficial interests in such of the Debentures as have an aggregate principal amount equal to the aggregate stated liquidation amount of, with an interest rate identical to the distribution rate of, and bearing accrued and unpaid interest equal to accrued and unpaid distributions on, the Securities until such certificates are presented to the Debenture Issuer or its agent for transfer or reissuance (and until such certificates are so surrendered, no payments of interest or principal shall be made to Holders of Securities in respect of any payments due and payable under the Debentures) and (iii) all rights of Holders of Securities under the Capital Securities or the Common Securities, as applicable, shall cease, except the right of such Holders to receive Debentures upon surrender of certificates representing such Securities.

4. *Redemption and Distribution.* (a) The Debentures will mature on July 30, 2035. The Debentures may be redeemed by the Debenture Issuer, in whole or in part, on any Distribution Payment Date on or after July 30, 2010, at the Redemption Price, upon not less than 30 nor more than 60 days' notice to Holders of such Debentures. In addition, upon the occurrence and continuation of a Tax Event or an Investment Company Event, the Debentures may be redeemed by the Debenture Issuer in whole but not in part, at any time within 90 days following the occurrence of such Tax Event or Investment Company Event, as the case may be (the "Special Redemption Date"), at the Special

Redemption Price, upon not less than 30 nor more than 60 days' notice to Holders of the Debentures so long as such Tax Event or Investment Company Event, as the case may be, is continuing.

"Tax Event" means the receipt by the Debenture Issuer and the Trust of an opinion of counsel experienced in such matters to the effect that, as a result of 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 as a result of any official administrative pronouncement (including any private letter ruling, technical advice memorandum, regulatory procedure, notice or announcement)(an "Administrative Action") or judicial decision interpreting or applying such laws or regulations, regardless of whether such Administrative Action or judicial decision is issued to or in connection with a proceeding involving the Debenture Issuer or the Trust and whether or not subject to review or appeal, which amendment, clarification, change, Administrative Action or decision is enacted, promulgated or announced, in each case on or after the date of original issuance of the Debentures, there is more than an insubstantial risk that: (i) the Trust is, or will be within 90 days of the date of such opinion, subject to United States federal income tax with respect to income received or accrued on the Debentures; (ii) interest payable by the Debenture Issuer on the Debentures is not, or within 90 days of the date of such opinion, will not be, deductible by the Debenture Issuer, in whole or in part, for United States federal income tax purposes; or (iii) the Trust is, or will be within 90 days of the date of such opinion, subject to more than a de minimis amount of other taxes (including withholding taxes), duties, assessments or other governmental charges.

"Investment Company Event" means the receipt by the Debenture Issuer and the Trust of an opinion of counsel experienced in such matters to the effect that, as a result of a change in law or regulation or 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 Trust is or, within 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 original issuance of the Debentures.

"Special Event" means either a Tax Event or an Investment Company Event.

"Redemption Price" means 100% of the principal amount of the Debentures being redeemed plus accrued and unpaid interest on such Debentures to the Redemption Date or, in the case of redemption in full at maturity, the Maturity Date, or, in the case of a redemption due to the occurrence of a Special Event, to the Special Redemption Date if such Special Redemption Date is on or after July 30, 2010.

"Special Redemption Price" means 107.5% of the principal amount of the Debentures being redeemed pursuant to Section 10.02 of the Indenture plus accrued and unpaid interest on such Debentures to the Special Redemption Date and (2) if the Special Redemption Date is on or after July 30, 2010, the Redemption Price for such Special Redemption Date.

"Redemption Date" means the date fixed for the redemption of Capital Securities, which shall be any Distribution Payment Date on or after July 30, 2010.

(b) Upon repayment at maturity or redemption in whole or in part of the Debentures (other than following the distribution of the Debentures to the Holders of the Securities), the proceeds from such repayment or payment shall concurrently be applied to redeem Pro Rata at the applicable Redemption Price, Securities having an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so repaid or redeemed; *provided, however*, that holders of such Securities shall be given not less than 30 nor more than 60 days' notice of such redemption (other than at the scheduled maturity of the Debentures).

(c) If fewer than all the outstanding Securities are to be so redeemed, the Common Securities and the Capital Securities will be redeemed Pro Rata and the Capital Securities to be redeemed will be as described in Section 4(e)(i) below.

(d) The Trust may not redeem fewer than all the outstanding Capital Securities unless all accrued and unpaid Distributions have been paid on all Capital Securities for all quarterly Distribution periods terminating on or before the date of redemption.

(e) Redemption or Distribution Procedures.

(i) Notice of any redemption of, or notice of distribution of the Debentures in exchange for, the Securities (a "Redemption/Distribution Notice") will be given by the Trust by mail to each Holder of Securities to be redeemed or exchanged not fewer than 30 nor more than 60 days before the date fixed for redemption or exchange thereof which, in the case of a redemption, will be the date fixed for redemption of the Debentures. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this Section 4(e)(i), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first-class mail, postage prepaid, to Holders of such Securities. Each Redemption/Distribution Notice shall be addressed to the Holders of such Securities at the address of each such Holder appearing on the books and records of the Registrar. No defect in the Redemption/Distribution Notice or in the mailing thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(ii) In the event that fewer than all the outstanding Securities are to be redeemed, the Securities to be redeemed shall be redeemed Pro Rata from each Holder of Capital Securities.

(iii) If the Securities are to be redeemed and the Trust gives a Redemption/Distribution Notice, which notice may only be issued if the Debentures are redeemed as set out in this Section 4 (which notice will be irrevocable), then, provided, that the Institutional Trustee has a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, the Institutional Trustee will pay the relevant Redemption Price to the Holders of such Securities by check mailed to the address of each such Holder appearing on the books and records of the Trust on the redemption date. If a Redemption/Distribution Notice shall have been given and funds deposited as required, then immediately prior to the close of business on the date of such deposit, Distributions will cease to accrue on the Securities so called for redemption and all rights of Holders of such Securities so called for redemption will cease, except the right of the Holders of such Securities to receive the applicable Redemption Price or Special Redemption Price specified in Section 4(a), but without interest on such Redemption Price. If any date fixed for redemption of Securities is not a Business Day, then payment of any such Redemption Price or Special Redemption Price payable on such date will be made on the next succeeding day that is a Business Day except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If payment of the Redemption Price or Special Redemption Price in respect of any Securities is improperly withheld or refused and not paid by the Trust, Distributions on such Securities will continue to accrue at the then applicable rate from the original redemption date to the actual date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price or Special Redemption Price. In the event of any redemption of the Capital Securities issued by the Trust in part, the Trust shall not be required to (i) issue, register the transfer of or exchange any Security during a period beginning at the opening of business 15 days before any selection for redemption of the Capital Securities and ending at the close of business on the earliest date on which the relevant notice of redemption is deemed to have been given to all Holders of the Capital Securities to be so redeemed or (ii) register the transfer of or exchange any Capital



Securities so selected for redemption, in whole or in part, except for the unredeemed portion of any Capital Securities being redeemed in part.

(iv) Redemption/Distribution Notices shall be sent by the Administrators on behalf of the Trust (A) in respect of the Capital Securities, to the Holders thereof, and (B) in respect of the Common Securities, to the Holder thereof.

(v) Subject to the foregoing and applicable law (including, without limitation, United States federal securities laws), and provided, that the acquiror is not the Holder of the Common Securities or the obligor under the Indenture, 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.

5. *Voting Rights—Capital Securities.* (a) Except as provided under Sections 5(b) and 7 and as otherwise required by law and the Declaration, the Holders of the Capital Securities will have no voting rights. The Administrators are required to call a meeting of the Holders of the Capital Securities if directed to do so by Holders of not less than 10% in liquidation amount of the Capital Securities.

(b) Subject to the requirements of obtaining a tax opinion by the Institutional Trustee in certain circumstances set forth in the last sentence of this paragraph, the Holders of a Majority in liquidation amount of the Capital Securities, voting separately as a class, have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Institutional Trustee, or exercising any trust or power conferred upon the Institutional Trustee under the Declaration, including the right to direct the Institutional Trustee, as holder of the Debentures, to (i) exercise the remedies available under the Indenture as the holder of the Debentures, (ii) waive any past default that is waivable under the Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable or (iv) consent on behalf of all the Holders of the Capital Securities to any amendment, modification or termination of the Indenture or the Debentures where such consent shall be required; *provided, however*, that, where a consent or action under the Indenture would require the consent or act of the holders of greater than a simple majority in principal amount of Debentures (a "Super Majority") affected thereby, the Institutional Trustee may only give such consent or take such action at the written direction of the Holders of not less than the proportion in liquidation amount of the Capital Securities outstanding which the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding. If the Institutional Trustee fails to enforce its rights under the Debentures after the Holders of a Majority in liquidation amount of such Capital Securities have so directed the Institutional Trustee, to the fullest extent permitted by law, a Holder of the Capital Securities may institute a legal proceeding directly against the Debenture Issuer to enforce the Institutional Trustee's rights under the Debentures without first instituting any legal proceeding against the Institutional Trustee or any other person or entity. Notwithstanding the foregoing, if an Event of Default has occurred and is continuing and such event is attributable to the failure of the Debenture Issuer to pay interest or principal on the Debentures on the date the interest or principal is payable (or in the case of redemption, the redemption date), then a Holder of record of the Capital Securities may directly institute a proceeding for enforcement of payment, on or after the respective due dates specified in the Debentures, to such Holder directly of the principal of or interest on the Debentures having an aggregate principal amount equal to the aggregate liquidation amount of the Capital Securities of such Holder. The Institutional Trustee shall notify all Holders of the Capital Securities of any default actually known to the Institutional Trustee with respect to the Debentures unless (x) such default has been cured prior to the giving of such notice or (y) the Institutional Trustee determines in good faith that the withholding of such notice is in the interest of the Holders of such Capital Securities, except where the default relates to the payment of principal of or interest on any of the Debentures. Where such default constitutes an Indenture Event of Default, such notice shall state that such Indenture Event of Default also constitutes an Event of Default hereunder. Except with respect to directing the time, method and place of conducting a

proceeding for a remedy, the Institutional Trustee shall not take any of the actions described in clause (i), (ii) or (iii) above unless the Institutional Trustee has obtained an opinion of tax counsel to the effect that, as a result of such action, the Trust will not be classified as other than a grantor trust for United States federal income tax purposes.

In the event the consent of the Institutional Trustee, as the holder of the Debentures is required under the Indenture with respect to any amendment, modification or termination of the Indenture, the Institutional Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination and shall vote with respect to such amendment, modification or termination as directed by a Majority in liquidation amount of the Securities voting together as a single class; *provided, however*, that where a consent under the Indenture would require the consent of a Super Majority, the Institutional Trustee may only give such consent at the written direction of the Holders of not less than the proportion in liquidation amount of such Securities outstanding which the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding. The Institutional Trustee shall not take any such action in accordance with the written directions of the Holders of the Securities unless the Institutional Trustee has obtained an opinion of tax counsel to the effect that, as a result of such action, the Trust will not be classified as other than a grantor trust for United States federal income tax purposes.

A waiver of an Indenture Event of Default will constitute a waiver of the corresponding Event of Default hereunder. Any required approval or direction of Holders of the Capital Securities may be given at a separate meeting of Holders of the Capital Securities convened for such purpose, at a meeting of all of the Holders of the Securities in the Trust or pursuant to written consent. The Institutional Trustee will cause a notice of any meeting at which Holders of the Capital Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of record of the Capital Securities. Each such notice will include a statement setting forth the following information (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents. No vote or consent of the Holders of the Capital Securities will be required for the Trust to redeem and cancel Capital Securities or to distribute the Debentures in accordance with the Declaration and the terms of the Securities.

Notwithstanding that Holders of the Capital Securities are entitled to vote or consent under any of the circumstances described above, any of the Capital Securities that are owned by the Sponsor or any Affiliate of the Sponsor shall not entitle the Holder thereof to vote or consent and shall, for purposes of such vote or consent, be treated as if such Capital Securities were not outstanding.

In no event will Holders of the Capital Securities have the right to vote to appoint, remove or replace the Administrators, which voting rights are vested exclusively in the Sponsor as the Holder of all of the Common Securities of the Trust. Under certain circumstances as more fully described in the Declaration, Holders of Capital Securities have the right to vote to appoint, remove or replace the Institutional Trustee and the Delaware Trustee.

6. *Voting Rights—Common Securities.* (a) Except as provided under Sections 6(b), 6(c) and 7 and as otherwise required by law and the Declaration, the Common Securities will have no voting rights.

(b) The Holders of the Common Securities are entitled, in accordance with Article IV of the Declaration, to vote to appoint, remove or replace any Administrators.

(c) Subject to Section 6.7 of the Declaration and only after each Event of Default (if any) with respect to the Capital Securities has been cured, waived or otherwise eliminated and subject to the requirements of the second to last sentence of this paragraph, the Holders of a Majority in liquidation

amount of the Common Securities, voting separately as a class, may direct the time, method, and place of conducting any proceeding for any remedy available to the Institutional Trustee, or exercising any trust or power conferred upon the Institutional Trustee under the Declaration, including (i) directing the time, method, place of conducting any proceeding for any remedy available to the Debenture Trustee, or exercising any trust or power conferred on the Debenture Trustee with respect to the Debentures, (ii) waiving any past default and its consequences that are waivable under the Indenture, or (iii) exercising any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable, *provided, however*, that, where a consent or action under the Indenture would require a Super Majority, the Institutional Trustee may only give such consent or take such action at the written direction of the Holders of not less than the proportion in liquidation amount of the Common Securities which the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding. Notwithstanding this Section 6(c), the Institutional Trustee shall not revoke any action previously authorized or approved by a vote or consent of the Holders of the Capital Securities. Other than with respect to directing the time, method and place of conducting any proceeding for any remedy available to the Institutional Trustee or the Debenture Trustee as set forth above, the Institutional Trustee shall not take any action described in clause (i), (ii) or (iii) above, unless the Institutional Trustee has obtained an opinion of tax counsel to the effect that for the purposes of United States federal income tax the Trust will not be classified as other than a grantor trust on account of such action. If the Institutional Trustee fails to enforce its rights under the Declaration, to the fullest extent permitted by law any Holder of the Common Securities may institute a legal proceeding directly against any Person to enforce the Institutional Trustee's rights under the Declaration, without first instituting a legal proceeding against the Institutional Trustee or any other Person.

Any approval or direction of Holders of the Common Securities may be given at a separate meeting of Holders of the Common Securities convened for such purpose, at a meeting of all of the Holders of the Securities in the Trust or pursuant to written consent. The Administrators will cause a notice of any meeting at which Holders of the Common Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of the Common Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

No vote or consent of the Holders of the Common Securities will be required for the Trust to redeem and cancel Common Securities or to distribute the Debentures in accordance with the Declaration and the terms of the Securities.

7. *Amendments to Declaration and Indenture.* (a) In addition to any requirements under Section 11.1 of the Declaration, if any proposed amendment to the Declaration provides for, or the Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or special rights of the Securities, whether by way of amendment to the Declaration or otherwise, or (ii) the Liquidation of the Trust, other than as described in Section 7.1 of the Declaration, then the Holders of outstanding Securities, voting together as a single class, will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of the Holders of not less than a Majority in liquidation amount of the Securities affected thereby; *provided, however*, if any amendment or proposal referred to in clause (i) above would adversely affect only the Capital Securities or only the Common Securities, then only the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of a Majority in liquidation amount of such class of Securities.

(b) In the event the consent of the Institutional Trustee as the holder of the Debentures is required under the Indenture with respect to any amendment, modification or termination of the

Indenture or the Debentures, the Institutional Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination and shall vote with respect to such amendment, modification, or termination as directed by a Majority in liquidation amount of the Securities voting together as a single class; *provided, however*, that where a consent under the Indenture would require a Super Majority, the Institutional Trustee may only give such consent at the written direction of the Holders of not less than the proportion in liquidation amount of the Securities which the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding.

(c) Notwithstanding the foregoing, no amendment or modification may be made to the Declaration if such amendment or modification would (i) cause the Trust to be classified for purposes of United States federal income taxation as other than a grantor trust, (ii) reduce or otherwise adversely affect the powers of the Institutional Trustee or (iii) cause the Trust to be deemed an "investment company" which is required to be registered under the Investment Company Act.

(d) Notwithstanding any provision of the Declaration, the right of any Holder of the Capital Securities to receive payment of distributions and other payments upon redemption or otherwise, on or after their respective due dates, or to institute a suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder. For the protection and enforcement of the foregoing provision, each and every Holder of the Capital Securities shall be entitled to such relief as can be given either at law or equity.

8. *Pro Rata.* A reference in these terms of the Securities to any payment, distribution or treatment as being "Pro Rata" shall mean pro rata to each Holder of the Securities according to the aggregate liquidation amount of the Securities held by the relevant Holder in relation to the aggregate liquidation amount of all Securities outstanding unless, in relation to a payment, an Event of Default has occurred and is continuing, in which case any funds available to make such payment shall be paid first to each Holder of the Capital Securities Pro Rata according to the aggregate liquidation amount of the Capital Securities held by the relevant Holder relative to the aggregate liquidation amount of all Capital Securities outstanding, and only after satisfaction of all amounts owed to the Holders of the Capital Securities, to each Holder of the Common Securities Pro Rata according to the aggregate liquidation amount of the Common Securities held by the relevant Holder relative to the aggregate liquidation amount of all Common Securities outstanding.

9. *Ranking.* The Capital Securities rank *pari passu* with, and payment thereon shall be made Pro Rata with, the Common Securities except that, where an Event of Default has occurred and is continuing, the rights of Holders of the Common Securities to receive payment of Distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights of the Holders of the Capital Securities with the result that no payment of any Distribution on, or Redemption Price or Special Redemption Price of, any Common Security, and no other payment on account of redemption, liquidation or other acquisition of Common Securities, shall be made unless payment in full in cash of all accumulated and unpaid Distributions on all outstanding Capital Securities for all distribution periods terminating on or prior thereto, or in the case of payment of the Redemption Price or Special Redemption Price the full amount of such Redemption Price or Special Redemption Price on all outstanding Capital Securities then called for redemption, shall have been made or provided for, and all funds immediately available to the Institutional Trustee shall first be applied to the payment in full in cash of all Distributions on, or the Redemption Price or Special Redemption Price of, the Capital Securities then due and payable.

10. *Acceptance of the Indenture.* Each Holder of the Capital Securities and the Common Securities, by the acceptance of such Securities, agrees to the provisions of the Indenture.

11. *No Preemptive Rights.* The Holders of the Securities shall have no, and the issuance of the Securities is not subject to, preemptive or similar rights to subscribe for any additional securities.

12. *Miscellaneous.* These terms constitute a part of the Declaration. The Sponsor will provide a copy of the Declaration and the Indenture to a Holder without charge on written request to the Sponsor at its principal place of business.

EXHIBIT A-1

FORM OF CAPITAL SECURITY CERTIFICATE

[FORM OF FACE OF SECURITY]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS OR ANY OTHER APPLICABLE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY ONLY (A) TO THE DEBENTURE ISSUER OR THE TRUST, (B) PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON THE HOLDER REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO A "NON-U.S. PERSON" IN AN "OFFSHORE TRANSACTION" PURSUANT TO REGULATIONS UNDER THE SECURITIES ACT, (D) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF SUBPARAGRAPH (a) (1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT THAT IS ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF AN "ACCREDITED INVESTOR," FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE DEBENTURE ISSUER'S AND THE TRUST'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM IN ACCORDANCE WITH THE AMENDED AND RESTATED DECLARATION OF TRUST, A COPY OF WHICH MAY BE OBTAINED FROM THE DEBENTURE ISSUER OR THE TRUST. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES THAT IT WILL COMPLY WITH THE FOREGOING RESTRICTIONS.

THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES, REPRESENTS AND WARRANTS THAT IT WILL NOT ENGAGE IN HEDGING TRANSACTIONS INVOLVING THIS SECURITY UNLESS SUCH TRANSACTIONS ARE IN COMPLIANCE WITH THE SECURITIES ACT.

THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF 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, UNLESS SUCH PURCHASER OR HOLDER IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF

LABOR PROHIBITED TRANSACTION CLASS EXEMPTION 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION OR ITS PURCHASE AND HOLDING OF THIS SECURITY IS NOT PROHIBITED BY SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE WITH RESPECT TO SUCH PURCHASE OR HOLDING. ANY PURCHASER OR HOLDER OF THIS SECURITY OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT EITHER (i) 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, OR (ii) SUCH PURCHASE WILL NOT RESULT IN A PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE FOR WHICH THERE IS NO APPLICABLE STATUTORY OR ADMINISTRATIVE EXEMPTION.

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS MAY BE REQUIRED BY THE AMENDED AND RESTATED DECLARATION OF TRUST TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

THIS SECURITY WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN BLOCKS HAVING A LIQUIDATION AMOUNT OF NOT LESS THAN \$100,000 AND MULTIPLES OF \$1,000 IN EXCESS THEREOF. ANY ATTEMPTED TRANSFER OF THIS SECURITY IN A BLOCK HAVING A LIQUIDATION AMOUNT OF LESS THAN \$100,000 SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF THIS SECURITY FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF DISTRIBUTIONS ON THIS SECURITY, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN THIS SECURITY.

CUSIP NO [ ]

Certificate Evidencing Capital Securities

of

Impac Capital Trust #4

Fixed/Floating Rate TruPS®

(liquidation amount \$1,000 per Capital Security)

Impac Capital Trust #4, a statutory trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that [ ] (the "Holder") is the registered owner of [ ] capital securities of the Trust representing undivided beneficial interests in the assets of the Trust, designated the Fixed/Floating Rate TruPS® (liquidation amount \$1,000 per Capital Security) (the "Capital Securities"). Subject to the Declaration (as defined below), the Capital 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. The Capital Securities represented hereby are issued pursuant to, and the designation, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities shall in all respects be subject to, the provisions of the Amended and Restated Declaration of Trust of the Trust, dated as of October 18, 2005, among Gretchen Verdugo and Ron Morrison, as Administrators, Wilmington Trust Company, as Delaware Trustee, Wilmington Trust Company, as Institutional Trustee, Impac Mortgage Holdings, Inc., as Sponsor, and the holders from time to time of undivided beneficial interests in the assets of the Trust, including the designation of the terms of the Capital Securities as set forth in Annex I to the Declaration, as the same may be amended from time to time (the "Declaration"). Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Sponsor will provide a copy of the Declaration and the Indenture to the Holder without charge upon written request to the Sponsor at its principal place of business.

By acceptance of this Security, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

By acceptance of this Security, the Holder agrees to treat, for United States federal income tax purposes, the Debentures as indebtedness and the Capital Securities as evidence of beneficial ownership in the Debentures.

This Capital Security is governed by, and shall be construed in accordance with, the laws of the State of Delaware, without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the Trust has duly executed this certificate.

Impac Capital Trust #4

By:

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 Name:  
 Title: Administrator

Dated:

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 A-1-3

**CERTIFICATE OF AUTHENTICATION**

This is one of the Capital Securities referred to in the within-mentioned Declaration.

Wilmington Trust Company,  
not in its individual capacity but solely as the Institutional Trustee

By:

\_\_\_\_\_  
Authorized Officer

Dated:

\_\_\_\_\_

A-1-4

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Distributions payable on each Capital Security will be payable (i) until July 30, 2010, at a fixed rate per annum equal to 8.55% and (ii) from and including July 30, 2010, at a variable per annum rate of interest, reset quarterly, equal to LIBOR (as defined in the Declaration) plus 3.75% (the "Coupon Rate") of the stated liquidation amount of \$1,000 per Capital Security, such rate being the rate of interest payable on the Debentures to be held by the Institutional Trustee. Except as set forth below in respect of an Extension Period, Distributions in arrears for more than one quarterly period will bear interest thereon compounded quarterly at the applicable Coupon Rate for each such quarterly period (to the extent permitted by applicable law). The term "Distributions" as used herein includes cash distributions, any such compounded distributions and any Additional Amounts payable on the Debentures unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Institutional Trustee and to the extent the Institutional Trustee has funds legally available in the Property Account therefor. The amount of Distributions payable for any period will be computed for any full quarterly Distribution Period on the basis of (i) until July 30, 2010, a 360-day year consisting of twelve 30-day months and (ii) from and including July 30, 2010, a 360-day year and the actual number of days elapsed in the relevant Distribution Period.

Except as otherwise described below, Distributions on the Capital 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"). The Debenture Issuer has the right under the Indenture to defer payments of interest on the Debentures by extending the interest payment period for up to 20 consecutive quarterly periods (each, an "Extension Period") at any time and from time to time on the Debentures, subject to the conditions described below, during which Extension Period no interest shall be due and payable. During any Extension Period, interest will continue to accrue on the Debentures, and interest on such accrued interest (such accrued interest and interest thereon referred to herein as "Deferred Interest") will accrue at an annual rate equal to the Coupon Rate in effect for each such Extension Period, compounded quarterly from the date such Deferred Interest would have been payable were it not for the Extension Period, to the extent permitted by law. No Extension Period may end on a date other than a Distribution Payment Date. At the end of any such Extension Period, the Debenture Issuer shall pay all Deferred Interest then accrued and unpaid on the Debentures; *provided, however*, that no Extension Period may extend beyond the Maturity Date, Redemption Date or Special Redemption Date. Prior to the termination of any Extension Period, the Debenture Issuer may further extend such period, *provided*, that such period together with all such previous and further consecutive extensions thereof shall not exceed 20 consecutive quarterly periods, or extend beyond the Maturity Date, Redemption Date or Special Redemption Date. Upon the termination of any Extension Period and upon the payment of all Deferred Interest, the Debenture Issuer may commence a new Extension Period, subject to the foregoing requirements. No interest or Deferred Interest shall be due and payable during an Extension Period, except at the end thereof, but Deferred Interest shall accrue upon each installment of interest that would otherwise have been due and payable during such Extension Period until such installment is paid. The deferral of the payment of interest during an Extension Period shall not defer the payment of any Additional Amounts that may be due. If Distributions are deferred, the Distributions due shall be paid on the date that the related Extension Period terminates to Holders of the Securities as they appear on the books and records of the Trust on the record date immediately preceding such 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 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.

The Capital Securities shall be redeemable as provided in the Declaration.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Capital Security Certificate to:

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

(Insert address and zip code of assignee),

and irrevocably appoints

as agent to transfer this Capital Security Certificate on the books of the Trust. The agent may substitute another to act for it, him or her.

Date:

Signature:

(Sign exactly as your name appears on the other side of this Capital Security Certificate)

Signature Guarantee(1)

- 
- (1) Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union, meeting the requirements of the Security registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Security registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

**EXHIBIT A-2**

**FORM OF COMMON SECURITY CERTIFICATE**

THIS COMMON SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS OR ANY OTHER APPLICABLE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EXEMPTION FROM REGISTRATION.

EXCEPT AS SET FORTH IN SECTION 8.1(b) OF THE DECLARATION (AS DEFINED BELOW), THIS SECURITY MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED.

Certificate Evidencing Common Securities

of

Impac Capital Trust #4

Impac Capital Trust #4, a statutory trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that Impac Mortgage Holdings, Inc. (the "Holder") is the registered owner of 620 common securities of the Trust representing undivided beneficial interests in the assets of the Trust (liquidation amount \$1,000 per Common Security)(the "Common Securities"). The Common Securities represented hereby are issued pursuant to, and the designation, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities shall in all respects be subject to, the provisions of the Amended and Restated Declaration of Trust of the Trust, dated as of October 18, 2005, among Gretchen Verdugo and Ron Morrison, as Administrators, Wilmington Trust Company, as Delaware Trustee, Wilmington Trust Company, as Institutional Trustee, the Holder, as Sponsor, and the holders from time to time of undivided beneficial interests in the assets of the Trust, including the designation of the terms of the Common Securities as set forth in Annex I to the Declaration, as the same may be amended from time to time (the "Declaration"). Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Sponsor will provide a copy of the Declaration and the Indenture to the Holder without charge upon written request to the Sponsor at its principal place of business.

As set forth in the Declaration, when an Event of Default has occurred and is continuing, the rights of Holders of Common Securities to payment in respect of Distributions and payments upon Liquidation, redemption or otherwise are subordinated to the rights of payment of Holders of the Capital Securities.

By acceptance of this Certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

By acceptance of this Certificate, the Holder agrees to treat, for United States federal income tax purposes, the Debentures as indebtedness and the Common Securities as evidence of undivided beneficial ownership in the Debentures.

This Common Security is governed by, and shall be construed in accordance with, the laws of the State of Delaware, without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the Trust has executed this certificate this day of , 2005.

Impac Capital Trust #4

By:

\_\_\_\_\_

Name:  
Title: Administrator

Distributions payable on each Common Security will be identical in amount to the Distributions payable on each Capital Security, which is (i) until July 30 2010, at a fixed rate per annum equal to 8.55% and (ii) from and including July 30, 2010, at a variable per annum rate of interest, reset quarterly, equal to LIBOR (as defined in the Declaration) plus 3.75% (the "Coupon Rate") of the stated liquidation amount of \$1,000 per Capital Security, such rate being the rate of interest payable on the Debentures to be held by the Institutional Trustee. Except as set forth below in respect of an Extension Period, Distributions in arrears for more than one quarterly period will bear interest thereon compounded quarterly at the applicable Coupon Rate for each such quarterly period (to the extent permitted by applicable law). The term "Distributions" as used herein includes cash distributions, any such compounded distributions and any Additional Amounts payable on the Debentures unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Institutional Trustee and to the extent the Institutional Trustee has funds legally available in the Property Account therefor. The amount of Distributions payable for any period will be computed for any full quarterly Distribution Period on the basis of (i) until July 30, 2010, a 360-day year consisting of twelve 30-day months and (ii) from and including July 30, 2010, a 360-day year and the actual number of days elapsed in the relevant Distribution Period.

Except as otherwise described below, Distributions on the Common 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"). The Debenture Issuer has the right under the Indenture to defer payments of interest on the Debentures by extending the interest payment period for up to 20 consecutive quarterly periods (each, an "Extension Period") at any time and from time to time on the Debentures, subject to the conditions described below, during which Extension Period no interest shall be due and payable. During any Extension Period, interest will continue to accrue on the Debentures, and interest on such accrued interest (such accrued interest and interest thereon referred to herein as "Deferred Interest") will accrue at an annual rate equal to the Coupon Rate in effect for each such Extension Period, compounded quarterly from the date such Deferred Interest would have been payable were it not for the Extension Period, to the extent permitted by law. No Extension Period may end on a date other than a Distribution Payment Date. At the end of any such Extension Period, the Debenture Issuer shall pay all Deferred Interest then accrued and unpaid on the Debentures; *provided, however*, that no Extension Period may extend beyond the Maturity Date, Redemption Date or Special Redemption Date. Prior to the termination of any Extension Period, the Debenture Issuer may further extend such period, *provided*, that such period together with all such previous and further consecutive extensions thereof shall not exceed 20 consecutive quarterly periods, or extend beyond the Maturity Date, Redemption Date or Special Redemption Date. Upon the termination of any Extension Period and upon the payment of all Deferred Interest, the Debenture Issuer may commence a new Extension Period, subject to the foregoing requirements. No interest or Deferred Interest shall be due and payable during an Extension Period, except at the end thereof, but Deferred Interest shall accrue upon each installment of interest that would otherwise have been due and payable during such Extension Period until such installment is paid. The deferral of the payment of interest during an Extension Period shall not defer the payment of any Additional Amounts that may be due. If Distributions are deferred, the Distributions due shall be paid on the date that the related Extension Period terminates to Holders of the Securities as they appear on the books and records of the Trust on the record date immediately preceding such 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 legally available for the payment of such distributions in the Property Account of the Trust. The Trust's funds legally available for Distribution to the Holders of the Securities will be limited to payments received from the Debenture Issuer.

The Common Securities shall be redeemable as provided in the Declaration.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Common Security Certificate to:

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

(Insert address and zip code of assignee),

and irrevocably appoints \_\_\_\_\_ as agent to transfer this Common Security 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 Common Security Certificate)

Signature Guarantee:(1)

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- (1) Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union, meeting the requirements of the Security registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Security registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

FORM OF TRANSFEREE CERTIFICATE  
(UNLESS EXHIBIT C APPLIES)

, [ ]

Impac Mortgage Holdings, Inc.  
Impac Capital Trust #4  
1401 Dove Street  
Newport Beach, California, 92660

Re: Purchase of \$[ ] stated liquidation amount of Fixed/Floating Rate TruPS® (the "Capital Securities") of Impac Capital Trust #4

Ladies and Gentlemen:

Reference is hereby made to the Amended and Restated Declaration of Trust of Impac Capital Trust #4, dated as of October 18, 2005, as amended from time to time (the "Declaration"), among Gretchen Verdugo and Ron Morrison, as Administrators, Wilmington Trust Company, as Delaware Trustee, Wilmington Trust Company, as Institutional Trustee, Impac Mortgage Holdings, Inc., as Sponsor, and the holders from time to time of undivided beneficial interests in the assets of Impac Capital Trust #4. Capitalized terms used but not defined herein shall have the meanings given them in the Declaration.

In connection with our purchase of the Capital Securities we confirm that:

13. We understand that the Fixed/Floating Rate TruPS® (the "Capital Securities") of Impac Capital Trust #4 (the "Trust") of Impac Mortgage Holdings, Inc. (the "Company") executed in connection therewith) and the Fixed/Floating Rate Junior Subordinated Debt Securities due 2035 of the Company (the "Subordinated Debt Securities") (the Capital Securities and the Subordinated Debt Securities together being referred to herein as the "Offered Securities"), have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), and may not be offered or sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing the Capital Securities that, if we decide to offer, sell or otherwise transfer any such Capital Securities, such offer, sale or transfer will be made only (a) to the Company or the Trust, (b) pursuant to Rule 144A under the Securities Act, to a person we reasonably believe is a qualified institutional buyer under Rule 144A (a "QIB") that purchases for its own account or for the account of a QIB and to whom notice is given that the transfer is being made in reliance on Rule 144A, (c) to a "Non-U.S. Person" in an "offshore transaction" pursuant to Regulation S under the Securities Act, (d) pursuant to an exemption from registration, to an "accredited investor" within the meaning of subparagraph (a) (1), (2), (3) or (7) of Rule 501 under the Securities Act that is acquiring Capital Securities for its own account or for the account of such an accredited investor for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act, or (e) pursuant to another available exemption from the registration requirements of the Securities Act, and in each of the foregoing cases in accordance with any applicable state securities laws and any requirements of law that govern the disposition of our property. The foregoing restrictions on resale will not apply subsequent to the date on which, in the written opinion of counsel, the Capital Securities are not "restricted securities" within the meaning of Rule 144 under the Securities Act. If any resale or other transfer of the Capital Securities is proposed to be made pursuant to clause (d) or (e) above, the transferor shall deliver a letter from the transferee substantially in the form of this letter to the Institutional Trustee as Transfer Agent, which shall provide as applicable, among other things, that the transferee is an "accredited investor" within the meaning of

subparagraph (a)(1), (2), (3) or (7) of Rule 501 under the Securities Act that is acquiring such Securities for investment purposes and not for distribution in violation of the Securities Act. We acknowledge on our behalf and on behalf of any investor account for which we are purchasing Securities that the Trust and the Company reserve the right prior to any offer, sale or other transfer pursuant to clause (d) or (e) to require the delivery of any opinion of counsel, certifications and/or other information satisfactory to the Trust and the Company. We understand that the certificates for any Capital Security that we receive will bear a legend substantially to the effect of the foregoing.

14. We are an "accredited investor" within the meaning of subparagraph (a) (1), (2), (3) or (7) of Rule 501 under the Securities Act purchasing for our own account or for the account of such an "accredited investor," and we are acquiring the Capital Securities for investment purposes and not with view to, or for offer or sale in connection with, any distribution in violation of the Securities Act, and we have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Capital Securities, and we and any account for which we are acting are each able to bear the economic risks of our or its investment.

15. We are a sophisticated institutional investor, have knowledge and experience in financial matters and are capable of independently evaluating the merits and risks of our investment decision with respect to the Capital Securities, and we have conducted, to the extent we deemed necessary, an independent investigation of such matters, as, in our judgment, is necessary for us to make an informed investment decision with respect to the acquisition of an interest in the Capital Securities.

16. We are acquiring the Capital Securities purchased by us for our own account (or for one or more accounts as to each of which we exercise sole investment discretion and have authority to make, and do make, the statements contained in this letter) and not with a view to any distribution of the Capital Securities, subject, nevertheless, to the understanding that the disposition of our property will at all times be and remain within our control.

17. In the event that we purchase any Capital Securities, we will acquire such Capital Securities having an aggregate stated liquidation amount of not less than \$100,000, for our own account and for each separate account for which we are acting.

18. We acknowledge that we either (A) are not a fiduciary of a pension, profit-sharing or other employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (a "Plan"), or an entity whose assets include "plan assets" by reason of any Plan's investment in the entity and are not purchasing the Capital Securities on behalf of or with "plan assets" by reason of any Plan's investment in the entity and are not purchasing the Capital Securities on behalf of or with "plan assets" of any Plan or (B) are eligible for the exemptive relief available under one or more of the following prohibited transaction class exemptions ("PTCEs") issued by the U.S. Department of Labor: PTCE 96-23, 95-60, 91-38, 90-1 or 84-14.

19. We acknowledge that the Trust and the Company and others will rely upon the truth and accuracy of the foregoing acknowledgments, representations, warranties and agreements and agree that if any of the acknowledgments, representations, warranties and agreements deemed to have been made by our purchase of the Capital Securities are no longer accurate, we shall promptly notify the Initial Purchaser. If we are acquiring any Capital Securities as a fiduciary or agent for one or more investor accounts, we represent that we have sole discretion with respect to each such investor account and that we have full power to make the foregoing acknowledgments, representations and agreement on behalf of each such investor account. You are irrevocably authorized to produce this letter or a copy hereof to



any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

(Name of Purchaser)

By:

Date:

Upon transfer, the Capital Securities would be registered in the name of the new beneficial owner as follows.

Name:

Address:

Taxpayer ID Number:

FORM OF TRANSFEROR CERTIFICATE  
TO BE EXECUTED FOR QIBs OR REGULATION S TRANSFEREES

\_\_\_\_\_, [ ]

Impac Mortgage Holdings, Inc.  
Impac Capital Trust #4  
1401 Dove Street  
Newport Beach, California, 92660

Re: Purchase of \$[ ] stated liquidation amount of Fixed/Floating Rate TruPS®  
(the "Capital Securities") of Impac Capital Trust #4

Reference is hereby made to the Amended and Restated Declaration of Trust of Impac Capital Trust #4, dated as of October 18, 2005, as amended from time to time (the "Declaration"), among Gretchen Verdugo and Ron Morrison, as Administrators, Wilmington Trust Company, as Delaware Trustee, Wilmington Trust Company, as Institutional Trustee, Impac Mortgage Holdings, Inc., as Sponsor, and the holders from time to time of undivided beneficial interests in the assets of Impac Capital Trust #4. Capitalized terms used but not defined herein shall have the meanings given them in the Declaration.

This letter relates to \$[ ] aggregate liquidation amount of Capital Securities which are held in the name of [name of transferor] (the "Transferor").

In accordance with Section 8.2(b) of the Declaration, the Transferor does hereby certify that such Capital Securities are being transferred in accordance with the transfer restrictions set forth in the Capital Securities and:

- \_\_\_\_\_ Rule 144A under the Securities Act ("Rule 144A"), to a transferee that the Transferor reasonably believes is purchasing the Capital Securities for its own account or an account with respect to which the transferee exercises sole investment discretion and the transferee and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, in a transaction meeting the requirements of Rule 144A and in accordance with applicable securities laws of any state of the United States or any other jurisdiction; or
- \_\_\_\_\_ Regulation S under the Securities Act ("Regulation S"), to a person that is not a "U.S. Person" for purposes of Regulation S in an "offshore transaction" for purposes of Regulation S.

We acknowledge that the Trust and the Sponsor and others will rely upon the truth and accuracy of the foregoing acknowledgments, representations, warranties and agreements. You are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

(Name of Transferor)

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

Name:

Title:

Date:

## QuickLinks

[Exhibit 10.29](#)

[AMENDED AND RESTATED DECLARATION OF TRUST IMPAC CAPITAL TRUST #4 Dated as of October 18, 2005](#)

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[FORM OF TRANSFEROR CERTIFICATE TO BE EXECUTED FOR QIBs OR REGULATION S TRANSFEREES](#)

The following table displays our ratio of earnings to fixed charges and ratio of earnings to combined fixed charges and preferred stock dividends for the periods shown: (1) (2)

**IMPAC MORTGAGE HOLDINGS, INC.**  
**RATIO OF EARNINGS TO FIXED CHARGES AND RATIO OF EARNINGS TO**  
**COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**  
**(dollar amounts in thousands)**

For the Year Ended December 31,

	2005	2004	2003	2002	2001
Net earnings (loss)	240,607	244,187	147,430	41,918	(7,469)
Add: Fixed charges	1,048,662	413,584	\$ 209,470	127,851	108,224
Net earnings (loss) plus fixed charges	1,289,269	657,771	356,900	169,769	100,755
Fixed charges	1,048,662	413,584	209,470	127,851	108,224
Preferred stock dividends	14,530	3,750	—(3)	—(3)	1,575
Total fixed charges and preferred stock dividends	1,063,192	417,334	209,470	127,851	109,799
Ratio of earnings to fixed charges	1.23x	1.59x	1.70x	1.33x	—(4)
Ratio of earnings to combined fixed charges and preferred dividends	1.21x	1.58x	1.70x	1.33x	—(4)

- (1) Earnings used in computing the ratio of earnings to fixed charges consist of net earnings before income taxes plus fixed charges. Fixed charges include interest expense on debt and the portion of rental expense deemed to represent the interest factor.
- (2) Financial information for the years ended December 31, 2003 to 2001 reflects accounting restatements and reclassifications for prior periods. In addition, prior to the consolidation of IFC on July 1, 2003, the method used to calculate the ratio of earnings to fixed charges and preferred stock dividends reflects the consolidated net earnings of IMH less net earnings of IFC plus dividend distributions from IFC to IMH.
- (3) No preferred stock dividends were paid during this period as IMH did not have any preferred stock outstanding.
- (4) Earnings were insufficient to cover fixed charges. The amount of the deficiency for the years ended December 31, 2001 were \$7.5 million.

## QuickLinks

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[IMPAC MORTGAGE HOLDINGS, INC. RATIO OF EARNINGS TO FIXED CHARGES AND RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS \(dollar amounts in thousands\)](#)

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-121562) and Form S-8 (Nos. 333-12025, 333-68128, 333-83650, 333-106647, 333-117070, 333-117137 and 333-128113) and related Prospectuses of Impac Mortgage Holding, Inc. of our reports dated March 7, 2006 with respect to the consolidated financial statements of Impac Mortgage Holding, Inc., management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of Impac Mortgage Holding, Inc., in this Annual Report (Form 10-K) for the year ended December 31, 2005.

/s/ ERNST & YOUNG LLP

Los Angeles, California  
March 10, 2006

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QuickLinks

[Exhibit 23.1](#)

[CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM](#)



**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
Impac Mortgage Holdings, Inc.:

We consent to the incorporation by reference in the registration statement No. 333-121562 on Form S-3 and registration statements (Nos. 333-12025, 333-68128, 333-83650, 333-117137, 333-117070, 333-106647 and 333-128113) on Form S-8 of Impac Mortgage Holdings, Inc. of our report dated May 13, 2005, with respect to the consolidated balance sheet of Impac Mortgage Holdings, Inc. as of December 31, 2004, and the related consolidated statements of operations and comprehensive earnings, changes in stockholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2004, which report appears in the December 31, 2005, annual report on Form 10-K of Impac Mortgage Holdings, Inc..

/s/ KPMG LLP

Los Angeles, California

March 14, 2006

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## QuickLinks

[Exhibit 23.2](#)

[Consent of Independent Registered Public Accounting Firm](#)

### CERTIFICATION

I, Joseph R. Tomkinson, certify that:

1. I have reviewed this report on Form 10-K 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  
Joseph R. Tomkinson  
Chief Executive Officer  
March 15, 2006

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QuickLinks

[Exhibit 31.1](#)

[CERTIFICATION](#)

**CERTIFICATION**

I, Richard J. Johnson, certify that:

1. I have reviewed this report on Form 10-K 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/ Richard J. Johnson  
Richard J. Johnson  
Chief Financial Officer  
March 15, 2006

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QuickLinks

[Exhibit 31.2](#)

[CERTIFICATION](#)

***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 annual report of Impac Mortgage Holdings, Inc. (the "Company") on Form 10-K for the period ending December 31, 2005 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  
Joseph R. Tomkinson  
Chief Executive Officer  
March 15, 2006

/s/ Richard J. Johnson  
Richard J. Johnson  
Chief Financial Officer  
March 15, 2006

A signed original of this written statement required by Section 906 will be provided to Impac Mortgage Holdings, Inc. and will be retained by Impac Mortgage Holdings, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

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QuickLinks

[Exhibit 32.1](#)

[CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)