QuickLinks -- Click here to rapidly navigate through this document

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE TO
(Rule 13e-4)

Tender Offer Statement Under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934

IMPAC MORTGAGE HOLDINGS, INC.
(Name of Subject Company (Issuer) and Filing Person (Offeror))

Series B Preferred Stock, $0.01 Par Value Per Share	**45254P300**
Series C Preferred Stock, $0.01 Par Value Per Share	**45254P409**
(Title of Class of Securities)	(CUSIP Number of Class of Securities)

Ronald M. Morrison
General Counsel
Impac Mortgage Holdings, Inc.
19500 Jamboree Road
Irvine, California 92612
(949) 475-3600
(Name, Address and Telephone Number of Person Authorized to
Receive Notices and Communications On Behalf of Filing Person)

Copy to:

Katherine J. Blair, Esq.
K&L Gates LLP
10100 Santa Monica Boulevard, 7th Floor
Los Angeles, California 90067
(310) 552-5000

CALCULATION OF REGISTRATION FEE

Transaction Valuation*	Amount of Filing Fee**
$1,860,776.30	$104

* Estimated solely for purposes of calculating the filing fee based on the sum of (i) the product of (A) the offered purchase price of $0.29297 per share of Impac Mortgage Holdings, Inc.'s 9.375% Series B Cumulative Redeemable Preferred Stock ("Series B Preferred Stock") and (B) 2,000,000 shares of Series B Preferred Stock and (ii) the product of (A) the offered purchase price of $0.28516 per share of Impac Mortgage Holdings, Inc.'s 9.125% Series C Cumulative Redeemable Preferred Stock ("Series C Preferred Stock") and (B) 4,470,600 shares of Series C Preferred Stock. The number of shares of each series of preferred stock represents the maximum number of shares of such series of preferred stock that are subject to the Offer to Purchase and Consent Solicitation.

** The amount of the filing fee, calculated in accordance with Rule 0-11(b) of the Securities Exchange Act of 1934, as amended, equals $55.80 per $1,000,000 of the aggregate amount of the Transaction Valuation (or .00005580 of the aggregate Transaction Valuation). The Transaction Valuation set forth above was calculated for the sole purpose of determining the filing fee and should not be used for any other purpose.

o Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: Not applicable. **Filing Party:** Not applicable.

Form or Registration No.: Not applicable. **Date Filed:** Not applicable.

o Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- o third party tender offer subject to Rule 14d-1.
- ☒ issuer tender offer subject to Rule 13e-4.
- o going-private transaction subject to Rule 13e-3.
- o amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: o

SCHEDULE TO

This Tender Offer Statement on Schedule TO (the "**Tender Offer Statement**") relates to an offer by Impac Mortgage Holdings, Inc., a Maryland corporation ("**Impac**," or the "**Company**"), to purchase outstanding shares of its 9.375% Series B Cumulative Redeemable Preferred Stock, $0.01 par value per share ("Series B Preferred Stock") for $0.29297 per share of Series B Preferred Stock tendered, and 9.125% Series C Cumulative Redeemable Preferred Stock, $0.01 par value per share ("Series C Preferred Stock") for $0.28516 per share of Series C Preferred Stock tendered, pursuant to the terms and subject to the conditions described in the offering circular, dated May 29, 2009 (the "**Offering Circular**"), filed as Exhibit (a)(1)(B) and the related letter of transmittal and consent for each series of preferred stock (together the "**Letters of Transmittal and Consent**"), filed as Exhibits (a)(1)(C)(i) and (a)(1)(C)(ii) hereto.

This Tender Offer Statement is intended to satisfy the reporting requirements of Section 13(e) of the Securities Exchange Act of 1934, as amended. The information contained in the Offering Circular and the related Letters of Transmittal and Consent are incorporated herein by reference in response to all of the items of this Schedule TO, as more particularly described below.

Item 1. Summary Term Sheet.

The information set forth under "Summary Description of the Offer to Purchase and Consent Solicitation" in the Offering Circular is incorporated herein by reference.

Item 2. Subject Company Information.

(a) *Name and Address.* The issuer is Impac Mortgage Holdings, Inc., a Maryland corporation. The Company's principal executive offices are located at 19500 Jamboree Road, Irvine, California 92612 and the telephone number of its principal executive offices is (949) 475-3600.

(b) *Securities.* This Tender Offer Statement on Schedule TO relates to an offer by the Company to exchange shares of Common Stock for all outstanding shares of its Series B Preferred Stock and Series C Preferred Stock (collectively, the "**Preferred Stock**").

As of May 28, 2009, 2,000,000 shares of Series B Preferred Stock and 4,470,600 shares of Series C Preferred Stock were issued and outstanding.

(c) *Trading Market and Price.* The information with respect to Preferred Stock set forth in the Offering Circular under the heading "Market Price of and Dividends on the Preferred Stock" is incorporated herein by reference.

Item 3. Identity and Background of Filing Person.

The information set forth under Item 2(a) above is incorporated herein by reference. The Company is both the filing person and the subject company.

The information set forth in the Definitive Proxy Statement for the Annual Meeting of Stockholders to be held on July 21, 2009, filed with the Securities and Exchange Commission (the "SEC") on April 30, 2009, under the headings "Proposal No. 1—Election of Directors—Information Concerning Director Nominees" and "Proposal No. 1—Election of Directors—Executive Officers" is incorporated by reference herein. The business address of each of the foregoing is c/o Impac Mortgage Holdings, Inc., 19500 Jamboree Road, Irvine, California 92612 and their telephone number is (949) 475-3600.

Item 4. Terms of the Transaction.

(a) *Material Terms.* The information set forth in the Offering Circular under "Questions and Answers About the Offer to Purchase and Consent Solicitation," "Summary Description of the Offer to Purchase and Consent Solicitation," "The Offer to Purchase and Consent Solicitation," "Description of Capital Stock" and "Material United States Federal Income Tax Considerations—Treatment of the Offer to Purchase" is incorporated herein by reference.

(b) *Purchases.* The information set forth in the Offering Circular under the heading "The Offer to Purchase and Consent Solicitation—Security Ownership" is incorporated herein by reference.

Item 5. Past Contacts, Transactions, Negotiations and Agreements.

(e) *Agreements Involving the Subject Company's Securities.*

The information set forth in Part II of Item 5 of the Company's Quarterly Report on Form 10-Q fo the period ended March 31, 2009, filed with the SEC on May 11, 2009, under the subheading "Exchange of Trust Preferred Securities for Notes" and the information set forth in the Company Current Report on Form 8-K filed with the SEC on October 20, 2005 are incorporated by reference herein.

Item 6. Purposes of the Transaction and Plans or Proposals.

(a) *Purposes.* The information set forth in the Offering Circular under the headings "Questions and Answers About the Offer to Purchase and Consent Solicitation" and "Background Information" is incorporated herein by reference.

(b) *Use of Securities Acquired.* The shares of Preferred Stock acquired in the Offer to Purchase will become authorized but unissued shares. The information set forth in the Offering Circular under the heading "The Offer to Purchase and Consent Solicitation—Tender of Preferred Stock; Acceptance for Payment and Payment of Shares" is incorporated herein by reference.

(c) *Plans.* The information set forth in the Offering Circular under the headings "Questions and Answers About the Offer to Purchase and Consent Solicitation," "The Offer to Purchase and Consent Solicitation—Liquidity," and "Market Price of and Dividends on the Preferred Stock" is incorporated herein by reference.

Item 7. Source and Amount of Funds or Other Consideration.

(a) *Source of Funds.* The information set forth in the Offering Circular under the heading "The Offer to Purchase and Consent Solicitation—Source and Amount of Funds" is incorporated herein by reference.

(b) *Conditions.* The information set forth in the Offering Circular under the heading "The Offer to Purchase and Consent Solicitation—Conditions of the Offer to Purchase and Consent Solicitation" is incorporated herein by reference.

(d) *Borrowed Funds.* Not applicable.

Item 8. Interest in Securities of the Subject Company.

(a) *Securities Ownership.* The information set forth in the Offering Circular under the heading "The Offer to Purchase and Consent Solicitation—Security Ownership" is incorporated herein by reference.

(b) *Securities Transactions.* The information set forth in the Offering Circular under the heading "The Offer to Purchase and Consent Solicitation—Security Ownership" is incorporated herein by reference.

Item 9. Persons/Assets, Retained, Employed, Compensated or Used.

The information set forth in the Offering Circular under the heading "The Offer to Purchase and Consent Solicitation—Terms of the Offer to Purchase and Consent Solicitation" is incorporated herein by reference.

Item 10. Financial Statements.

(a) *Financial Information.* Not applicable.

(b) *Pro Forma Information.* Not applicable.

Item 11. Additional Information.

(a) Agreements, Regulatory Requirements and Legal Proceedings.

(1) The information set forth in the Offer circular under "The Offer to Purchase and Consent Solicitation—Security Ownership" is incorporated herein by reference.

(2) The information set forth in the Offering Circular under the heading "The Offer to Purchase and Consent Solicitation—Certain Legal and Regulatory Matters" is incorporated herein by reference.

(3) Not applicable.

(4) Not applicable.

(5) Not applicable.

(b) *Other Material Information.* Not applicable.

Item 12. Exhibits.

Exhibit No.	Description
(a)(1)(A)	Letter from Joseph R. Tomkinson, Chairman and Chief Executive Officer of Impac Mortgage Holdings, Inc., to holders of Preferred Stock, dated May 29, 2009.
(a)(1)(B)	Offering Circular, dated May 29, 2009.
(a)(1)(C)(i)	Letter of Transmittal and Consent to the holders of Series B Preferred Stock, dated May 29, 2009.
(a)(1)(C)(ii)	Letter of Transmittal and Consent to the holders of Series C Preferred Stock, dated May 29, 2009.
(a)(1)(D)	Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
(a)(1)(E)	Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
(a)(1)(F)	Guidelines for Certification of Taxpayer Identification Number (TIN) on Substitute Form W-9.
(a)(1)(G)	Form of Notice of Guaranteed Delivery.
(a)(2)	Exhibit (a)(1)(A) is incorporated by reference herein.
(a)(3)	Not applicable.
(a)(4)	Not applicable.
(a)(5)	Press Release.

Exhibit No.	Description
(b)	Not applicable.
(d)(1)	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).
(d)(2)	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).
(d)(3)	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).
(d)(4)	Indenture between Impac Mortgage Holdings, Inc. and Wilmington Trust Company, as trustee, dated October 18, 2005 (incorporated by reference to Exhibit 4.8 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2005).
(d)(5)	Exchange Agreement among Impac Mortgage Holdings, Inc. and Taberna Preferred Funding I, Ltd. and Taberna Preferred Funding II, Ltd. dated as of May 8, 2009
(d)(6)	Junior Subordinated Indenture between Impac Mortgage Holdings, Inc. and, The Bank of New York Mellon Trust Company, National Association, as trustee, dated May 8, 2009, related to Junior Subordinated Note due 2034 in the original principal amount of $31,756,000
(d)(7)	Junior Subordinated Indenture between Impac Mortgage Holdings, Inc. and, The Bank of New York Mellon Trust Company, National Association, as trustee, dated May 8, 2009, related to Junior Subordinated Note due 2034 in the original principal amount of $30,244,000
(e)	Not applicable.
(f)	Not applicable.
(g)	Not applicable
(h)	Not applicable.

Item 13. Information Required by Schedule 13E-3.

Not applicable.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

IMPAC MORTGAGE HOLDINGS, INC.
By: /s/ RONALD M. MORRISON

Name: Ronald M. Morrison
Title: *General Counsel and Corporate Secretary*
Date: May 29, 2009

Exhibit Index

Exhibit No.	Description
(a)(1)(A)	Letter from Joseph R. Tomkinson, Chairman and Chief Executive Officer of Impac Mortgage Holdings, Inc., to holders of Preferred Stock, dated May 29, 2009.
(a)(1)(B)	Offering Circular, dated May 29, 2009.
(a)(1)(C)(i)	Letter of Transmittal and Consent to the holders of Series B Preferred Stock, dated May 29, 2009.
(a)(1)(C)(ii)	Letter of Transmittal and Consent to the holders of Series C Preferred Stock, dated May 29, 2009.
(a)(1)(D)	Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
(a)(1)(E)	Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
(a)(1)(F)	Guidelines for Certification of Taxpayer Identification Number (TIN) on Substitute Form W-9.
(a)(1)(G)	Form of Notice of Guaranteed Delivery.
(a)(2)	Exhibit (a)(1)(A) is incorporated by reference herein.
(a)(3)	Not applicable.
(a)(4)	Not applicable.
(a)(5)	Press Release.
(b)	Not applicable.
(d)(1)	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).
(d)(2)	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).
(d)(3)	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).
(d)(4)	Indenture between Impac Mortgage Holdings, Inc. and Wilmington Trust Company, as trustee, dated October 18, 2005 (incorporated by reference to Exhibit 4.8 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2005).
(d)(5)	Exchange Agreement among Impac Mortgage Holdings, Inc. and Taberna Preferred Funding I, Ltd. and Taberna Preferred Funding II, Ltd. dated as of May 8, 2009
(d)(6)	Junior Subordinated Indenture between Impac Mortgage Holdings, Inc. and, The Bank of New York Mellon Trust Company, National Association, as trustee, dated May 8, 2009, related to Junior Subordinated Note due 2034 in the original principal amount of $31,756,000
(d)(7)	Junior Subordinated Indenture between Impac Mortgage Holdings, Inc. and, The Bank of New York Mellon Trust Company, National Association, as trustee, dated May 8, 2009, related to Junior Subordinated Note due 2034 in the original principal amount of $30,244,000
(e)	Not applicable.
(f)	Not applicable.
(g)	Not applicable.
(h)	Not applicable.

QuickLinks

Exhibit (a)(1)(A)

Joseph R. Tomkinson
Chairman and Chief Executive Officer

Impac Mortgage Holdings, Inc.
19500 Jamboree Road
Irvine, CA 92612
www.impaccompanies.com

May 29, 2009

To Our Preferred Stockholders:

Enclosed with this letter is an offering circular, dated May 29, 2009 (the "Offering Circular") relating to an Offer to Purchase and Consent Solicitation with respect to the Series B Preferred Stock and Series C Preferred Stock (collectively, the "Preferred Stock") of Impac Mortgage Holdings, Inc. (the "Company"). The Offer to Purchase and Consent Solicitation is an offer to purchase each outstanding share of Series B Preferred Stock for $0.29297 and each outstanding share of Series C Preferred Stock for $0.28516. If the Offer to Purchase and Consent Solicitation is successfully completed, we will also contemporaneously pay all accumulated and unpaid dividends on the Preferred Stock and pay all unpaid deferred amounts on our trust preferred securities. The accumulated and unpaid dividends are $1.17 per share of Series B Preferred Stock and $1.14 per share of Series C Preferred Stock. As of April 30, 2009, the unpaid deferred amounts on our trust preferred securities totaled $518,500, including interest thereon. In addition, you are being asked to approve amendments to our Charter to modify the terms of each series of Preferred Stock to eliminate certain preferential rights. Information about these matters is provided in the enclosed Offering Circular.

During the past few years, we have been seriously challenged by the unprecedented turmoil in the mortgage market, causing us to discontinue our mortgage funding operations, eliminate all but one of our reverse repurchase facilities and reduce our operating costs. One of our goals in this challenging market environment has been to align the costs of our operations to our cash flows. We believe the elimination of the Preferred Stock and the related dividends through the Offer to Purchase and Consent Solicitation will give us the enhanced balance sheet flexibility to operate and grow our business. We additionally believe that with an improved capital structure there are multiple business opportunities we can pursue to enhance stockholder value that have not previously been feasible.

If the Offer to Purchase and Consent Solicitation is not approved, there may be a near-term negative effect on the Company's business, results of operations, and financial position, including the potential inability to satisfy our liabilities and our cash requirements related to long-term dividend and interest obligations.

Our Board of Directors (the "Board") took into account a number of factors in determining the purchase price for the Offer to Purchase, including historical and current trading levels of each series of Preferred Stock and the estimated recovery value of the securities in a liquidation scenario. The Board's objective in its analysis was to further the best interests of stockholders and toward that end the Board determined to encourage the fullest participation in the tender offer.

Completion of the Offer to Purchase and Consent Solicitation requires valid tenders and consent from at least $66^2/_3\%$ of the outstanding shares of Preferred Stock, voting together as a single class. Completion of the Offer to Purchase and Consent Solicitation also requires the approval by holders representing a majority of the outstanding shares of Common Stock of a proposal to approve the proposed amendments to our Charter to modify the terms of each series of Preferred Stock to eliminate certain rights (which we are seeking concurrently with the Offer to Purchase and Consent Solicitation). As a result of these conditions for completion of the Offer to Purchase and Consent Solicitation, the Offer to Purchase and Consent Solicitation cannot be completed unless $66^2/_3\%$ of the outstanding shares of Preferred Stock are validly tendered. Under the terms of the Offer to Purchase and Consent Solicitation, you may not tender your shares of Preferred Stock without also consenting to the proposed charter amendments to each series of Preferred Stock.

The Offering Circular enclosed with this letter provides you with information about the reasons for the Offer to Purchase and Consent Solicitation, the terms of the Offer to Purchase and Consent Solicitation, procedures for tendering your shares, and the proposed charter amendments to modify the terms of each series of Preferred Stock. We encourage you to read the entire Offering Circular carefully. You may also obtain additional information about us from documents we have filed with the Securities and Exchange Commission and on our website at *www.impaccompanies.com*.

Thank you for your ongoing support of and continued interest in Impac Mortgage Holdings, Inc.

Sincerely,

Joseph R. Tomkinson
Chairman and Chief Executive Officer

QuickLinks

Exhibit (a)(1)(B)

Table of Contents

OFFERING CIRCULAR

IMPAC MORTGAGE HOLDINGS, INC.
19500 Jamboree Road
Irvine, CA 92612
(949) 475-3600

OFFER TO PURCHASE FOR CASH

BY

IMPAC MORTGAGE HOLDINGS, INC.
OF ALL OUTSTANDING SHARES

OF

9.375% SERIES B CUMULATIVE REDEEMABLE PREFERRED STOCK (CUSIP NO. 45254P300)

AT A PURCHASE PRICE OF $0.29297 PER SHARE

AND

9.125% SERIES C CUMULATIVE REDEEMABLE PREFERRED STOCK (CUSIP NO. 45254P409)

AT A PURCHASE PRICE OF $0.28516 PER SHARE

AND

CONSENT SOLICITATION

THE OFFER AND WITHDRAWAL RIGHTS EXPIRE

AT 9:00 A.M., E.D.T., ON JUNE 26, 2009,
UNLESS THE OFFER IS EXTENDED.

Impac Mortgage Holdings, Inc. (the "Company," "our," "we" or "us") is offering to purchase, upon the terms and subject to the conditions set forth in this Offering Circular and in the related letters of transmittal and consent (the "Offer to Purchase"), all of our outstanding 9.375% Series B Cumulative Redeemable Preferred Stock, par value $0.01 per share ("Series B Preferred Stock") at a price of $0.29297 per share of Series B Preferred Stock and 9.125% Series C Cumulative Redeemable Preferred Stock, par value $0.01 per share ("Series C Preferred Stock" and together with Series B Preferred Stock, the "Preferred Stock") at a price of $0.28516 per share of Series C Preferred Stock.

Concurrently with the Offer to Purchase, we are soliciting consents (the "Consent Solicitation") from holders of the Preferred Stock to amend our Charter (the "Charter") to modify the preferential terms of the Preferred Stock, including modifications to dividend, liquidation premium and voting rights, as described in this Offering Circular ("Proposed Amendments").

If successfully completed, in the Offer to Purchase and Consent Solicitation:

- for each tendered share of Series B Preferred Stock accepted for purchase by us, the holder will receive $0.29297; and
- for each tendered share of Series C Preferred Stock accepted for purchase by us, the holder will receive $0.28516.

If the Offer to Purchase and Consent Solicitation is successfully completed, we will contemporaneously pay to all holders of Preferred Stock (whether the shares are tendered or not) accumulated and unpaid dividends on the Preferred Stock. The accumulated and unpaid dividends are $1.17 per share of Series B Preferred Stock and $1.14 per share of Series C Preferred Stock. We will also contemporaneously pay all unpaid deferred amounts on our trust preferred securities, which totaled $518,500, including interest thereon, as of April 30, 2009.

Concurrently with the Offer to Purchase and Consent Solicitation, we are seeking the affirmative vote of a majority of the outstanding shares of Common Stock entitled to be cast on the proposal to approve the Proposed Amendments to our Charter. If we are unable to obtain the requisite votes from the holders of our Common Stock, this Offer to Purchase and Consent Solicitation will automatically terminate and we will not pay the accumulated and unpaid dividends on the Preferred Stock. Furthermore, holders representing $66^{2}/_{3}$% of the outstanding shares of Preferred Stock, voting as a single class separate from the holders of the Common Stock, must also approve the Proposed Amendments in order to effect the Proposed Amendments, which may be accomplished by submitting executed letter(s) of transmittal and consent and validly tendering (without later withdrawing) your shares of Preferred Stock. If we do not receive the requisite consent from the holders of the Preferred Stock, even if we have obtained the requisite approval from the holders of Common Stock, then this Offer to Purchase and Consent Solicitation will automatically terminate and we will not pay the accumulated and unpaid dividends on the Preferred Stock. You must validly tender all shares of Preferred Stock that you own and deliver your consent to the Proposed Amendments to the Charter to modify the terms of the Preferred Stock in order to participate in the Offer to Purchase and Consent Solicitation.

The Offer to Purchase and Consent Solicitation will expire at 9:00 a.m., Eastern Daylight Time, on June 26, 2009, unless extended or terminated by us. The term "expiration date" means 9:00 a.m., Eastern Daylight Time, on June 26, 2009, unless we extend the period of time for which the Offer to Purchase and Consent Solicitation are open, in which case the term "expiration date" means the latest time and date on which the Offer to Purchase and Consent Solicitation, as so extended, expire.

Each series of our Preferred Stock is quoted on the over-the-counter Pink Sheets under the following symbols:

Series B Preferred Stock: IMPHP

Series C Preferred Stock: IMPHO

On May 28, 2009, the last sales price of our Series B Preferred Stock quoted over-the-counter was $1.20 per share and the last sales price of our Series C Preferred Stock quoted over-the-counter was $1.17 per share.

Important Notice Regarding the Availability of Consent Solicitation Materials. The Offering Circular dated May 29, 2009 and the Company's Annual Report for the year ended December 31, 2008 and Quarterly Report for the period ended March 31, 2009 are also available at http://www.vfnotice.com/impaccompanies.

See "Risk Factors" beginning on page 22 for a discussion of issues that you should consider with respect to the Offer to Purchase and Consent Solicitation.

The Offer to Purchase and Consent Solicitation and the securities to be issued in the Offer to Purchase and Consent Solicitation have not been approved or disapproved by the Securities and Exchange Commission (the "SEC"), any state securities commission, or the similar commission or governmental agency of any foreign jurisdiction, nor has the SEC, any state securities commission, or the similar commission or governmental agency of any foreign jurisdiction determined whether the information in this Offering Circular is truthful or complete. None of the SEC, any state securities commission or any similar commission or governmental agency of any foreign jurisdiction has passed upon the merits or fairness of the Offer to Purchase and Consent Solicitation, or passed upon the adequacy or accuracy of the disclosure contained in this Offering Circular. Any representation to the contrary is a criminal offense.

This Offering Circular is first being mailed to holders of the Preferred Stock on or around May 29, 2009.

The Information Agent for the Offer to Purchase is:

D.F. King & Co., Inc.

The date of this Offering Circular is May 29, 2009.

TABLE OF CONTENTS

"Questions and Answers about the Offer to Purchase and Consent Solicitation" and a "Summary" describing the principal terms and conditions of the Offer to Purchase and Consent Solicitation follow. You should read this entire Offering Circular and the applicable Letter(s) of Transmittal and Consent carefully before deciding whether or not to tender your Preferred Stock and deliver your consent. You may want to consult with your personal financial advisor or other legal or investment professional(s) regarding your individual circumstances. All common share and per common share information contained in this Offering Circular has been adjusted to reflect a 1-for-10 reverse split of our Common Stock that was effected on December 30, 2008.

There are 2,000,000 shares of our Series B Preferred Stock and 4,470,600 shares of our Series C Preferred Stock outstanding, each of which has a liquidation preference of $25.00 per share.

We are seeking consents from holders of the Preferred Stock to amend certain provisions and eliminate other provisions (collectively, the "Proposed Amendments") applicable to each series of Preferred Stock as described in "The Offer to Purchase and Consent Solicitation—Terms of the Offer to Purchase and Consent Solicitation." See *Annex A* and *Annex B* to this Offering Circular for the amended text of the affected provisions of the Charter reflecting the Proposed Amendments. Under Maryland law and the Charter, the affirmative vote of holders of outstanding shares of Common Stock entitled to cast a majority of all the votes entitled to be cast on the proposal is necessary to approve the amendments to the Charter modifying the preferential terms of each series of Preferred Stock. Concurrently with the Offer to Purchase and Consent Solicitation, we are seeking the affirmative vote of a majority of the outstanding shares of Common Stock entitled to be cast on the proposal to approve the Proposed Amendments to our Charter. If we are unable to obtain the requisite votes from the holders of our Common Stock to approve the Proposed Amendments, this Offer to Purchase and Consent Solicitation will automatically terminate and we will not purchase any tendered shares or pay the accumulated and unpaid dividends on the Preferred Stock. Furthermore, holders representing $66^{2}/_{3}\%$ of the outstanding shares of Preferred Stock, voting as a single class separate from the holders of the Common Stock, must also approve the Proposed Amendments in order to effect the Proposed Amendments, which may be accomplished by submitting executed letter(s) of transmittal and consent and validly tendering (without later withdrawing) your shares of Preferred Stock. If we do not receive the requisite consent from the holders of the Preferred Stock, even if we have obtained the requisite approval from the holders of Common Stock, then this Offer to Purchase and Consent Solicitation will automatically terminate and we will not purchase any tendered shares or pay the accumulated and unpaid dividends on the Preferred Stock.

At any time, our Board of Directors (the "Board") may determine that we will make less than all of the proposed modifications under the Proposed Amendments, extend the June 26, 2009 expiration date for the approval of the Proposed Amendments and the completion of the Offer to Purchase and Consent Solicitation, change the terms of the Offer to Purchase and Consent Solicitation or undertake a combination of the foregoing.

None of our officers, employees, the Board, the Information Agent (as defined below), the Depositary (as defined below) or any of our financial advisors is making a recommendation to any holder of Preferred Stock as to whether you should tender shares in the Offer to Purchase and Consent Solicitation. You must make your own investment decision regarding the Offer to Purchase and Consent Solicitation based upon your own assessment of the market value of the Preferred Stock, the effect of holding shares of Preferred Stock upon the approval of the Proposed Amendments, your liquidity needs, your investment objectives and any other factors you deem relevant.

In order to tender shares in the Offer to Purchase and Consent Solicitation, you must consent and authorize the Depositary to consent on your behalf to the Proposed Amendments by executing letters of transmittal and consent or request that your broker or nominee tender and consent on your behalf. No meeting has been or is being held in conjunction with the Consent Solicitation. Consents may only

be submitted on the terms set forth in the Offering Circular. See "The Offer to Purchase and Consent Solicitation—Terms of the Offer to Purchase and Consent Solicitation."

Our officers, directors and employees may solicit tenders from holders of our Preferred Stock and may answer inquiries concerning the Offer to Purchase and Consent Solicitation, but they will not receive additional compensation for soliciting tenders or answering any such inquiries.

D.F. King & Co., Inc. is acting as Information Agent (the "Information Agent") for the Offer to Purchase and Consent Solicitation. The Information Agent will receive reasonable and customary compensation for its services and will also be reimbursed for certain out-of-pocket expenses and indemnified against certain liabilities. American Stock Transfer and Trust Company is acting as the Depositary for the Offer to Purchase and Consent Solicitation (the "Depositary").

Questions related to the terms of the Offer to Purchase and Consent Solicitation and requests for assistance or for additional copies of this Offering Circular, the letters of transmittal and consent or any other documents may be directed to the Information Agent using its contact information set forth on the back cover of the Offering Circular or by telephone toll-free at (800) 269-6427. Beneficial owners may also contact their custodian for assistance concerning the Offer to Purchase and Consent Solicitation.

You should rely only on the information contained or incorporated by reference, and included herewith, in this Offering Circular. Except for the Information Agent, we have no arrangements for and have no understanding with any dealer, salesman or other person regarding the solicitation of tenders hereunder. None of us, the Depositary or the Information Agent has authorized any other person to provide you with different or additional information. If anyone provides you with different or inconsistent information, you should not rely on it. Neither the delivery of this Offering Circular nor any purchase made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Company or its subsidiaries since the respective dates as of which information is given in this Offering Circular. We are offering to purchase, and are seeking tenders of, the Preferred Stock only in jurisdictions where the offers or tenders are permitted.

QUESTIONS AND ANSWERS ABOUT THE OFFER TO PURCHASE AND CONSENT SOLICITATION

The following are some questions regarding the Offer to Purchase and Consent Solicitation that you may have as a holder of the Preferred Stock and the answers to those questions. We urge you to read carefully the entire Offering Circular, including the section entitled "Risk Factors," the related letters of transmittal and consent, our annual report on Form 10-K for the year ended December 31, 2008 (the "Annual Report") and our Quarterly Report on Form 10-Q for the period ended March 31, 2009 (the "Quarterly Report"). Additional important information is contained in the remainder of this Offering Circular.

All references to "IMH," the "Company," "we," "our," "ours" and "us" and similar terms are to Impac Mortgage Holdings, Inc. and its subsidiaries, unless the context otherwise requires. Except as otherwise specified, all common share and per common share information in this Offering Circular has been adjusted to reflect a reverse stock split of our Common Stock that was effected on December 30, 2008, in which each 10 outstanding shares of our Common Stock were converted into 1 share of our Common Stock.

Who is offering to buy my Preferred Stock?

Impac Mortgage Holdings, Inc. is offering to repurchase all outstanding shares of Series B Preferred Stock and Series C Preferred Stock in a self-tender offer. All shares of Preferred Stock that are validly tendered and accepted for purchase by us in the Offer to Purchase and Consent Solicitation will become authorized but unissued shares.

What is the purpose of the Offer to Purchase and Consent Solicitation?

Since 2007, our management has been seriously challenged by the unprecedented turmoil in the mortgage market, including the following: significant increases in delinquencies and foreclosures; significant increases in credit-related losses; declines in originations; tightening of warehouse credit and the virtual elimination of the market for loan securitizations. As a result, we discontinued certain operations, resolved and terminated all but one of our reverse repurchase lines, which was restructured, satisfied $33.0 million of trust preferred securities for $4.95 million, exchanged $51.3 million in trust preferred securities for $62 million in new notes and settled a portion of our outstanding repurchase claims, while also reducing our operating costs and liabilities.

We did not pay dividends on the Preferred Stock for the fourth quarter of 2008 and the first quarter of 2009. As of March 31, 2009, the accumulated and unpaid dividends on the Preferred Stock were $7.4 million in aggregate. We have also deferred payments on our trust preferred securities since December 2008. As of April 30, 2009, excluding the trust preferred securities that were recently exchanged for new notes, our outstanding deferred payments, including interest thereon, on our remaining trust preferred securities were $518,500 in aggregate.

One of our goals in this challenging market environment has been to align the costs of our operations to our cash flows. The acceptance of this Offer to Purchase and Consent Solicitation would reduce the Company's continuing obligation to pay or accumulate quarterly dividends on the Preferred Stock, thereby allowing the Company to use or preserve cash for other purposes. Currently, the aggregate dividends on the outstanding Preferred Stock total approximately $14.9 million per year.

If we receive the requisite approval from the holders of Preferred Stock and Common Stock and the Offer to Purchase and Consent Solicitation is completed, then contemporaneously with the closing we will pay all accumulated and unpaid dividends on the Preferred Stock and unpaid deferred amounts on our trust preferred securities. Holders that tender their shares of Preferred Stock will also receive the consideration pursuant to this Offer to Purchase. Assuming all shares of Preferred Stock are validly

tendered (and not withdrawn) and repurchased by us, we will pay an aggregate purchase price of approximately $1.9 million pursuant to this Offer to Purchase and Consent Solicitation. Those holders who do not tender their shares of Preferred Stock, despite the completion of the Offer to Purchase and Consent Solicitation, will only receive the cumulated dividends on the Preferred Stock. Plus, if the Offer to Purchase and Consent Solicitation is completed, our obligation to pay future accumulated and unpaid dividends on any remaining outstanding shares of Preferred Stock will be eliminated and future dividends, if any, will be non-cumulative.

We believe the significant reduction or elimination of the outstanding Preferred Stock and the elimination of the related dividends obligations will give us the enhanced balance sheet flexibility to operate and grow our business. We additionally believe that with an improved capital structure there are multiple business opportunities we can pursue to enhance stockholder value that have not previously been feasible.

If the Offer to Purchase and Consent Solicitation is not approved, there may be a near-term negative effect on our business, results of operations, and financial position, including the potential inability to satisfy our liabilities and the long-term dividend-related cash requirements of our Preferred Stock and obligations pursuant to the terms of our remaining trust preferred securities. We currently have no present intention to pay future dividends on the Preferred Stock. If we do not pay dividends on our Preferred Stock for six or more quarterly periods (whether or not consecutive), the holders of the Preferred Stock will be entitled to elect two directors to our Board of Directors. Our failure to pay dividends for the fourth quarter of 2008 and the first quarter of 2009 constitute two quarterly periods for purpose of this determination.

What will I receive in the Offer to Purchase and Consent Solicitation if I tender my shares of Preferred Stock and they are accepted?

If successfully completed, in the Offer to Purchase and Consent Solicitation:

- for each tendered share of Series B Preferred Stock accepted for purchase by us, you will receive $0.29297; and
- for each tendered share of Series C Preferred Stock accepted for purchase by us, you will receive $0.28516.

You will also receive contemporaneously with the purchase price for the Preferred Stock all accumulated and unpaid dividends on each share of Preferred Stock, which, as of March 31, 2009, was $1.17 per share of Series B Preferred Stock and $1.14 per share of Series C Preferred Stock.

When and how will I be paid for my tendered shares of Preferred Stock?

If all terms and conditions for completion of the Offer to Purchase and Consent Solicitation are satisfied or waived, we will pay for all validly tendered and not withdrawn shares of Preferred Stock promptly after the expiration date of the Offer to Purchase and Consent Solicitation. We refer to the date on which such payment is made as the "payment date." We expect the payment date to be made approximately five (5) to ten (10) business days after the expiration date. We reserve the right to delay payment for the Preferred Stock pending anticipated receipt of any applicable governmental or regulatory approvals.

We will pay for your validly tendered and not withdrawn shares of Preferred Stock by depositing the aggregate consideration, as well as an amount for all accumulated and unpaid dividends, with the Depositary, which will act as your agent for purposes of receiving payments from us and transmitting the payments to you. In all cases, payment for tendered shares of Preferred Stock will be made only after timely receipt by the Depositary of your certificates for such shares, or in the case of stockholders

who own shares in book-entry form, an indication in the letter of transmittal that such stockholder is tendering its shares, plus a properly completed and duly executed letter of transmittal and any other required documents for such shares. See "Tender of Preferred Stock; Acceptance for Payment and Payment for Shares."

How did the Board determine the consideration to be paid in the Offer to Purchase and Consent Solicitation?

The Board took into account a number of factors in determining the purchase price for the shares of Preferred Stock, including historical and current trading levels of the Preferred Stock, the interests of the Company's existing investors and the estimated recovery value of the securities in a liquidation scenario. In considering historical and current trading levels of each series of Preferred Stock, the Board considered how various announcements and releases effected the stock's trading levels. It also took into account the effect of announcing that the Company does not intend to pay Preferred Stock dividends in the future. It also considered the effect of delisting from the NYSE on the pricing and relative market value of the securities and the volatility and limited liquidity of the securities. The Board also considered the liquidation value and distribution of assets, if any, to the Preferred Stock and Common Stock as well as the Preferred Stock's position relative to its outstanding debt. The Board also considered the interest of all holders of the Company's capital stock with the goal of maximizing participation in the Offer to Purchase. The Board's objective in its analysis was to further the best interests of stockholders and toward that end the Board determined to encourage the fullest participation in the tender offer.

Our Board has made no determination that the purchase price represents a fair valuation of the Preferred Stock. We did not retain any independent representative or consultant to render a fairness opinion or to provide any analysis of fairness in connection with the approval of the Offer to Purchase and Consent Solicitation. We cannot assure you that if you tender your shares of Preferred Stock you will receive the same or greater value than if you choose to keep them.

What are the conditions to the closing of the Offer to Purchase and Consent Solicitation?

We are not obligated to purchase any tendered shares of Preferred Stock if:

1. there is any litigation regarding the Offer to Purchase and Consent Solicitation:

    - challenging or seeking to make illegal, materially delay, restrain or prohibit the Offer to Purchase and Consent Solicitation or the acceptance for purchase of shares of Preferred Stock; or
    - which would have a material adverse effect on us;

2. the consummation of the Offer to Purchase and Consent Solicitation would violate any law, rule or regulation applicable to us, including limitations on distributions pursuant to Maryland law;

3. any law, rule, regulation or governmental order becomes applicable to us that results, directly or indirectly, in the consequences described under paragraph 1 above;

4. less than $66^{2}/_{3}\%$ of the outstanding shares of the Preferred Stock, voting as a single class separate from the Common Stock (which is equivalent to $66^{2}/_{3}\%$ of the aggregate liquidation preference of the outstanding shares of the Preferred Stock), are tendered (and thereby consent to the Proposed Amendments to our Charter) in the Offer to Purchase and Consent Solicitation; or

5. less than a majority of the outstanding shares of Common Stock entitled to be cast on the proposal to approve the Proposed Amendments to our Charter vote in favor of such amendments.

We will, in our reasonable judgment, determine whether each of the Offer to Purchase and Consent Solicitation conditions have been satisfied and whether to waive any conditions that have not been satisfied.

Pursuant to the terms of the Preferred Stock, we are not permitted to purchase any shares of Preferred Stock unless full cumulative dividends are contemporaneously declared and paid.

See "The Offer to Purchase and Consent Solicitation—Conditions of the Offer to Purchase and Consent Solicitation" and "The Offer to Purchase and Consent Solicitation—Extension, Termination and Amendment."

If the Offer to Purchase and Consent Solicitation is NOT successfully completed, what will be the consequences to the stockholders and the Company?

If the Offer to Purchase and Consent Solicitation is not successfully completed, the Preferred Stock will remain issued and outstanding, and entitled to all of the preferential rights associated with the Preferred Stock as further described in this Offering Circular under "Description of Capital Stock-Preferred Stock." The holders of the Preferred Stock will continue to be entitled to the applicable cumulative dividend and any applicable liquidation premium. Given our current financial condition, we currently do not intend to pay future dividends on the Preferred Stock if the Offer to Purchase and Consent Solicitation is not successfully completed. If we do not pay dividends on our Preferred Stock for six or more quarterly periods (whether or not consecutive), the holders of the Preferred Stock will be entitled to elect two directors to our Board of Directors. Our failure to make dividend payments for the fourth quarter of 2008 and the first quarter of 2009 counts as two quarterly periods of non-payment towards the potential triggering of this right.

The Preferred Stock is entitled to receive $25.00 per share (before any payments are made to the holders of our Common Stock and any other junior stock) upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs. The $25.00 liquidation preference per share is not being modified in the proposed amendments to the Charter. However, if Proposed Amendments are not approved, upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the Preferred Stock will also continue to be entitled to any accumulated and unpaid dividends (whether or not declared) plus, with respect to the Series C Preferred Stock and until November 2009, a premium of $.50 per share. If our available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Preferred Stock and any other parity stock, then the holders of the Preferred Stock and any other parity stock will share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled. Any liquidating distributions to capital stock are subject to payments on outstanding indebtedness. As of March 30, 2009, the Company had stockholders' equity of $9.0 million with an aggregate of $6.2 billion of total liabilities. The annual aggregate dividends on the outstanding Preferred Stock total approximately $14.9 million and the aggregate liquidation value of the Preferred Stock is approximately $161.8 million, excluding any liquidation premium and accumulated dividends.

If the Offer to Purchase and Consent Solicitation is not successfully completed, the Preferred Stock will continue to rank senior to our Common Stock with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up and be entitled to a larger amount of our assets. Plus, our ability to make distributions to holders of Common Stock will remain limited. Unless full cumulative dividends are paid on the Preferred Stock, no dividends (other than in shares of Common Stock) or distributions can be paid and shares of Common Stock nor can any shares of Preferred Stock be redeemed, purchased or otherwise acquired.

There may be significant adverse consequences to the Company if the proposal to approve the Proposed Amendments is not approved by the holders of Common Stock or the Proposed Amendments are not approved by the holders of Preferred Stock, including the potential inability to satisfy our liabilities and the long-term dividend-related cash requirements of our Preferred Stock. The Company will continue to be obligated to pay accumulated dividends on the Preferred Stock, and to the extent we do not pay dividends for six or more quarterly periods, the holders of the Preferred Stock will be entitled to elect two directors to our Board of Directors. If elected, two additional directors will add to the Company's compensation costs paid to its Board of Directors. Currently, board members receive an annual fee of $40,000, a meeting fee of $2,500 and fees for service on committees. Future dividends payable to the holders of Series B Preferred Stock and Series C Preferred Stock would likely represent a significant reduction in our cash, making it difficult for us to satisfy other continuing obligations. We may not be able to raise additional capital if we cannot pay dividends on the Preferred Stock, attract additional investors given the dividend rights of the Preferred Stock or satisfy our outstanding obligations.

In light of the continuing turmoil in the mortgage market, our ability to continue our operations is dependent upon our ability to implement successfully our strategic initiatives and acquire new operations that contribute sufficient additional cash flow to enable us to meet our current and future expenses. Our future financial performance and success are dependent in large part upon our ability to implement our contemplated strategies successfully. We have restructured our existing reverse repurchase line, exchanged about half of our trust preferred securities for new notes, and satisfied a portion of our trust preferred securities in an effort to reduce payment obligations. To the extent that we are not successful in reducing our payment obligations, we would be unlikely to be able to continue our operations as planned, thereby requiring us to reduce our operating costs and expenses so that our income can cover those costs. As a result, we may not be able to accomplish our goals, rebuild our business, and, given the limited opportunities available in the financial market, we may be required to change our current plan of operations, which we can not determine at this time, but could include a wind down of the Company.

If I decide not to tender my shares of Preferred Stock and the Offer to Purchase and the Consent Solicitation is completed, how will the completion of the Offer to Purchase and the Consent Solicitation affect my shares of Preferred Stock?

If you decide not to tender your shares of Preferred Stock and the Proposed Amendments take effect, the rights of your Preferred Stock will be materially and adversely affected and the value of your Preferred Stock may decline.

If we receive the requisite approvals from the holders of the Preferred Stock and Common Stock and the Proposed Amendments take effect, even if you do not tender your shares in the Offer to Purchase and the Consent Solicitation, you will still receive the accumulated and unpaid fourth quarter 2008 and first quarter 2009 dividends on the Preferred Stock. However, you will be subject to and bound by the Proposed Amendments, which, among other things, will permit us to declare and pay dividends on our Common Stock or shares of any other class or series of our capital stock, except any class or series of stock on parity with the Preferred Stock ("Parity Preferred"), or redeem, repurchase or otherwise acquire shares of any class or series of our capital stock, including Common Stock and any other series of preferred stock, without paying or setting apart for payment any dividends on the Preferred Stock, eliminate any accumulated and unpaid dividends on the Preferred Stock and make all dividends non-cumulative.

If you decide not to tender your shares of Preferred Stock and we complete the Offer to Purchase and the Consent Solicitation, thereby significantly reducing the number of outstanding shares of each series of Preferred Stock, the liquidity and possibly the market price of your shares of Preferred Stock may be adversely affected.

See "Risk Factors—Risks Related to the Offer to Purchase and Consent Solicitation," "The Offer to Purchase and Consent Solicitation—Terms of the Offer to Purchase and Consent Solicitation" and "The Offer to Purchase and Consent Solicitation—Effects of Tenders and Consents" for more detail and *Annex A* and *Annex B* hereto for the complete text of the Proposed Amendments.

Am I required to tender my shares of Preferred Stock in order to receive the accumulated and unpaid dividends on my shares of Preferred Stock?

No. If the Offer to Purchase and Consent Solicitation is successfully completed, but you choose not to tender your shares of Preferred Stock, you will still receive the accumulated and unpaid dividends on your shares of Preferred Stock. Pursuant to the terms of the Preferred Stock, we are not permitted to purchase the Preferred Stock unless full cumulative dividends on the Preferred Stock are declared and paid contemporaneously. You will not receive any purchase consideration if you do not tender your shares.

Will I receive accumulated and unpaid dividends if the Offer to Purchase and Consent Solicitation is NOT successfully completed?

No, we will not pay the accumulated and unpaid dividends on the Preferred Stock if the Offer to Purchase and Consent Solicitation is not successfully completed. Accumulated and unpaid dividends on the Preferred Stock will only be paid if the Offer to Purchase and Consent Solicitation is successfully completed.

When will the Offer to Purchase and Consent Solicitation expire?

The Offer to Purchase and Consent Solicitation is currently scheduled to expire at 9:00 a.m., Eastern Daylight Time, on June 26, 2009. We may, however, extend the Offer to Purchase and Consent Solicitation from time to time as necessary until all the conditions to the Offer to Purchase and Consent Solicitation have been satisfied or waived.

See "The Offer to Purchase and Consent Solicitation—Extension, Termination and Amendment."

Under what circumstances can the Offer to Purchase and Consent Solicitation be extended?

We may extend the Offer to Purchase and Consent Solicitation for any period at our sole discretion to increase the time in which holders of Preferred Stock may tender their shares. We will also extend the expiration date of the Offer to Purchase and Consent Solicitation if required by applicable law or regulation.

See "The Offer to Purchase and Consent Solicitation—Extension, Termination and Amendment."

What happens to my tendered shares if the Offer to Purchase and Consent Solicitation is terminated?

The Offer to Purchase and Consent Solicitation may be terminated if:

- we are unable to obtain the requisite votes from the holders of our Common Stock;
- we do not receive the requisite consent from the holders of the Preferred Stock; or
- the other conditions to the Offer to Purchase discussed in this Offering Circular are not satisfied or (where within the Company's discretion) waived, including, but not limited to, if the Company does not satisfy the distribution requirements under Maryland law at the requisite time to complete the Offer to Purchase and Consent Solicitation.

If the Offer to Purchase and Consent Solicitation is terminated and you previously have tendered shares, we will return certificates for such shares of Preferred Stock tendered (or, in the case of shares of Preferred Stock tendered in uncertificated form, those shares of Preferred Stock will be credited back to an appropriate account) as soon as practicable following the termination of the Offer to Purchase and Consent Solicitation without expense to the tendering stockholder.

See "Tender of Preferred Stock; Acceptance for Payment and Payment for Shares."

How will I be notified if the Offer to Purchase and Consent Solicitation is extended, amended or terminated?

If the Offer to Purchase and Consent Solicitation is extended, amended or terminated, we will promptly notify The Depository Trust Company, which we refer to as "DTC," and make a public announcement by issuing a press release. In the case of an extension, the announcement will be issued no later than 9:00 a.m., Pacific Daylight Time, on the next business day after the previously scheduled expiration date of the Offer to Purchase and Consent Solicitation.

See "The Offer to Purchase and Consent Solicitation—Extension, Termination and Amendment."

Will I have to pay any fees or commissions for participating in the Offer to Purchase and Consent Solicitation?

If you hold your shares through a broker, dealer or other nominee, and your broker, dealer or other nominee tenders the shares on your behalf, your broker, dealer or other nominee may charge you a fee for doing so. You should consult your broker, dealer or other nominee to determine whether any charges will apply.

See "The Offer to Purchase and Consent Solicitation—Terms of the Offer to Purchase and Consent Solicitation" and "The Offer to Purchase and Consent Solicitation—Expenses."

May I tender only a portion of the shares of Preferred Stock that I hold?

No. You must tender all of your shares of Preferred Stock to participate in the Offer to Purchase and Consent Solicitation. If you own shares of more than one series of Preferred Stock, you must tender all of the shares of Preferred Stock of each series that you own to participate in the Offer to Purchase and Consent Solicitation. See "The Offer to Purchase and Consent Solicitation—Terms of the Offer to Purchase and Consent Solicitation."

How do I tender my shares of Preferred Stock?

If you hold physical share certificates and are the record owner of your shares, you must deliver the certificates representing your shares of Preferred Stock, together with completed letters of transmittal and consent and any other documents required by the letters of transmittal and consent, to American Stock Transfer and Trust Company, the Depositary for the Offer to Purchase and Consent Solicitation, no later than the time the Offer to Purchase and Consent Solicitation expires.

If your shares of Preferred Stock are held in street name (*i.e.*, through a broker, dealer or other nominee), the shares of Preferred Stock can be tendered by your nominee through DTC upon your request. In order to tender shares validly in the Offer to Purchase and Consent Solicitation, you must consent to the Proposed Amendments by executing letters of transmittal and consent or, if your shares of Preferred Stock are held in street name, request that your broker or nominee do so on your behalf.

If you wish to tender your shares of Preferred Stock but share certificates are not immediately available, time will not permit shares or other required documentation to reach the Depositary before the expiration date or the procedure for book-entry transfer cannot be completed on a timely basis, you

must follow the procedures for guaranteed delivery described under "The Offer to Purchase and Consent Solicitation—Procedure for Tendering and Consenting—Guaranteed Delivery Procedures." You must, in all cases, obtain a Medallion guarantee from an eligible institution in the form set forth in the notice of guaranteed delivery in connection with the delivery of your shares in this manner. Once DTC has closed, participants in DTC whose name appears on a DTC security position listing as the owner of shares of Preferred Stock will still be able to tender shares by delivering a notice of guaranteed delivery to the Depositary via facsimile. If you hold Preferred Stock through a broker, dealer or other nominee, that institution must submit any notice of guaranteed delivery on your behalf.

See "The Offer to Purchase and Consent Solicitation—Procedure for Tendering and Consenting."

If I recently purchased shares of Preferred Stock, can I still tender my shares of Preferred Stock in the Offer to Purchase and Consent Solicitation?

Yes. If you have recently purchased shares of Preferred Stock, you may tender those shares in the Offer to Purchase and Consent Solicitation. In order to tender such shares of Preferred Stock, you must make sure that your transaction settles prior to the expiration date or with sufficient time for you to tender your shares in compliance with the guaranteed delivery procedures. See "The Offer to Purchase and Consent Solicitation—Procedure for Tendering and Consenting—Guaranteed Delivery Procedures" for more information on guaranteed delivery.

What is the Consent Solicitation?

We are soliciting consents from holders of the Preferred Stock to amend the Charter to modify the preferential terms of the Preferred Stock including modifications to dividend, liquidation premium and voting rights, as further described in this Offering Circular. See "The Offer to Purchase and Consent Solicitation—Effects of Tenders and Consents." Each share of Preferred Stock (equal to each $25.00 of liquidation preference) will be entitled to one vote on the Consent Solicitation.

In order to complete the purchase of the Preferred Stock in the Offer to Purchase and Consent Solicitation, we must receive the requisite approvals of the Proposed Amendments from the holders of the Preferred Stock.

Do I have to deliver my consent in the Consent Solicitation in order to tender my shares of Preferred Stock validly in the Offer to Purchase and Consent Solicitation?

Yes. You must consent to the Proposed Amendments in order to tender your shares of Preferred Stock in the Offer to Purchase and Consent Solicitation. Your participation in the Offer to Purchase and Consent Solicitation is conditioned on your execution of a written consent approving the Proposed Amendments, and our completion of the Offer to Purchase and Consent Solicitation is conditioned on obtaining consents from the requisite number of holders of the Preferred Stock (voting together as a single class) to the Proposed Amendments.

There is no record date for the Offer to Purchase and Consent Solicitation, and the holders of $66^{2}/_{3}\%$ of the outstanding shares of Preferred Stock as of the expiration date will be required to consent to the Proposed Amendments pursuant to the terms set forth herein.

See "The Offer to Purchase and Consent Solicitation—Terms of the Offer to Purchase and Consent Solicitation."

What vote is required to approve the Proposed Amendments?

Concurrently with the Offer to Purchase and Consent Solicitation, we are seeking the affirmative vote of a majority of the outstanding shares of Common Stock entitled to be cast on the proposal to approve the Proposed Amendments to our Charter modifying the terms of each series of Preferred

Stock. If we are unable to obtain the requisite votes from the holders of our Common Stock, this Offer to Purchase and Consent Solicitation will automatically terminate. Furthermore, holders representing $66^{2}/_{3}$% of the outstanding shares of Preferred Stock, voting as a single class separate from the holders of the Common Stock, must also approve the Proposed Amendments in order to effect the Proposed Amendments, which may be accomplished by submitting executed letter(s) of transmittal and consent and validly tendering (without later withdrawing) your shares of Preferred Stock. If we do not receive the requisite consent from the holders of the Preferred Stock, even if we have obtained the requisite approval from the holders of Common Stock, then this Offer to Purchase and Consent Solicitation will automatically terminate.

See "The Offer to Purchase and Consent Solicitation—Terms of the Offer to Purchase and Consent Solicitation."

May I deliver a consent to only some of the Proposed Amendments?

No. You must consent to all of the Proposed Amendments affecting the Preferred Stock you hold if you wish to validly tender any of your shares of Preferred Stock.

See "The Offer to Purchase and Consent Solicitation—Terms of the Offer to Purchase and Consent Solicitation."

How do I deliver my consent to the Proposed Amendments?

If you are a record holder of shares of Preferred Stock, by submitting executed letters of transmittal and consent and validly tendering (without later withdrawing) your shares of Preferred Stock, you will be consenting to all of the Proposed Amendments to the terms of the Preferred Stock. If you hold your shares of Preferred Stock in street name (*i.e.*, through a broker, dealer or other nominee), you should instruct your broker, dealer or other nominee to tender your shares of Preferred Stock and consent to the Proposed Amendments on your behalf.

See "The Offer to Purchase and Consent Solicitation—Effects of Tenders and Consents."

When will the Proposed Amendments become effective?

If we receive the requisite approval of the holders of the Common Stock and the requisite consents of holders of the Preferred Stock and all other conditions are met, the Proposed Amendments will become effective upon the filing by the Company of Articles of Amendment with the State Department of Assessments and Taxation of Maryland (the "SDAT") or at a later date and time specified in the Articles of Amendment that is not more than 30 days after the acceptance for recording of the Articles of Amendment by the SDAT. The Company intends to file the Articles of Amendment promptly after the expiration of the Offer to Purchase and Consent Solicitation, if at least $66^{2}/_{3}$% of the outstanding shares of the Preferred Stock have been tendered in the Offer to Purchase and Consent Solicitation and all other conditions are waived or satisfied. The Board reserves the right not to make one or more of the Proposed Amendments, even if all Proposed Amendments are approved by our stockholders.

See "The Offer to Purchase and Consent Solicitation—Terms of the Offer to Purchase and Consent Solicitation."

What must I do if I want to withdraw my shares of Preferred Stock from the Offer to Purchase and Consent Solicitation and revoke the related consent?

You may properly withdraw any shares of Preferred Stock that you validly tender at any time prior to the expiration of the Offer to Purchase and Consent Solicitation, which is 9:00 a.m., Eastern Daylight Time, on June 26, 2009, unless we extend it, by following the procedures described in this

Offering Circular. A withdrawal of tendered shares of Preferred Stock must be for all shares of Preferred Stock tendered by a holder. In addition, you may withdraw any shares of Preferred Stock that you tender that are not accepted for purchase by us after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation. See "The Offer to Purchase and Consent Solicitation—Withdrawal of Tenders and Revocation of Consents."

A proper withdrawal of tendered shares of Preferred Stock prior to the expiration of the Offer to Purchase and Consent Solicitation will be a valid revocation of the related consent. You may not validly revoke your consent unless you validly withdraw previously tendered shares.

If you have share certificates for your shares of Preferred Stock which are registered in your name, in order to withdraw your shares of Preferred Stock from the Offer to Purchase and Consent Solicitation and revoke your related consent, you must deliver a written notice of withdrawal to the Depositary at the appropriate address specified on the back cover of this Offering Circular prior to the expiration of the Offer to Purchase and Consent Solicitation or, if your shares of Preferred Stock have not been previously accepted for purchase by us, after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation. Your notice of withdrawal must comply with the requirements set forth in this Offering Circular.

If you hold your shares of Preferred Stock in street name (*i.e.*, through a broker, dealer or other nominee) and you tendered your shares through DTC, a withdrawal of your shares of Preferred Stock and revocation of the related consent will be effective if you and your nominee comply with the appropriate procedures of DTC's automated Offer to Purchase program system prior to the expiration of the Offer to Purchase and Consent Solicitation or after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation. Any notice of withdrawal must identify the shares of Preferred Stock to be withdrawn, including, if held through DTC, the name and number of the account at DTC to be credited and otherwise comply with the procedures of DTC.

See "The Offer to Purchase and Consent Solicitation—Withdrawal of Tenders and Revocation of Consents."

Are you making a recommendation regarding whether I should tender in the Offer to Purchase and Consent Solicitation?

No. None of our officers, employees, the Board, the Information Agent, the Depositary or any of our financial advisors is making a recommendation to any holder of Preferred Stock as to whether the holder should tender shares in the Offer to Purchase and Consent Solicitation. You must make your own investment decision regarding the Offer to Purchase and Consent Solicitation based upon your own assessment of the market value of the Preferred Stock, the effect of holding shares of Preferred Stock if the Proposed Amendments are approved, your liquidity needs, your investment objectives and any other factors you deem relevant.

See "Background Information."

What are the tax consequences of the transaction to me?

Your receipt of cash for shares validly tendered pursuant to the Offer to Purchase and Consent Solicitation will, if you meet certain conditions, require the recognition of gain or loss in an amount equal to the difference between (1) the cash you receive pursuant to the Offer to Purchase and Consent Solicitation and (2) your adjusted tax basis in the shares that you surrender pursuant to the Offer to Purchase and Consent Solicitation. That gain or loss will be a capital gain or loss if the shares are a capital asset in your hands, and will be long-term capital gain or loss if you have held the shares for more than one year at the time the Offer to Purchase and Consent Solicitation is completed. However, the tax consequences of the Offer to Purchase and Consent Solicitation to you may vary

depending on your particular facts and circumstances, and it is possible that the entire amount of cash you receive pursuant to the Offer will be treated as a dividend. The amount of cash received that represents the payment of accumulated but previously-unpaid dividends will be treated as ordinary dividend income to a U.S. person for United States Federal income tax purposes. See "Material United States Federal Income Tax Consequences" for a more detailed discussion of the tax treatment of accepting the Offer to Purchase and Consent Solicitation. We urge you to consult with your own tax advisor as to the particular tax consequences to you of the Offer to Purchase and Consent Solicitation.

Does the Company intend to remain a public company following the completion of the Offer to Purchase and Consent Solicitation?

Yes. We intend to remain a public company.

Whom do I call if I have any questions on how to tender my shares of Preferred Stock or consent to the Proposed Amendments, or any other questions relating to the Offer to Purchase and Consent Solicitation?

Questions related to the terms of the Offer to Purchase and Consent Solicitation and requests for assistance, as well as for additional copies of this Offering Circular, the letters of transmittal and consent or any other documents, may be directed to the Information Agent using its contact information set forth on the back cover of this Offering Circular or by telephone toll-free at (800) 269-6427.

Questions relating to the tender of physical share certificates should be directed to the Depositary.

Where can I find more information about Impac Mortgage Holdings, Inc.?

For more information, see the Annual Report and the Quarterly Report included with this Offering Circular and "Where You Can Find More Information."

SUMMARY

This Offering Circular, the related letters of transmittal and consent and the Annual Report and Quarterly Report included with this Offering Circular each contain important information that should be read carefully before any decision is made with respect to the Offer to Purchase and Consent Solicitation. The following summary is qualified in its entirety by the more detailed information appearing elsewhere in this Offering Circular and the related letters of transmittal and consent. Except as otherwise specified, all common share and per common share information in this Offering Circular has been adjusted to reflect a reverse stock split of our Common Stock that was effected on December 30, 2008 in which each 10 outstanding shares of our Common Stock were converted into 1 share of our Common Stock.

Impac Mortgage Holdings, Inc.

Impac Mortgage Holdings, Inc. is a Maryland corporation incorporated in August 1995 and has the following subsidiaries: IMH Assets Corp. ("IMH Assets"), Impac Warehouse Lending Group, Inc. ("IWLG"), and Impac Funding Corporation ("IFC"), Impac Secured Assets Corp. ("ISAC"), Impac Commercial Capital Corporation ("ICCC"), and Integrated Real Estate Service Corp.

Since 2007, our management has been seriously challenged by the unprecedented turmoil in the mortgage market, including the following: significant increases in delinquencies and foreclosures; significant increases in credit-related losses; declines in originations; tightening of warehouse credit and the virtual elimination of the market for loan securitizations. As a result, we discontinued certain operations, resolved and terminated all but one of our reverse repurchase lines, which was restructured, satisfied $33.0 million of trust preferred securities for $4.95 million, exchanged $51.3 million in trust preferred securities for new notes and settled a portion of our outstanding repurchase claims, while also reducing our operating costs and liabilities.

We did not pay dividends on the Preferred Stock for the fourth quarter of 2008 and the first quarter of 2009. As of March 31, 2009, the accumulated and unpaid dividends on the Preferred Stock were $7.4 million in aggregate. We have also deferred payments on our trust preferred securities since December 2008. As of April 30, 2009, excluding the trust preferred securities that were recently exchanged for $62 million in new notes, our outstanding deferred payments, including interest thereon, on our remaining trust preferred securities were $518,500 in aggregate.

One of our goals in this challenging market environment has been to align the costs of our operations to our cash flows. The acceptance of this Offer to Purchase and Consent Solicitation would reduce the Company's continuing obligation to pay or accumulate quarterly dividends on the Preferred Stock, thereby allowing the Company to use or preserve cash for other purposes. Currently, the aggregate dividends on the outstanding Preferred Stock total approximately $14.9 million per year.

We believe the elimination of the Preferred Stock and the related dividends will give us the enhanced balance sheet flexibility to operate and grow our business. We additionally believe that with an improved capital structure there are multiple business opportunities we can pursue to enhance stockholder value that have not previously been feasible.

If the Offer to Purchase and Consent Solicitation is not approved, there may be a near-term negative effect on our business, results of operations, and financial position, including the potential inability to satisfy our liabilities and the long-term dividend-related cash requirements of our Preferred Stock. The Preferred Stock will remain issued and outstanding, and entitled to all of the preferential rights associated with the Preferred Stock as further described in this Offering Circular under "Description of Capital Stock—Preferred Stock." If we do not successfully complete the Offer to Purchase and Consent Solicitation, we will not pay the accumulated and unpaid dividends and we currently do not intend to continue making dividend payments on our Preferred Stock, which could adversely affect our business. If we do not pay dividends on our Preferred Stock for six or more

quarterly periods (whether or not consecutive), the holders of the Preferred Stock will be entitled to elect two directors to our Board of Directors. Our failure to make dividend payments for the fourth quarter of 2008 and the first quarter of 2009 counts as two quarterly periods of non-payment towards the potential triggering of this right. Furthermore, the Preferred Stock is entitled to receive $25.00 per share (before any payments are made to the holders of our Common Stock and any other junior stock) upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs. The $25.00 liquidation preference per share is not being modified in the proposed amendments to the Charter. However, if the Proposed Amendments are not approved, upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the Preferred Stock will also continue to be entitled to any accumulated and unpaid dividends (whether or not declared) plus, with respect to the Series C Preferred Stock and until November 2009, a premium of $.50 per share. Any liquidating distributions to capital stock are subject to payments on outstanding indebtedness. The Preferred Stock will continue to rank senior to our Common Stock with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up and be entitled to a larger amount of our assets. Plus, our ability to make distributions to holders of Common Stock will remain limited. As of March 30, 2009, the Company had stockholders' equity of $9.0 million with an aggregate of $6.2 billion of total liabilities. The annual dividends on the outstanding Preferred Stock total approximately $14.9 million and the aggregate liquidation value of the Preferred Stock is approximately $161.8 million, excluding any liquidation premium and accumulated dividends.

The Company can not make any assurances that it will receive the requisite consents of holders of both the Common Stock and Preferred Stock and that all the conditions will be met to complete the Offer to Purchase and Consent Solicitation.

Summary Description of the Offer to Purchase and Consent Solicitation

The Company	Impac Mortgage Holdings, Inc.
The Preferred Stock Subject to the Offer to Purchase and Consent Solicitation	All outstanding shares of our Series B Preferred Stock and Series C Preferred Stock.
Reverse Stock Split	On December 30, 2008, we effected a 1-for-10 reverse stock split of all of our issued and outstanding shares of Common Stock (the "Reverse Stock Split"). The par value and number of authorized shares of our Common Stock remained unchanged. All references to number of common shares and per common share amounts included in this Offering Circular gives effect to the Reverse Stock Split.
The Offer to Purchase	We are offering to purchase, for $0.29297 per share of Series B Preferred Stock and $0.28516 per shares of Series C Preferred Stock, any and all of our shares of Preferred Stock validly tendered and not validly withdrawn prior to the expiration of the Offer to Purchase and Consent Solicitation. See "The Offer to Purchase and Consent Solicitation—Terms of the Offer to Purchase and Consent Solicitation."
Consideration	In the Offer to Purchase and Consent Solicitation:

- for each tendered share of Series B Preferred Stock accepted for purchase by us, the holder will receive $0.29297; and

- for each tendered share of Series C Preferred Stock accepted for purchase by us, the holder will receive $0.28516.

Aggregate Consideration	Assuming all shares of Preferred Stock are validly tendered (and not withdrawn), we will pay an aggregate of approximately $1.9 million for the repurchase of the Preferred Stock, not including accumulated and unpaid dividends.
Accumulated and Unpaid Dividends	The accumulated and unpaid dividends are $1.17 per share of Series B Preferred Stock and $1.14 per shares of Series C Preferred Stock. The aggregate accumulated and unpaid dividends on the Preferred Stock are $7.4 million.
The Consent Solicitation	In order to tender shares in the Offer to Purchase and Consent Solicitation, holders of our Preferred Stock are required to consent (by executing the letters of transmittal and consent or requesting that their broker or nominee consent on their behalf) to amend the Charter to modify the terms of the Preferred Stock as set forth in *Annex A* and *Annex B*. The following is a summary of the Proposed Amendments and is qualified in its entirety by reference to the Charter and the amended text of the affected provisions of our Charter reflecting the Proposed Amendments, set forth in *Annex A* and *Annex B*. The Proposed Amendments, if approved by our stockholders, would amend the Preferred Stock as follows:

1. make future dividends non-cumulative;
2. eliminate the provisions prohibiting the payment of dividends on junior stock and prohibiting the purchase or redemption of junior or parity stock if full cumulative dividends for all past dividend periods are not paid or declared and set apart for payment;
3. eliminate any premiums payable upon the liquidation, dissolution or winding up of the Company;
4. eliminate the provision prohibiting the Company from electing to redeem Preferred Stock prior to the fifth year anniversary of the issuance of such Preferred Stock;
5. eliminate the provision prohibiting the Company from redeeming less than all of the outstanding Preferred Stock if full cumulative dividends for all past dividend periods have not been paid or declared and set apart for payment;
6. eliminate the right of holders of Preferred Stock to elect two directors if dividends are in arrears for six quarterly periods; and
7. eliminate the right of holders of Preferred Stock to consent to or approve the authorization or issuance of preferred stock senior to the Preferred Stock.

	The elimination of the restrictions described above would allow us to declare and pay dividends on shares of Common Stock or shares of any other class or series of capital stock, except any class or series of Parity Preferred, or redeem, repurchase or otherwise acquire shares of any class or series of our capital stock, including Common Stock and any other series of preferred stock, without paying or setting apart for payment any dividends on shares of either series of Preferred Stock. If we receive sufficient consents from the holders of the Preferred Stock, voting as a single class separate from the holders of the Common Stock, to approve the Proposed Amendments, we will file Articles of Amendment with the SDAT to effect the Proposed Amendments promptly after the expiration of the Offer to Purchase and Consent Solicitation if $66^{2}/_{3}$% of the outstanding shares of the Preferred Stock have been tendered in the Offer to Purchase and Consent Solicitation and all other conditions are waived or satisfied. For additional information regarding the Consent Solicitation, see "The Offer to Purchase and Consent Solicitation—Terms of the Offer to Purchase and Consent Solicitation" and "The Offer to Purchase and Consent Solicitation—Effects of Tenders and Consents." We urge you to review the terms of the Charter, including the articles supplementary, which are filed as exhibits to our Form 8-A/A filed on June 30, 2004 and Form 8-A filed on November 19, 2004, and the amended text of the affected provisions of our Charter, which are attached to this Offering Circular as *Annex A* and *Annex B*.
Expiration of the Offer to Purchase and Consent Solicitation	The Offer to Purchase and Consent Solicitation will expire at 9:00 a.m., Eastern Daylight Time, on June 26, 2009, unless extended or earlier terminated by us.
Conditions to Completion of the Offer to Purchase and Consent Solicitation	The completion of the Offer to Purchase and Consent Solicitation is subject to the closing conditions described in "The Offer to Purchase and Consent Solicitation—Conditions of the Offer to Purchase and Consent Solicitation."
Withdrawal of Tenders and Revocation of Consents	You may withdraw previously tendered shares of Preferred Stock at any time before the expiration of the Offer to Purchase and Consent Solicitation. In addition, you may withdraw any shares of Preferred Stock that you tender that are not accepted by us for purchase after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation. Withdrawal of your tender before the expiration of the Offer to Purchase and Consent Solicitation will also revoke your consent. See "The Offer to Purchase and Consent Solicitation—Withdrawal of Tenders and Revocation of Consents."

Material United States Federal Income Tax Considerations	See "Material United States Federal Income Tax Considerations."
Risk Factors	You should consider carefully all of the information set forth in this Offering Circular and, in particular, you should evaluate the specific factors set forth under "Risk Factors" before deciding whether to participate in the Offer to Purchase and Consent Solicitation.
Information Agent	D.F. King & Co., Inc.
Depositary	American Stock Transfer and Trust Company.
Concurrent Payment of Deferred Obligations on Trust Preferred Securities	If the Company completes the Offer to Purchase, we will contemporaneously pay all unpaid deferred amounts on our trust preferred securities, which, excluding trust preferred securities that were recently exchanged for new notes, totaled approximately $518,500, including interest thereon, as of April 30, 2009.
Additional Documentation; Further Information; Assistance	Any requests for assistance concerning the Offer to Purchase and Consent Solicitation and requests for additional copies of this Offering Circular and the letters of transmittal and consent may be directed to the Information Agent at the address and telephone numbers set forth on the back cover of this Offering Circular. Beneficial owners may also contact their broker, dealer or other nominee.

RISK FACTORS

You should carefully consider the risks and uncertainties described throughout this Offering Circular, including those described below, and the risk factors set forth in our Annual Report on Form 10-K and Quarterly Report on Form 10-Q regarding the risks of investment in our securities, before you decide whether to tender your shares of Preferred Stock and execute and deliver your consent to the Proposed Amendments.

Risks Related to the Offer to Purchase and Consent Solicitation

The Proposed Amendments will eliminate certain significant rights of the holders of Preferred Stock.

If we complete the Offer to Purchase and Consent Solicitation and obtain the requisite approvals from holders of our Common Stock and Preferred Stock, and the Proposed Amendments become effective, certain significant rights of holders of Preferred Stock that are currently set forth in the Charter will be eliminated. The rights of holders of any shares of Preferred Stock that are not repurchased will be materially and adversely affected by the Proposed Amendments. See "The Offer to Purchase and Consent Solicitation—Terms of the Offer to Purchase and Consent Solicitation" and "The Offer to Purchase and Consent Solicitation—Effects of the Tenders and Consents" for a description of the Proposed Amendments and *Annex A* and *Annex B* for the complete text of the Proposed Amendments.

If we receive the requisite approvals of the Proposed Amendments, dividend payments on the Preferred Stock will become non-cumulative and the dividend priority provisions will be eliminated.

The dividends on the Preferred Stock are currently cumulative, which means that if a dividend is not paid in any quarter it will accrue and become payable in the future, either upon the redemption of such share, or upon the liquidation or dissolution of the Company. If we complete the Offer to Purchase and Consent Solicitation and receive the requisite approval from the holders of our Common Stock and the holders of Preferred Stock, and the Proposed Amendments become effective, future dividends, if any, on the Preferred Stock will become non-cumulative, which means that if a dividend is not declared for any dividend period, it will not accrue and holders of Preferred Stock will not be entitled to receive that dividend at any time in the future.

The Proposed Amendments would allow the Company to declare and pay dividends on shares of Common Stock or shares of any other class or series of capital stock, except any class or series of Parity Preferred, or redeem, repurchase or otherwise acquire shares of any class or series of our capital stock, including Common Stock and any other series of Preferred Stock, without paying or setting apart for payment any dividends on shares of any series of Preferred Stock. The Proposed Amendments would also allow the Company to repurchase less than all of the shares of any series of Preferred Stock, or redeem or repurchase shares of another series of Preferred Stock, without declaring and paying or setting apart for payment any dividends on the other outstanding shares of Preferred Stock.

We have not obtained a third-party determination that the Offer to Purchase and Consent Solicitation is fair to holders of Preferred Stock.

We are not making a recommendation as to whether holders of Preferred Stock should tender their shares in the Offer to Purchase and Consent Solicitation. We have not retained, and do not intend to retain, any unaffiliated representative to act solely on behalf of the holders of Preferred Stock for purposes of negotiating the Offer to Purchase and Consent Solicitation or preparing a report concerning the fairness of the Offer to Purchase and Consent Solicitation. You must make your own independent decision regarding your participation in the Offer to Purchase and Consent Solicitation.

The purchase price offered per share in the Offer to Purchase and Consent Solicitation is currently lower than the liquidation preference per share of the Preferred Stock.

The purchase price being offered per share of Preferred Stock in the Offer to Purchase and Consent Solicitation is lower than the liquidation preference per share of the Preferred Stock. The shares of Preferred Stock have a liquidation preference of $25.00 per share plus any accumulated and unpaid dividends on such share. The holders of the Series B Preferred Stock are being offered $0.29297 per share and the holders of the Series C Preferred Stock are being offered $0.28516 per share in the Offer to Purchase and Consent Solicitation.

The purchase price offered per share in the Offer to Purchase and Consent Solicitation is not dependent on or related to the market price of shares of the Preferred Stock, and could be lower than the sales price of the Preferred Stock on or prior to the expiration date.

The purchase price offered per share of the Preferred Stock in the Offer to Purchase and Consent Solicitation was determined by the Board in good faith to further the best interests of stockholders and to encourage the fullest participation in the tender offer. The purchase price is fixed, and thus is not dependent on or related to the market price of shares of the Preferred Stock as quoted on the Pink Sheets. As a result, the sales price of shares of the Preferred Stock may be higher or lower than the purchase price at any time on or prior to the expiration date, and will not be subject to any adjustment related to the fluctuations in market price of the shares of Preferred Stock. If you tender your shares for repurchase and the Offer to Purchase and Consent Solicitation is successfully completed, you may receive more or less consideration that you would have if you had alternately sold your shares of Preferred Stock in the open market or in an alternate transaction.

If the Offer to Purchase and Consent Solicitation is successful, there may no longer be a trading market for any remaining shares of Preferred Stock that were not tendered.

If the Offer to Purchase and Consent Solicitation is completed, we do not intend to apply for listing of any remaining outstanding shares of Preferred Stock on any national securities exchange. We do not believe there will be an active market for trading of the Preferred Stock following completion of the Offer to Purchase and Consent Solicitation and, as a result, we believe that holders of the remaining Preferred Stock will have an illiquid investment indefinitely.

STATEMENT REGARDING FORWARD-LOOKING INFORMATION

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

For a discussion of these and other risks and uncertainties that could cause actual results to differ from those contained in the forward-looking statements, see "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in the Company's Annual Report on Form 10-K for the period ended December 31, 2008 and Quarterly Report on Form 10-Q for the period ended March 31, 2009, the other reports we file under the Exchange Act, and the additional risk factors set forth above in this Offering Circular. This document speaks only as of its date and we do not undertake, and specifically disclaim any obligation, to publicly release the results of any revisions that may be made to any forward-looking statements to reflect the occurrence of anticipated or unanticipated events or circumstances after the date of such statements.

CAPITALIZATION

The following table shows our capitalization as of March 31, 2009 on a historical basis and on a pro forma basis assuming completion of the Offer to Purchase and Consent Solicitation, 100% participation by holders of outstanding shares of Preferred Stock in the Offer to Purchase, payment of accumulated and unpaid dividends on the Preferred Stock and payment of any deferred payments, including interest thereon, on the trust preferred securities.

This table should be read in conjunction with, and is qualified in its entirety by reference to, the section captioned "Financial Information" and our consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2008 and Quarterly Report on Form 10-Q for the period ended March 31, 2009 included with this Offering Circular.

	As of March 31, 2009	
	Historical (Unaudited)	Proforma
	(in thousands)	
ASSETS		
Cash and cash equivalents	$ 38,313	$ 28,483
LIABILITIES		
Trust preferred securities	11,090	11,090
Other liabilities	6,321	5,795
STOCKHOLDERS' EQUITY		
Series-A junior participating preferred stock, $0.01 par value; 2,500,000 shares authorized; none issued and outstanding	—	—
Series-B 9.375% cumulative redeemable preferred stock, $0.01 par value; liquidation value $50,000; 2,000,000 shares authorized, issued and outstanding	20	—
Series-C 9.125% cumulative redeemable preferred stock, $0.01 par value; liquidation value $111,765; 5,500,000 shares authorized; 4,470,600 shares issued and outstanding as of March 31, 2009 and December 31, 2008.	45	—
Common stock, $0.01 par value; 200,000,000 shares authorized; 7,618,146 shares issued and outstanding as of March 31, 2009 and December 31, 2008, respectively	76	76
Additional paid-in capital	1,178,569	1,176,773
Net accumulated deficit:		
Cumulative dividends declared	(815,077)	(822,520)
Retained deficit	(354,628)	(354,628)
Net accumulated deficit	(1,169,705)	(1,177,148)
Total stockholders' equity(1)	9,005	(299)

(1) Under Maryland law, no distribution may be made if, after giving effect to the distribution: (a) the corporation would not be able to pay indebtedness of the corporation as the indebtedness becomes due in the usual course of business; or (b) the corporation's total assets would be less than the sum of the corporation's total liabilities plus, unless the charter permits otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of stockholders whose preferential rights on dissolution are superior to those receiving the distribution. Although the Company would not satisfy this distribution requirements based on the March 31, 2009 pro forma capitalization, the Company expects that it will meet the distribution requirements at the time of the closing of the Offer to Purchase and Consent Solicitation. Although the Company may receive the requisite approvals from the Preferred Stock and Common Stock in order to complete the Offer to Purchase and Consent Solicitation, if the Company does not satisfy the distribution requirements under Maryland law, then the Offer to Purchase and Consent Solicitation will be terminated.

FINANCIAL INFORMATION

We incorporate by reference, and include herewith, the financial statements and notes thereto in Item 8 of our Annual Report on Form 10-K for the year ended December 31, 2008 and the information included in Item 1 of our Quarterly Report for the period ended March 31, 2009, each of which is included with this Offering Circular.

BACKGROUND INFORMATION

Since 2007, our management has been seriously challenged by the unprecedented turmoil in the mortgage market, including the following: significant increases in delinquencies and foreclosures; significant increases in credit-related losses; declines in originations; tightening of warehouse credit and the virtual elimination of the market for loan securitizations. As a result, we discontinued certain operations, resolved and terminated all but one of our reverse repurchase lines, which was restructured, satisfied $33.0 million of trust preferred securities for $4.95 million, exchanged $51.3 million in trust preferred securities for $62 million in new notes and settled a portion of our outstanding repurchase claims, while also reducing our operating costs and liabilities.

We did not pay dividends on the Preferred Stock for the fourth quarter of 2008 and the first quarter of 2009. As of March 31, 2009, the accumulated and unpaid dividends on the Preferred Stock were $7.4 million in aggregate. We have also deferred payments on our trust preferred securities since December 2008. As of April 30, 2009, excluding the trust preferred securities that were recently exchanged for new notes, our outstanding deferred payments, including interest thereon, on our remaining trust preferred securities were $518,500 in aggregate.

One of our goals in this challenging market environment has been to align the costs of our operations to the cash flows. The acceptance of this Offer to Purchase and Consent Solicitation would reduce the Company's continuing obligation to pay or accumulate quarterly dividends on the Preferred Stock, thereby allowing the Company to use or preserve cash for other purposes. Currently, the aggregate dividends on the outstanding Preferred Stock total approximately $14.9 million per year.

If we receive the requisite approval from the holders of Preferred Stock and Common Stock and the Offer to Purchase and Consent Solicitation is completed, then contemporaneously with the closing we will pay all accumulated and unpaid dividends on the Preferred Stock and unpaid deferred amounts on our trust preferred securities. Holders that tender their shares of Preferred Stock will also receive the consideration pursuant to this Offer to Purchase. Assuming all shares of Preferred Stock are validly tendered (and not withdrawn) and repurchased by us, we will pay an aggregate purchase price of approximately $1.9 million pursuant to this Offer to Purchase and Consent Solicitation. Those holders who do not tender their shares of Preferred Stock despite the completion of the Offer to Purchase and Consent Solicitation will only receive the cumulated dividends on the Preferred Stock. Plus, if the Offer to Purchase and Consent Solicitation is completed, our obligation to pay future accumulated and unpaid dividends on any remaining outstanding shares of Preferred Stock will be eliminated and future dividends, if any, will be non-cumulative.

If the Offer to Purchase and Consent Solicitation is not approved, there may be a near-term negative effect on our business, results of operations, and financial position, including the potential inability to satisfy our liabilities and the long-term dividend-related cash requirements of our Preferred Stock and obligations pursuant to the terms of our remaining trust preferred securities.

If the Offer to Purchase and Consent Solicitation is not successfully completed, the Preferred Stock will remain issued and outstanding, and entitled to all of the preferential rights associated with the Preferred Stock as further described in this Offering Circular under "Description of Capital Stock-Preferred Stock." The holders of the Preferred Stock will continue to be entitled to the applicable cumulative dividend and any liquidation premium. Given our current financial condition, we currently do not intend to pay future dividends on the Preferred Stock if the Offer to Purchase and Consent

Solicitation is not successfully completed. If we do not pay dividends on our Preferred Stock for six or more quarterly periods (whether or not consecutive), the holders of the Preferred Stock will be entitled to elect two directors to our Board of Directors. Our failure to make dividend payments for the fourth quarter of 2008 and the first quarter of 2009 counts as two quarterly periods of non-payment towards the potential triggering of this right.

The Preferred Stock is entitled to receive $25.00 per share (before any payments are made to the holders of our Common Stock and any other junior stock) upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs. The $25.00 liquidation preference per share is not being modified in the proposed amendments to the Charter. However, if Proposed Amendments are not approved, upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the Preferred Stock will also continue to be entitled to any accumulated and unpaid dividends (whether or not declared) plus, with respect to the Series C Preferred Stock and until November 2009, a premium of $.50 per share. If our available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Preferred Stock and any other parity stock, then the holders of the Preferred Stock and any other parity stock will share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled. Any liquidating distributions to capital stock are subject to payments on outstanding indebtedness. As of March 30, 2009, the Company had stockholders' equity of $9.0 million with an aggregate of $6.2 billion of total liabilities. The annual aggregate dividends on the outstanding Preferred Stock total approximately $14.9 million and the aggregate liquidation value of the Preferred Stock is approximately $161.8 million, excluding any liquidation premium and accumulated dividends.

If the Offer to Purchase and Consent Solicitation is not successfully completed, the Preferred Stock will continue to rank senior to our Common Stock with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up and be entitled to a larger amount of our assets. Plus, our ability to make distributions to holders of Common Stock will remain limited. Unless full cumulative dividends are paid on the Preferred Stock, no dividends (other than in shares of Common Stock) or distributions can be paid and shares of Common Stock nor can any shares of Preferred Stock be redeemed, purchased or otherwise acquired.

There may be significant adverse consequences to the Company if the proposal to approve the Proposed Amendments is not approved by the holders of Common Stock or the Proposed Amendments are not approved by the holders of Preferred Stock, including the potential inability to satisfy our liabilities and the long-term dividend-related cash requirements of our Preferred Stock. The Company will continue to be obligated to pay accumulated dividends on the Preferred Stock, and to the extent we do not pay dividends for six or more quarterly periods, the holders of the Preferred Stock will be entitled to elect two directors to our Board of Directors. If elected, two additional directors will add to the Company's compensation costs paid to its Board of Directors. Currently, board members receive an annual fee of $40,000, a meeting fee of $2,500 and fees for service on committees. Future dividends payable to the holders of Series B Preferred Stock and Series C Preferred Stock would likely represent a significant reduction in our cash, making it difficult for us to satisfy other continuing obligations. We may not be able to raise additional capital if we cannot pay dividends on the Preferred Stock, attract additional investors given the dividend rights of the Preferred Stock or satisfy our outstanding obligations.

In light of the continuing turmoil in the mortgage market, our ability to continue our operations is dependent upon our ability to implement successfully our strategic initiatives and acquire new operations that contribute sufficient additional cash flow to enable us to meet our current and future expenses. Our future financial performance and success are dependent in large part upon our ability to implement our contemplated strategies successfully. We have restructured our existing reverse repurchase line, exchanged about half of our trust preferred securities for new notes, and satisfied a portion of our trust preferred securities in an effort to reduce payment obligations. To the extent that

we are not successful in reducing our payment obligations, we would be unlikely to be able to continue our operations as planned, thereby requiring us to reduce our operating costs and expenses so that our income can cover those costs. As a result, we may not be able to accomplish our goals, rebuild our business, and, given the limited opportunities available in the financial market, we may be required to change our current plan of operations, which we can not determine at this time, but could include a wind down of the Company.

The completion of the Offer to Purchase and Consent Solicitation will eliminate our obligation to pay accumulated and unpaid dividends on the Preferred Stock and will make future dividends, if any, non-cumulative. We believe the elimination of the Preferred Stock and the related dividends will give us the enhanced balance sheet flexibility to grow and operate our business. We additionally believe that with an improved capital structure there are multiple business opportunities we can pursue to enhance stockholder value that have not previously been feasible due to our ongoing obligations under our trust preferred securities and our Preferred Stock.

We have not undertaken a valuation with respect to the purchase price for the Offer to Purchase of the Preferred Stock. Our Board has made no determination that the purchase price represents a fair valuation of the Preferred Stock. We did not retain any independent representative or consultant to render a fairness opinion or to provide any analysis of fairness in connection with the approval of the Offer to Purchase and Consent Solicitation. We cannot assure you that if you tender your Preferred Stock you will receive the same or greater value than if you choose to keep them.

The Offer to Purchase and Consent Solicitation requires valid tenders and consents from at least $66^{2}/_{3}\%$ of the outstanding shares of Preferred Stock, voting together as a single class. Completion of the Offer to Purchase and Consent Solicitation also requires the approval by holders representing a majority of the outstanding shares of Common Stock of the proposal to approve the Proposed Amendments (which we are seeking concurrently with the Offer to Purchase and Consent Solicitation).

Although our officers, directors and employees are authorized to solicit tenders and answer inquiries from holders of our Preferred Stock, none of our officers, employees, the Board, the Information Agent, the Depositary or any of our financial advisors is making a recommendation to any holder of Preferred Stock as to whether you should tender shares in the Offer to Purchase and Consent Solicitation. You must make your own decision regarding the Offer to Purchase and Consent Solicitation based upon your own assessment of the market value of the Preferred Stock, the effect of holding shares of Preferred Stock upon the approval of the Proposed Amendments, your liquidity needs, your investment objectives and any other factors you deem relevant.

For a discussion of the risks associated with not tendering in the Offer to Purchase and Consent Solicitation and of the risks associated with a continuing investment in the Company, see "Risk Factors" and "Questions and Answers About the Offer to Purchase and Consent Solicitation."

Considerations in Determining the Purchase Price

The purchase price will not be adjusted due to any increases or decreases in the price of the Preferred Stock between the date of this Offering Circular and the expiration date.

The Board's objective in its analysis was to further the best interests of stockholders and toward that end the Board determined to encourage the fullest participation in the tender offer. The Board took into account a number of factors, including but not limited to the following factors, in determining the purchase price.

Trading Levels: The Board considered the historical and current trading levels of each series of Preferred Stock. It considered how the trading levels of the securities were affected by, among other things, the release of the Company's quarterly reports and the effect of the various announcements made by the Company. The Board considered the effect of the recent delisting of the Company's Preferred Stock from the NYSE and the effect on the pricing and relative market value of the

securities. The Board considered the volatility and limited liquidity of the securities. The Board considered the effect that the different dividend rates on each series of Preferred Stock had on their trading value. The Board also took into account the effect that announcing that the Company currently does not intend to pay future dividends on the Preferred Stock could have on trading levels and relative values of the securities.

Recovery Value of the Securities: The Board considered the effect that a liquidation of the Company and subsequent distribution of the assets, if any, to the three classes of security holders would have on the relative valuation of the securities. The Board considered the relative position of the Preferred Stock in liquidation to the positions of the reverse repurchase line, the new notes and remaining trust preferred securities.

Existing Investors: The Board considered the interests of all holders of our capital stock with the goal of maximizing participation of the Preferred Stock in this Offer to Purchase. Our Board has made no determination that the purchase price represents a fair valuation of the Preferred Stock. We did not retain any independent representative or consultant to render a fairness opinion or to provide any analysis of fairness in connection with the approval of the Offer to Purchase and Consent Solicitation. We cannot assure you that if you tender your shares of Preferred Stock you will receive the same or greater value than if you choose to keep them.

THE OFFER TO PURCHASE AND CONSENT SOLICITATION

Terms of the Offer to Purchase and Consent Solicitation

In order for shares of Preferred Stock to be tendered validly in the Offer to Purchase and Consent Solicitation, each holder of Preferred Stock must tender all, and not less than all, of the Preferred Stock it holds and must consent to all of the Proposed Amendments affecting the Preferred Stock. If a holder holds shares of more than one series of Preferred Stock, the holder must tender all of the shares of each series of Preferred Stock it holds.

If successfully completed, in the Offer to Purchase and Consent Solicitation:

- for each tendered share of Series B Preferred Stock accepted for purchase by us, the holder will receive $0.29297; and
- for each tendered share of Series C Preferred Stock accepted for purchase by us, the holder will receive $0.28516.

If the Offer to Purchase and Consent Solicitation is successfully completed, we will contemporaneously pay to all holders of Preferred Stock (whether the shares are tendered or not) accumulated and unpaid dividends on the Preferred Stock. The accumulated and unpaid dividends are $1.17 per share of Series B Preferred Stock and $1.14 per share of Series C Preferred Stock. We will also contemporaneously pay all unpaid deferred amounts on our trust preferred securities, which, excluding trust preferred securities recently exchanged for new notes, totaled $518,500, including interest thereon, as of April 30, 2009.

We will not pay any commission or other remuneration to any broker, dealer, salesman or other person for soliciting tenders of Preferred Stock. Our officers, directors and employees may solicit tenders from holders of our Preferred Stock and will answer inquiries concerning the Offer to Purchase and Consent Solicitation, but they will not receive additional compensation for soliciting tenders or answering any such inquiries.

D.F. King & Co., Inc. is acting as Information Agent for the Offer to Purchase and Consent Solicitation. The Information Agent will receive reasonable and customary compensation for its services and will also be reimbursed for certain out-of-pocket expenses and indemnified against certain liabilities.

You should rely only on the information contained in this Offering Circular. We have no arrangements for and have no understanding with any dealer, salesman or other person regarding the solicitation of tenders hereunder. None of us, the Depositary or the Information Agent has authorized any other person to provide you with different or additional information. If anyone provides you with different or inconsistent information, you should not rely on it. Neither the delivery of this Offering Circular nor any purchase made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Company or its subsidiaries since the respective dates as of which information is given in this Offering Circular. We are offering to purchase, and are seeking tenders of, the Preferred Stock only in jurisdictions where the offers or tenders are permitted.

The Proposed Amendments, if approved by our stockholders, would amend the Charter as set forth in *Annex A* and *Annex B*. For a discussion of the changes to the terms of the Preferred Stock that will come into effect if the Proposed Amendments are adopted, see also "The Offer to Purchase and Consent Solicitation —Effects of Tenders and Consents." The following discussion of the changes to the Preferred Stock and the discussion contained in "The Offer to Purchase and Consent Solicitation," are summaries of the Proposed Amendments and are qualified in their entirety by reference to the amended text of the affected provisions of the Charter reflecting the Proposed Amendments set forth in *Annex A* and *Annex B*. The Proposed Amendments would modify the terms of each series of Preferred Stock as follows:

- make future dividends non-cumulative;
- eliminate the provisions prohibiting the payment of dividends on junior stock and prohibiting the purchase or redemption of junior or parity stock if full cumulative dividends for all past dividend periods are not paid or declared and set apart for payment;
- eliminate any premiums payable upon the liquidation, dissolution or winding up of the Company;
- eliminate the provision prohibiting the Company from electing to redeem Preferred Stock prior to the fifth year anniversary of the issuance of such Preferred Stock;
- eliminate the provision prohibiting the Company from redeeming less than all of the outstanding Preferred Stock if full cumulative dividends for all past dividend periods have not been paid or declared and set apart for payment;
- eliminate the right of holders of Preferred Stock to elect two directors if dividends are in arrears for six quarterly periods; and
- eliminate the right of holders of Preferred Stock to consent to or approve the authorization or issuance of preferred stock senior to the Preferred Stock.

The elimination of the restrictions described above would allow us to declare and pay dividends on shares of Common Stock or shares of any other class or series of our capital stock, except any class or series of Parity Preferred, or redeem, repurchase or otherwise acquire shares of any class or series of our capital stock, including Common Stock and any other series of preferred stock, without paying or setting apart for payment any dividends on shares of either series of Preferred Stock.

Concurrently with the Offer to Purchase and Consent Solicitation, we are seeking the affirmative vote of a majority of the outstanding shares of Common Stock entitled to be cast on the proposal to approve the Proposed Amendments to our Charter. Under Maryland law and the Charter, the affirmative vote of holders of outstanding shares of Common Stock entitled to cast a majority of all the votes entitled to be cast on the proposal is necessary to approve the amendments to the Charter modifying the terms of each series of Preferred Stock. If we are unable to obtain the requisite votes from the holders of our Common Stock, this Offer to Purchase and Consent Solicitation will automatically terminate. Furthermore, holders representing $66^{2}/_{3}\%$ of the outstanding shares of Preferred Stock, voting as a single class separate from the holders of the Common Stock, must also

approve the Proposed Amendments in order to effect the Proposed Amendments, which may be accomplished by submitting executed letter(s) of transmittal and consent and validly tendering (without later withdrawing) your shares of Preferred Stock. If we do not receive the requisite consent from the holders of the Preferred Stock, even if we have obtained the requisite approval from the holders of Common Stock, then this Offer to Purchase and Consent Solicitation will automatically terminate. At any time before or after our stockholders approve the Proposed Amendments, the Board may determine that we will make less than all of the proposed modifications under the Proposed Amendments, extend the June 26, 2009, expiration date for the approval of the Proposed Amendments and completion of the Offer to Purchase and Consent Solicitation, change the terms of the Offer to Purchase and Consent Solicitation or undertake a combination of the foregoing.

For more complete information, we urge you to review the terms of the Charter, as amended and supplemented, and the articles supplementary, all of which have been included as exhibits to documents filed with the Securities and Exchange Commission, and the proposed amended text of the affected provisions of our Charter, which is attached to this Offering Circular as *Annex A* and *Annex B*.

Holders of record who submit executed letters of transmittal and consent and validly tender on or prior to the expiration date (without later withdrawing) their shares of Preferred Stock are also consenting to all of the Proposed Amendments to the terms of each series of Preferred Stock. Holders who hold their shares of Preferred Stock in street name (*i.e.*, through a broker, dealer or other nominee) should instruct their broker, dealer or other nominee to tender the shares of Preferred Stock and consent to the Proposed Amendments on such holders' behalf. Holders of shares of Preferred Stock may not tender shares in the Offer to Purchase and Consent Solicitation without delivering their consent to the Proposed Amendments.

Owners holding certificated shares of Preferred Stock who tender their shares directly to the Depositary will not have to pay any fees or commissions. Holders who tender their shares of Preferred Stock through a broker, dealer or other nominee may be charged a fee by their broker, dealer or other nominee for doing so. Such holders should consult their broker, dealer or other nominee to determine whether any charges will apply.

If the Offer to Purchase and Consent Solicitation is not earlier extended, amended or terminated and if all conditions to the Offer to Purchase and Consent Solicitation have either been satisfied or waived, promptly after the expiration of the Offer to Purchase and Consent Solicitation, we will file Articles of Amendment with the SDAT and then accept for purchase all shares validly tendered and not properly withdrawn by notifying DTC and the Depositary of our acceptance. The Proposed Amendments will become effective upon filing with the SDAT or at a later date and time specified in the Articles of Amendment that is not more than 30 days after the acceptance for recording of the Articles of Amendment by the SDAT. We will then issue a press release announcing the effectiveness of the Proposed Amendments and the completion of our repurchase of shares of Preferred Stock.

The term "expiration date" means 9:00 a.m., Eastern Daylight Time, on June 26, 2009, unless we extend the period of time for which the Offer to Purchase and Consent Solicitation is open, in which case the term "expiration date" means the latest time and date on which the Offer to Purchase and Consent Solicitation, as so extended, expires.

If the Offer to Purchase and Consent Solicitation expires or terminates without any shares of Preferred Stock validly tendered and not validly withdrawn being accepted for purchase by us following the expiration or termination of the Offer to Purchase and Consent Solicitation, you will continue to hold your shares of Preferred Stock.

The Board has authorized and approved the Offer to Purchase and Consent Solicitation. None of the Board, our officers and employees, the Information Agent, the Depositary or any of our financial advisors is making a recommendation to any holder of Preferred Stock as to whether you should tender shares. You must make your own decision regarding the Offer to Purchase and Consent Solicitation

based upon your own assessment of the market value of the Preferred Stock, the effect of holding shares of Preferred Stock upon the approval of the Proposed Amendments, your liquidity needs, your investment objectives and any other factors you deem relevant.

Conditions of the Offer to Purchase and Consent Solicitation

We are not obligated to accept for payment, purchase or pay for, and may delay the acceptance of, any shares of Preferred Stock tendered pursuant to the Offer to Purchase and Consent Solicitation, in any event subject to Rule 14e-1(c) under the Exchange Act, if at any time on or after the date of this Offering Circular and prior to the expiration of the Offer to Purchase and Consent Solicitation, any of the following conditions shall exist:

(a) there is any litigation regarding the Offer to Purchase and Consent Solicitation (i) challenging or seeking to make illegal, materially delay, restrain or prohibit the Offer to Purchase and Consent Solicitation or the acceptance for purchase of Preferred Stock; or (ii) which would have a material adverse effect on us;

(b) any governmental authority issues a final and nonappealable order or takes any action permanently restraining, enjoining or prohibiting or materially delaying or preventing the consummation of the Offer to Purchase and Consent Solicitation or consummation of the Offer to Purchase and Consent Solicitation would violate any law, rule or regulation applicable to us, including the distribution limitations under Maryland law;

(c) any law, rule or regulation or governmental order becomes applicable to us or the transactions contemplated by the Offer to Purchase and Consent Solicitation that results, directly or indirectly, in any of the consequences described within paragraph (a) above;

(d) less than $66^{2}/_{3}\%$ of the outstanding shares of Preferred Stock (which is equivalent to $66^{2}/_{3}\%$ of the aggregate liquidation preference of the outstanding shares of the Preferred Stock) are tendered (and thereby consent to the Proposed Amendments to our Charter) in the Offer to Purchase and Consent Solicitation; or

(e) less than a majority of the outstanding shares of Common Stock entitled to be cast on the proposal to approve the Proposed Amendments to our Charter vote in favor of such amendments.

Under Maryland law, no distribution may be made if, after giving effect to the distribution: (a) the corporation would not be able to pay indebtedness of the corporation as the indebtedness becomes due in the usual course of business; or (b) the corporation's total assets would be less than the sum of the corporation's total liabilities plus, unless the charter permits otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of stockholders whose preferential rights on dissolution are superior to those receiving the distribution. Although the Company would not satisfy this distribution requirements based on the March 31, 2009 pro forma capitalization, the Company expects that it will meet the distribution requirements at the time of the closing of the Offer to Purchase and Consent Solicitation. Although the Company may receive the requisite approvals from the Preferred Stock and Common Stock in order to complete the Offer to Purchase and Consent Solicitation, if the Company does not satisfy the distribution requirements under Maryland law, then the Offer to Purchase and Consent Solicitation will be terminated.

We will, in our reasonable judgment, determine whether each condition to the Offer to Purchase and Consent Solicitation has been satisfied or may be waived and whether any such condition(s) should be waived. If any of the conditions to the Offer to Purchase and Consent Solicitation are unsatisfied on the expiration date and we do not or cannot waive such conditions, the Offer to Purchase and Consent Solicitation will expire and we will not accept for purchase the shares of Preferred Stock that have been validly tendered.

Extension, Termination and Amendment

We expressly reserve the right, at any time and from time to time, to extend the period of time during which the Offer to Purchase and Consent Solicitation is open. We will extend the expiration date of the Offer to Purchase and Consent Solicitation if required by applicable law or regulation.

During any such extension, all Preferred Stock previously tendered and not properly withdrawn, and all related consents previously delivered and not properly revoked, will remain subject to the Offer to Purchase and Consent Solicitation, respectively, and subject to your right to withdraw your Preferred Stock and revoke the related consents in accordance with the terms of the Offer to Purchase and Consent Solicitation.

Subject to the SEC's applicable rules and regulations, we reserve the right, at any time or from time to time, to:

- amend or make changes to the terms of the Offer to Purchase and Consent Solicitation, including the conditions to the Offer to Purchase and Consent Solicitation;

- delay our acceptance for purchase or our purchase of any shares of Preferred Stock pursuant to the Offer to Purchase and Consent Solicitation, regardless of whether we previously accepted such shares of Preferred Stock for purchase, or to terminate the Offer to Purchase and Consent Solicitation and not accept for purchase or purchase any shares of Preferred Stock not previously accepted for purchase or purchased, upon the determination that any of the conditions of the Offer to Purchase and Consent Solicitation have not been satisfied, as determined by us; and

- waive any condition.

We will follow any extension, termination, amendment or delay, as promptly as practicable, with a public announcement. In the case of an extension, any such announcement will be issued no later than 9:00 a.m., Pacific Daylight Time, on the next business day after the previously scheduled expiration date. If we amend the Offer to Purchase and Consent Solicitation in a manner we determine to constitute a material change, we will promptly disclose the amendment as required by law and, depending on the significance of the amendment and the manner of disclosure to the registered holders, we will extend the Offer to Purchase and Consent Solicitation as required by law if the Offer to Purchase and Consent Solicitation would otherwise expire during that period.

Without limiting the manner in which we may choose to make public announcements of any delay in acceptance, extension termination or amendment of the Offer to Purchase and Consent Solicitation, we will have no obligation to publish, advertise or otherwise communicate any public announcement, other than by making a timely release to an appropriate news agency.

If we make a material change in the terms of the Offer to Purchase and Consent Solicitation or the information concerning the Offer to Purchase and Consent Solicitation, or if we waive a material condition of the Offer to Purchase and Consent Solicitation, we will extend the Offer to Purchase and Consent Solicitation to the extent required under the Exchange Act. If, prior to the expiration date, we increase or decrease the percentage of Preferred Stock being sought or increase or decrease the consideration, or change the type of consideration, offered to holders of Preferred Stock, such modification will be applicable to all holders of the same series of Preferred Stock whose shares of Preferred Stock are accepted for purchase pursuant to the Offer to Purchase and Consent Solicitation, and if, at the time notice of any such modification is first published, sent or given to holders of Preferred Stock, the Offer to Purchase and Consent Solicitation is scheduled to expire at any time earlier than the tenth business day from and including the date that such notice is first so published, sent or given, the Offer to Purchase and Consent Solicitation will be extended until the expiration of such ten business day period. For purposes of the Offer to Purchase and Consent Solicitation, a

"business day" means any day other than a Saturday, Sunday or a federal holiday and consists of the time period from 12:01 a.m. through 12:00 midnight, Eastern Daylight Time.

Tender of Preferred Stock; Acceptance for Payment and Payment for Shares.

Upon the terms and subject to the conditions of the Offer to Purchase and Consent Solicitation (including, if the Offer to Purchase and Consent Solicitation is extended or amended, the terms and conditions of any such extension or amendment), we will purchase, as promptly as practicable after the expiration date, by accepting for payment, and will pay for, shares of Preferred Stock validly tendered and not properly withdrawn promptly after the expiration date (or, in the case of Preferred Stock tendered pursuant to the guaranteed delivery procedures, promptly after the third NYSE trading day following the expiration date). We currently expect the payment date to be made approximately five (5) to ten (10) business days after the expiration date. In addition, subject to the applicable rules of the SEC, we expressly reserve the right to delay acceptance of, or the purchase of, any shares of Preferred Stock in order to comply with any applicable law. The reservation by this right to delay the acceptance or purchase of, or payment for, the shares is subject to the provisions of Rule 14e-1(c) under the Exchange Act, which requires us to pay the consideration offered or to return the shares deposited by, or on behalf of, stockholders, promptly after the termination or withdrawal of the offer.

For purposes of the Offer to Purchase and Consent Solicitation, we will be deemed to have accepted for payment (and thereby purchased) shares of Preferred Stock validly tendered and not properly withdrawn, if and when we notify the Depositary of our acceptance for payment of the tenders of shares pursuant to the Offer to Purchase. Upon the terms and subject to the conditions of the Offer to Purchase, payment for shares of Preferred Stock accepted pursuant to the Offer to Purchase will be made by deposit of the purchase price therefor with the Depositary, which will act as agent for tendering stockholders for the purpose of receiving payments from us and transmitting payments to such tendering stockholders whose shares have been accepted for payment.

Under no circumstances will we pay interest on the purchase price for shares, regardless of any delay in making such payment or extension of the Expiration Date.

If, prior to the Expiration Date, we increase the consideration to be paid per share pursuant to this Offer to Purchase and Consent Solicitation, we will pay such increased consideration for all such shares purchased pursuant to the Offer to Purchase and Consent Solicitation, whether or not such shares were tendered prior to such increase in consideration.

In addition, if certain events occur, we may not be obligated to purchase shares pursuant to the Offer to Purchase and Consent Solicitation. See Section "The Offer to Purchase and Consent Solicitation—Conditions of the Offer to Purchase and Consent Solicitation."

In all cases, delivery of the consideration for Preferred Stock accepted for purchase pursuant to the Offer to Purchase and Consent Solicitation will be made only after timely receipt by the Depositary of (i) the share certificates or confirmation of a book-entry transfer of the Preferred Stock into the Depositary's account at DTC (the book-entry transfer facility) (a "Book-Entry Confirmation") pursuant to the procedures set forth in "The Offer to Purchase and Consent Solicitation—Procedure for Tendering and Consenting"; (ii) the applicable letter(s) of transmittal and consent (or a manually signed photocopy), properly completed and duly executed, with any required signature guarantees or, in the case of tender of shares held by a bank, broker or other nominee, an Agent's Message (as described in "—Procedure for Tendering and Consenting—Book-Entry Transfer") in lieu of the letter(s) of transmittal and consent; and (iii) any other documents required by the applicable letter(s) of transmittal and consent.

If we do not accept any tendered shares of Preferred Stock for purchase pursuant to the terms and conditions of the Offer to Purchase and Consent Solicitation for any reason, we will return certificates for such shares of Preferred Stock without expense to the tendering stockholder (or, in the case of shares of Preferred Stock tendered through DTC, pursuant to the procedures set forth below under "The Offer to Purchase and Consent Solicitation—Procedure for Tendering and Consenting," those shares of Preferred Stock will be credited to an account maintained within DTC) as soon as practicable following expiration or termination of the Offer to Purchase and Consent Solicitation. All shares of Preferred Stock that are validly tendered and accepted for purchase by us in the Offer to Purchase and Consent Solicitation will become authorized but unissued shares.

Any tendering stockholder or other payee who fails to complete fully, sign and return to the Depositary the substitute Form W-9 included with the letter of transmittal or Form W-8BEN obtained from the Depositary may be subject to required backup withholding on the gross proceeds paid to that stockholder or other payee pursuant to our offer.

Procedure for Tendering and Consenting

Valid Tenders of Preferred Stock. In order for a stockholder validly to tender shares of Preferred Stock pursuant to the Offer to Purchase and Consent Solicitation, the applicable letter(s) of transmittal and consent (or a manually signed photocopy), properly completed and duly executed, together with any required signature guarantees (or, in the case of a book-entry transfer, an Agent's Message (defined below) in lieu of the letter(s) of transmittal and consent) and any other documents required by the applicable letter(s) of transmittal and consent must be received by the Depositary at the address set forth on the back cover of this Offering Circular and either (a) the share certificates evidencing tendered Preferred Stock must be received by the Depositary at this address or (b) the Preferred Stock must be tendered pursuant to the procedure for book-entry transfer described below and a Book-Entry Confirmation must be received by the Depositary, in each case prior to the expiration date, subject to the guaranteed delivery procedures described below. The holder may change its election prior to the expiration date of the Offer to Purchase and Consent Solicitation by submitting to the Depositary a properly completed and signed revised letter(s) of transmittal and consent.

Book-Entry Transfer. The Depositary will establish an account with respect to the Preferred Stock at DTC, the book-entry transfer facility, for purposes of the Offer to Purchase and Consent Solicitation within two business days after the date of this Offering Circular. If a holder's shares of Preferred Stock are held through a bank, broker or other nominee, the holder should instruct its bank, broker or other nominee to make the appropriate election on its behalf when they tender shares through DTC. The holder may change its election by causing a new Agent's Message with revised election information to be transmitted through DTC. Any financial institution that is a participant in the system of DTC may make a book-entry delivery of Preferred Stock by causing DTC to transfer those shares of Preferred Stock into the Depositary's account at DTC in accordance with DTC's procedures for transfer. However, although delivery of Preferred Stock may be effected through book-entry transfer at DTC, either the applicable letter(s) of transmittal and consent (or a manually signed photocopy), properly completed and duly executed, together with any required signature guarantees, or an Agent's Message in lieu of the letter(s) of transmittal and consent, and any other required documents, must, in any case, be received by the Depositary at its address set forth on the back cover of this Offering Circular prior to the expiration date, subject to the guaranteed delivery procedures described below. Delivery of documents to DTC does not constitute delivery to the Depositary.

The term "Agent's Message" means a message, transmitted by DTC to and received by the Depositary and forming a part of a Book-Entry Confirmation, that states that DTC has received an express acknowledgment from the participant in DTC tendering shares of Preferred Stock that are the subject of such Book-Entry Confirmation, that the participant has received and agrees to be bound by

the terms of the applicable letter(s) of transmittal and consent and that we may enforce this agreement against the participant.

If you own your shares through a broker, dealer or other nominee, and your broker, dealer or other nominee tenders the shares of Preferred Stock on your behalf, such institution may charge you a fee for doing so. You should consult your broker, dealer or nominee to determine whether any charges will apply. If you are the record owner of certificated shares of Preferred Stock and you tender your certificated shares directly to the Depositary, you will not be obligated to pay any charges or expenses of the Depositary or any brokerage commissions. Transfer taxes on the purchase of Preferred Stock pursuant to the Offer to Purchase and Consent Solicitation, if any, will be paid by us.

Signature Guarantees and Stock Powers. No signature guarantee is required on the letters of transmittal and consent (i) if the letters of transmittal and consent are signed by the registered holder(s) (which term, for purposes of this section, includes any participant in DTC's system whose name appears on a security position listing as the owner of the Preferred Stock) of the Preferred Stock tendered, unless the holder has completed either the box entitled "Special Delivery Instructions" or the box entitled "Special Payment Instructions" on the applicable letter(s) of transmittal and consent or (ii) if the shares of Preferred Stock are tendered for the account of a financial institution (including most commercial banks, savings and loan associations and brokerage houses) that is a participant in the Security Transfer Agents Medallion Program or any other "eligible guarantor institution," as that term is defined in Rule 17Ad-15 under the Exchange Act (each an "Eligible Institution"). In all other cases, all signatures on applicable letter(s) of transmittal and consent must be guaranteed by an Eligible Institution. See the instructions to the applicable letter(s) of transmittal and consent. If a share certificate is registered in the name of a person or persons other than the signer of the letter of transmittal and consent, or if payment is to be made or delivered to, or a share certificate not accepted for purchase or not tendered is to be issued in, the name(s) of a person other than the registered holder(s), then the share certificate must be endorsed or accompanied by appropriate duly executed stock powers, in either case signed exactly as the name(s) of the registered holder(s) appear on the share certificate, with the signature(s) on the share certificate or stock powers guaranteed by an Eligible Institution as provided in the applicable letter(s) of transmittal and consent. See the instructions to the applicable letter(s) of transmittal and consent.

Notwithstanding any other provision of this Offering Circular, purchase of Preferred Stock accepted pursuant to the Offer to Purchase and Consent Solicitation will in all cases only be made after timely receipt by the Depositary of (i) certificates evidencing the Preferred Stock or a Book-Entry Confirmation of a book-entry transfer of the Preferred Stock into the Depositary's account at DTC pursuant to the procedures set forth in this section; (ii) the applicable letter(s) of transmittal and consent (or a manually signed photocopy), properly completed and duly executed, with any required signature guarantees or, in the case of a book-entry transfer, an Agent's Message in lieu of the letter(s) of transmittal and consent; and (iii) any other documents required by the applicable letter(s) of transmittal and consent.

Guaranteed Delivery Procedures. Holders who wish to tender their shares of Preferred Stock (i) whose certificates are not immediately available; (ii) who cannot deliver the shares or other required documents to the Depositary on or before the expiration date; or (iii) who cannot comply with the procedures for book-entry transfer on a timely basis, may still tender their shares of Preferred Stock, so long as all of the following conditions are satisfied:

- you make your tender by or through an eligible institution;
- by no later than 9:00 a.m., Eastern Daylight Time, on the expiration date, the Depositary receives a properly completed and duly executed notice of guaranteed delivery, substantially in the form made available by the Company, in the manner provided below; and

- by no later than 9:00 a.m., Eastern Daylight Time, on the third NYSE trading day after the date of execution of such notice of guaranteed delivery, the Depositary receives (a) certificates evidencing the Preferred Stock or a Book-Entry Confirmation of a book-entry transfer of the Preferred Stock into the Depositary's account at DTC pursuant to the procedures set forth in this section; (b) the applicable letter(s) of transmittal and consent (or a manually signed photocopy) properly completed and duly executed with any required signature guarantees or, in the case of a book-entry transfer of shares, an Agent's Message in lieu of the letter(s) of transmittal and consent; and (c) any other documents required by the applicable letter(s) of transmittal and consent.

Registered holders of Preferred Stock (including any participant in DTC whose name appears on a DTC security position listing as the owner of shares of Preferred Stock) may transmit the notice of guaranteed delivery by facsimile transmission or mail it to the Depositary. If you hold shares of Preferred Stock through a broker, dealer or other nominee, that institution must submit any notice of guaranteed delivery on your behalf. You must, in all cases, include a Medallion guarantee by an eligible institution in the form set forth in the notice of guaranteed delivery.

The method of delivery of share certificates, the letters of transmittal and all other required documents, including delivery through DTC, are at the option and risk of the tendering stockholder, and the delivery will be deemed made only when actually received by the Depositary (including, in the case of a book-entry transfer, receipt of a Book-Entry Confirmation). If delivery is by mail, registered mail with return receipt requested, properly insured, is recommended. In all cases, sufficient time should be allowed to ensure timely delivery.

Effects of Tenders and Consents

By tendering your shares and delivering your consent as set forth above, you irrevocably appoint the Depositary and its designees as your attorneys-in-fact and proxies, each with full power of substitution, to the full extent of your rights with respect to your shares of Preferred Stock tendered and accepted for purchase by us. Such appointment will be automatically revoked if we do not accept for purchase shares of Preferred Stock that you have tendered. All such proxies shall be considered coupled with an interest in the tendered shares of Preferred Stock and therefore shall not be revocable; provided that the Preferred Stock tendered pursuant to the Offer to Purchase and Consent Solicitation may be withdrawn and, as a result, the corresponding consent revoked, at any time on or prior to the expiration date, as it may be extended by us, and unless theretofore accepted for purchase and not returned as provided for herein, may also be withdrawn after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation, subject to the withdrawal rights and procedures set forth below. Upon the effectiveness of such appointment, all prior proxies or consents given by you will be revoked, and no subsequent proxies or consents may be given (and, if given, will not be deemed effective) unless the tendered Preferred Stock is validly withdrawn. The Depositary will, with respect to the shares of Preferred Stock for which the appointment is effective, be empowered to consent to the Proposed Amendments with respect to your shares of Preferred Stock tendered in the Offer to Purchase and Consent Solicitation immediately prior to our acceptance for purchase of the shares of the Preferred Stock that you have tendered. If the Offer to Purchase and Consent Solicitation is terminated or withdrawn, the Proposed Amendments will not become effective and will have no effect on the Preferred Stock.

We will determine all questions as to the validity, form, eligibility (including time of receipt) and acceptance for purchase of any tender of shares of Preferred Stock and grant of consent in the Offer to Purchase and Consent Solicitation, in our sole discretion, and our determination shall be final and binding. We reserve the absolute right to reject any and all tenders of shares of Preferred Stock and grants of consent in the Offer to Purchase and Consent Solicitation determined by us not to be in proper form or the acceptance for purchase or purchase of which may, in our opinion, be unlawful.

Subject to the applicable rules and regulations of the SEC, we also reserve the right to waive, in our reasonable judgment, any of the conditions of the Offer to Purchase and Consent Solicitation and the absolute right to waive any defect or irregularity in the tender of any shares of Preferred Stock or grant of consent in the Offer to Purchase and Consent Solicitation. No tender of shares of Preferred Stock or grant of consent in the Offer to Purchase and Consent Solicitation will be deemed to have been made until all defects and irregularities in the tender of such shares or grant of consent in the Offer to Purchase and Consent Solicitation have been cured or waived. Neither we, the Depositary, the Information Agent nor any other person will be under any duty to give notification of any defects or irregularities in the tender of any shares of Preferred Stock or grant of consent in the Offer to Purchase and Consent Solicitation or will incur any liability for failure to give any such notification. Our interpretation of the terms and conditions of the Offer to Purchase and Consent Solicitation (including the applicable letter(s) of transmittal and consent and instructions thereto) will be final and binding.

The tender of shares of Preferred Stock and grant of consent, pursuant to any of the procedures described above, will constitute a binding agreement between you and us upon the terms and subject to the conditions of the Offer to Purchase and Consent Solicitation.

Promptly after the expiration of the Offer to Purchase and Consent Solicitation, if a sufficient number of shares of Preferred Stock have been tendered in the Offer to Purchase and Consent Solicitation and all other conditions are waived or satisfied, we will file Articles of Amendment setting forth the Proposed Amendments with the SDAT. The Proposed Amendments will become effective upon the filing of the Articles of Amendment with the SDAT or at any later date and time specified in the Articles of Amendment that is not more than 30 days after the acceptance for recording of the Articles of Amendment by SDAT. Only holders of the Preferred Stock who do not tender their shares in the Offer to Purchase and Consent Solicitation will remain holders of Preferred Stock after the Proposed Amendments are approved by the holders of the Common Stock and holders of the Preferred Stock and become effective. A majority of the entire Board may determine to make less than all of the modifications described herein to the terms of either series of Preferred Stock, so the Proposed Amendments, when they take effect, may not have all of the effects described in the Offering Circular. The following is a summary of the effects of the Proposed Amendments and is subject to and qualified in its entirety by reference to the amended text of the affected provisions of our Charter, as set forth in *Annex A* and *Annex B*.

Reduction of Voting Rights. Currently, our Charter provides that, whenever dividends on any series of Preferred Stock is in arrears for six or more quarterly periods, whether or not consecutive, the Preferred Stock, voting as a single class together with any other series of preferred stock ranking on a parity with the Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation ("Parity Preferred") upon which like voting rights have been conferred and are exercisable, will be entitled to elect two additional directors. The term of these two additional directors will end, and the number of directors will automatically decrease by two, at such time as all dividends accumulated on shares of the Preferred Stock or any Parity Preferred have been paid in full or declared and set apart for payment. Our failure to make dividend payments for the fourth quarter of 2008 and the first quarter of 2009 counts as two quarterly periods of non-payment towards the potential triggering of this right.

Our Charter provides that, as long as shares of either series of the Preferred Stock remain outstanding, without the approval of holders of $66^{2}/_{3}\%$ of the outstanding shares of the Preferred Stock, voting as a single class together with any Parity Preferred that we may issue upon which like voting have been conferred and are exercisable, we may not:

1. authorize or create, or increase the authorized or issued amount of, any class or series of capital stock ranking prior to such series of Preferred Stock with respect to payment of

distributions and the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized capital stock of the company into any such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares;

2. subject to certain exceptions, amend, alter or repeal any of the provisions of the Charter, so as to materially and adversely affect any preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption of the series of Preferred Stock or the holders thereof; or

3. subject to certain exceptions, enter into, approve, or otherwise facilitate a binding share exchange or reclassification involving the any series of Preferred Stock that materially and adversely affects any of the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption of such series of Preferred Stock or a consolidation, merger or similar transaction involving the Company.

The Proposed Amendments apply to each series of Preferred Stock and would eliminate all of the voting rights of the Preferred Stock described above, except for the right to approve certain amendments to our Charter. If approved, the Proposed Amendments would eliminate the right of holders of Preferred Stock to become involved in management of the Company by electing directors upon the Company's failure to pay dividends.

After the effectiveness of the Proposed Amendments, the sole voting right of holders of any series of Preferred Stock will be to approve any amendment, alteration or repeal of any provision of the Company's Charter, whether by merger or consolidation or otherwise (each, an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of that series of Preferred Stock or the holders thereof. The occurrence of an Event will not be considered to materially and adversely affect the rights of the holders of any series of Preferred Stock if shares of the series (or shares issued by a surviving entity in substitution for the series) remain outstanding with their terms materially unchanged (taking into account that upon the occurrence of an Event, the Company may not be the surviving entity). In addition, an increase in the number of authorized or outstanding shares of that series of Preferred Stock, or the authorization, creation, issuance or increase in the authorized or outstanding number of shares of any class or series of stock ranking senior to, on a parity with or junior to that series of Preferred Stock, will also not be considered to materially and adversely affect the rights of the holders of that series of Preferred Stock.

Modifications to Dividend Rights. Currently, our Charter provides that dividends on each existing series of Preferred Stock accrue and are cumulative, and holders of each series of Preferred Stock are entitled to receive full cumulative dividends accumulated on outstanding shares of each series of Preferred Stock for all past dividend periods (and any partial portion of the then-current dividend period) upon the occurrence of certain events, including the redemption of such shares or the Company's liquidation or dissolution. The Company must pay or declare and set apart for payment full cumulative dividends accumulated for all past dividend periods on shares of each series of Preferred Stock before the Company may pay dividends on, or redeem or repurchase, shares of Common Stock, Parity Preferred or shares of stock ranking junior to the series of Preferred Stock with respect to the payment of distributions and the distribution of assets upon liquidation ("Junior Preferred").

Upon the effectiveness of the Proposed Amendments, the Preferred Stock will no longer have the right to receive dividends accrued during any past dividend period and any dividends accrued during past dividend periods will no longer be payable upon redemption of shares of any series of Preferred Stock or upon liquidation or dissolution of the Company. The Proposed Amendments would eliminate each of the other restrictions described above and allow the Company to declare and pay dividends on shares of Common Stock, Parity Preferred or Junior Preferred, or redeem, repurchase or make other

payments to holders of Common Stock, Parity Preferred or Junior Preferred without paying or setting apart for payment any dividends on shares of any series of Preferred Stock. The Proposed Amendments would also allow the Company to repurchase less than all of the shares of any series of Preferred Stock, or redeem or repurchase shares of another series of preferred stock, without declaring and paying or setting apart for payment any dividends on the other outstanding shares of Preferred Stock.

The Proposed Amendments will not change the other terms of the Preferred Stock relating to dividends, including the base rate at which dividends accrue, the payment dates for dividends or provisions of our Charter that require us, if we pay less than the full amount of dividends for any dividend period, to pay dividends among the holders of each series of Preferred Stock pro rata, based on the respective amounts of unpaid dividends that are payable on each such share of Preferred Stock and Parity Preferred for such period.

Modifications to Liquidation Rights. The Company's Charter requires it, upon any voluntary or involuntary liquidation, dissolution or winding up of the Company, to pay to the holders of each series of the Preferred Stock, the $25.00 liquidation preference per share, an amount equal to any accumulated and unpaid dividends to the date of payment, and a premium of $.50 per share up to but not including November 23, 2008 in the case of the Series C Preferred Stock. The Proposed Amendments would eliminate the right to receive upon liquidation the amount of any accumulated and unpaid dividends and any premiums, although holders of the Preferred Stock would still be entitled to receive the $25.00 liquidation preference per share.

Modifications to Optional Redemption Provisions. Our Charter prohibits us from electing to redeem shares of each series of Preferred Stock prior to the applicable fifth year anniversary of the issuance of each series of Preferred Stock and, after such dates, permits us to redeem shares of each series of Preferred Stock for a redemption price equal to the $25.00 liquidation preference per share, plus all accumulated and unpaid dividends to and including the date fixed for redemption without interest. Our Charter requires us to declare and pay, or set apart for payment, all cumulative dividends for all past dividend periods on each series of Preferred Stock before we redeem less than all of the outstanding shares of that series of Preferred Stock. Further, unless full cumulative dividends on all shares of any series of Preferred Stock shall have been, or contemporaneously are, declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then-current dividend period, no shares of that series of Preferred Stock shall be redeemed unless all outstanding shares of that series of Preferred Stock are simultaneously redeemed. The Proposed Amendments would allow the Company to complete any future repurchase offer or redemption without paying accumulated dividends on any shares of Preferred Stock, including any shares that will remain outstanding following the completion of the Offer to Purchase.

The Proposed Amendments would allow the Company to elect to redeem any number of shares of any series of Preferred Stock, at any time, for a redemption price equal to the liquidation preference per share, without paying or declaring and setting apart for payment any accrued but unpaid dividends on the redeemed shares of Preferred Stock or paying or declaring and setting apart for payment any dividends to holders of any other series of preferred stock. If the redemption date for shares of any series of Preferred Stock falls after the record date but before the payment date of any dividend declared by the Company on that series of Preferred Stock, holders of any redeemed shares of such series of Preferred Stock will be entitled to receive the dividend when and as paid by the Company. The Proposed Amendments will not change the existing procedures for redemption of any series of the Preferred Stock or the requirement that, if we redeem less than all of the shares of any series of Preferred Stock, we will redeem shares of such series pro rata among the holders of that series in proportion to the number of shares held by such stockholders or by lot or by any other equitable manner determined by the Board.

Withdrawal of Tenders and Revocation of Consents

You may validly withdraw shares of Preferred Stock that you tender at any time prior to the expiration date of the Offer to Purchase and Consent Solicitation, which is 9:00 a.m., Eastern Daylight Time, on June 26, 2009, unless we extend it. In addition, if not previously returned, you may withdraw any shares of Preferred Stock that you tender that are not accepted by us for purchase after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation.

A proper withdrawal of tendered shares of Preferred Stock prior to the expiration date will be deemed a valid revocation of the related consent and authorization of the Depositary to consent on your behalf to the Proposed Amendments. A holder may not validly revoke a consent unless such holder validly withdraws the previously tendered shares. A withdrawal of tendered shares of Preferred Stock must be for all shares of Preferred Stock tendered by a holder.

For a withdrawal to be effective, you must deliver a written notice of withdrawal to the Depositary at the appropriate address specified on the back cover of this Offering Circular prior to the expiration date or, if your shares are not previously accepted by us for purchase, after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation. Any notice of withdrawal must identify the beneficial owner of the shares of Preferred Stock to be withdrawn, including the name of the beneficial owner of the shares of Preferred Stock, the name of the person who tendered the shares of Preferred Stock, if different, and the number of shares of Preferred Stock to be withdrawn. Your notice of withdrawal must comply with the requirements set forth in this Offering Circular. If you tendered Preferred Stock pursuant to the procedures for a book-entry transfer, a withdrawal of shares of Preferred Stock and revocation of the related consent will only be effective if you comply with the appropriate DTC procedures prior to the expiration date of the Offer to Purchase and Consent Solicitation or, if your shares are not previously accepted by us for purchase, after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation.

If we extend the Offer to Purchase and Consent Solicitation, are delayed in our acceptance of the shares of Preferred Stock for purchase or are unable to accept shares of Preferred Stock pursuant to the Offer to Purchase and Consent Solicitation for any reason, then, without prejudice to our rights under the Offer to Purchase and Consent Solicitation, the Depositary may retain tendered shares of Preferred Stock, and those shares of Preferred Stock may not be withdrawn, nor the related consents revoked, except as otherwise provided in this Offering Circular, subject to provisions under the Exchange Act that provide that an issuer making an Offer to Purchase shall either pay the consideration offered or return tendered securities promptly after the termination or withdrawal of the Offer to Purchase.

All questions as to the validity, form and eligibility, including time or receipt, of notices of withdrawal will be determined by us. Our determination will be final and binding on all parties. Any shares of Preferred Stock withdrawn will be deemed not to have been validly tendered for purposes of the Offer to Purchase and Consent Solicitation, and no consideration will be given, unless the shares of Preferred Stock so withdrawn are validly re-tendered and not properly withdrawn. Properly withdrawn shares of Preferred Stock may be re-tendered by following the procedures described above under "The Offer to Purchase and Consent Solicitation—Procedure for Tendering and Consenting" at any time prior to the expiration date of the Offer to Purchase and Consent Solicitation, subject to the guaranteed delivery procedures described above.

Neither we, the Depositary, the Information Agent nor any other person will be under any duty to give notification of any defects or irregularities in any notice of withdrawal or will incur any liability for failure to give any such notification. Any shares of Preferred Stock properly withdrawn will be

deemed not to have been validly tendered for purposes of the Offer to Purchase and Consent Solicitation.

Security Ownership

William S. Ashmore, who is the President and a director of the Company, owns 7,500 shares of Series B Preferred Stock and 2,500 shares of Series C Preferred Stock. Mr. Ashmore has indicated to the Company that he currently intends to tender all of his shares of Preferred Stock in the Offer to Purchase and consent to the Proposed Amendments. All tenders of Preferred Stock held by Mr. Ashmore will be made on the same terms as those by unaffiliated stockholders.

Except as provided above, the Company is not aware of any of its directors or executive officers that own any Preferred Stock. Furthermore, neither we, nor any of our associates, subsidiaries, nor, to our knowledge, any of our directors or executive officers, have effected any transactions in the Preferred Stock during the 60 days before the date of the Offer to Purchase.

Other than as described herein, neither we nor any person controlling us nor, to our knowledge, any of our directors or executive officers, is a party to any contract, arrangement, understanding or relationship with any other person relating, directly or indirectly, to any of the Preferred Stock, including, but not limited to, any contract, arrangement, understanding or relationship concerning the transfer or the voting of any such securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or the giving or withholding of proxies, consents or authorizations.

The following table sets forth certain information known to us with respect to beneficial ownership of our common stock as of the May 18, 2009 (taking into account cancellation of certain outstanding options) by (i) each director, (ii) each executive officer, (iii) each person known to us to beneficially own more than five percent of our common stock, and (iv) all directors and executive officers as a group. Unless otherwise indicated in the footnotes to the table, the beneficial owners named have, to our knowledge, sole voting and investment power with respect to the shares beneficially owned, subject to community property laws where applicable.

Name of BeneficialOwner(1)	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned
Joseph R. Tomkinson(2)	60,375	*
William S. Ashmore(3)	34,462	*
Ronald M. Morrison(4)	14,892	*
James Walsh(5)	6,222	*
Stephan R. Peers(6)	4,918	*
Frank P. Filipps(7)	4,185	*
Leigh J. Abrams(8)	3,960	*
Todd R. Taylor	126	*
Directors and executive officers as a group (8 persons)(9)	129,140	1.7%

(1) Except as otherwise noted, all named beneficial owners can be contacted at 19500 Jamboree Road, Irvine, California 92612.

(2) Includes (i) options to purchase 24,000 shares that are exercisable or exercisable within 60 days of May 18, 2009 and (ii) 28,521 shares held in trust with Mr. Tomkinson as trustee.

(3) Includes (i) options to purchase 20,000 shares that are exercisable or exercisable within 60 days of May 18, 2009 and (ii) 7,967 shares held in trust with Mr. Ashmore as trustee.

(4) Includes options to purchase 10,000 shares that are exercisable or exercisable within 60 days of May 18, 2009.

(5) Includes options to purchase 3,375 shares that are exercisable or exercisable within 60 days of May 18, 2009.

(6) Includes options to purchase 3,375 shares that are exercisable or exercisable within 60 days of May 18, 2009.

(7) Includes options to purchase an aggregate of 3,375 shares that are exercisable or exercisable within 60 days of May 18, 2009.

(8) Includes options to purchase an aggregate of 2,250 shares that are exercisable or exercisable within 60 days of May 18, 2009.

(9) Includes options to purchase an aggregate of 66,375 shares that are exercisable or exercisable within 60 days of April 28, 2009.

Source and Amount of Funds

This Offer to Purchase is not conditioned upon our receipt of financing. The total amount of funds required to purchase all shares of Preferred Stock is approximately $1.9 million. This does not include accumulated and unpaid dividends as of March 31, 2009 on the Preferred Stock in the aggregate of $7.4 million or unpaid deferred amounts as of April 30, 2009 on our trust preferred securities, including interest thereon, in the aggregate of $518,500, excluding trust preferred securities recently exchanged for new notes. We will have sufficient cash and cash equivalents to repurchase all validly tendered (and not withdrawn) shares pursuant to the Offer to Purchase, pay the accumulated and unpaid dividends and pay the deferred unpaid amounts on our trust preferred securities.

Liquidity

Following the completion of the Offer to Purchase and Consent Solicitation, the liquidity and trading price of any remaining untendered shares of Preferred Stock held by the public and the rights of the holders of those shares may be adversely affected. Shares of Preferred Stock are currently quoted on the Pink Sheets.

The extent of the public market for shares of the Preferred Stock and the availability of such quotations would, however, depend upon the number of holders and/or the aggregate market value of the shares of Preferred Stock remaining at such time, the interest in maintaining a market in the shares of Preferred Stock on the part of securities firms, and other factors.

Appraisal Rights

You do not have appraisal rights in connection with the Offer to Purchase and Consent Solicitation.

Certain Legal and Regulatory Matters

Except as set forth in this Offering Circular, we are not aware of any material filing, approval or other action by or with any governmental authority or administrative or regulatory agency that would be required for our acquisition or ownership of Preferred Stock. We intend to make all required filings under the Securities Act and the Exchange Act.

Subsequent Repurchases of Shares of Preferred Stock

Whether or not the Offer to Purchase and Consent Solicitation is consummated, subject to the applicable covenant restrictions contained in our debt instruments, the terms of the Charter and applicable law, we or our affiliates may from time to time acquire shares of Preferred Stock, other than pursuant to the Offer to Purchase and Consent Solicitation, through open market purchases, privately

negotiated transactions, exchange offers, exercise of optional redemption rights, offer to purchase or otherwise, upon such terms and at such prices as we may determine, which may be more or less than the amount to be paid pursuant to the Offer to Purchase and Consent Solicitation and could be paid in cash or other consideration not provided for in this Offer to Purchase and Consent Solicitation.

Depositary

We have retained American Stock Transfer and Trust Company as Depositary. We will pay American Stock Transfer and Trust Company reasonable and customary compensation for its services in connection with the Offer to Purchase and Consent Solicitation, reimburse it for its reasonable out-of-pocket expenses and indemnify it against certain liabilities and expenses in connection with the Offer to Purchase and Consent Solicitation, including liabilities under federal securities laws.

Information Agent

D.F. King & Co., Inc. is serving as Information Agent in connection with the Offer to Purchase and Consent Solicitation. The Information Agent will assist with the mailing of this Offering Circular and related materials to holders of Preferred Stock, respond to inquiries of and provide information to holders of shares of Preferred Stock in connection with the Offer to Purchase and Consent Solicitation, and provide other similar advisory services as we may request from time to time. Questions regarding the terms of the Offer to Purchase and Consent Solicitation, and requests for assistance or for additional copies of the Offering Circular and any other required documents, should be directed to the Information Agent at the address and telephone numbers set forth on the back cover of this Offering Circular.

Expenses

We expect to incur reasonable and customary fees and expenses in connection with the Offer to Purchase and Consent Solicitation. We also will pay brokerage houses and other custodians, nominees and fiduciaries the reasonable out-of-pocket expenses incurred by them in forwarding copies of this Offer to Purchase and Consent Solicitation, the letters of transmittal and consent and related documents to the beneficial owners of shares and in handling or forwarding tenders of shares by their customers. The following table sets forth all expenses incurred or estimated to be incurred in connection with the transaction:

Filing, Legal and Accounting Fees	$300,000
Information Agent Expenses	11,500
Printing Costs	75,000
Other Expenses	13,500
Total Expenses	$400,000

In connection with the Offer to Purchase and Consent Solicitation, our directors, officers and employees may solicit tenders of shares by use of the mails, personally or by telephone, facsimile, telegram, electronic communication or other similar methods. These directors, officers and employees will not be specifically compensated for these services.

No brokerage commissions will be payable by tendering holders of shares to us, the Information Agent or the Depositary. Stockholders who tender their shares through a broker, dealer, commercial bank, trust company or other nominee should contact such institution as to whether it charges any service fees.

MARKET PRICE OF AND DIVIDENDS ON THE PREFERRED STOCK

Preferred Stock

Prices of the Preferred Stock may fluctuate greatly and holders are urged to obtain current information with respect to the market prices for the Preferred Stock.

Series B Preferred Stock

Until November 20, 2008, our Series B Preferred Stock was listed on the NYSE under the symbol "IMHPRB." The Series B Preferred Stock is currently quoted on the Pink Sheets under the symbol "IMPHP." There are 2,000,000 shares of Series B Preferred Stock outstanding, held by one holder of record. The holders of the Series B Preferred Stock are entitled to cumulative quarterly dividends equal to 9.375% of the $25.00 liquidation preference, which is equivalent to $2.34375 annually per share. The following table sets forth, for the periods indicated, the high and low sales prices per share of the Series B Preferred Stock:

	Stock Prices	
	High	Low
2009		
April 1 to May 28, 2009	$ 1.29	$ 0.45
First Quarter ended March 31, 2009	0.65	0.45
2008		
Fourth Quarter ended December 31, 2008	$ 7.00	$ 0.10
Third Quarter ended September 30, 2008	13.50	3.00
Second Quarter ended June 30, 2008	18.76	7.52
First Quarter ended March 31, 2008	14.90	9.05
2007		
Fourth Quarter ended December 31, 2007	$11.70	$ 6.14
Third Quarter ended September 30, 2007	21.34	5.00
Second Quarter ended June 30, 2007	23.50	18.40
First Quarter ended March 31, 2007	25.19	12.80

On May 28, 2009, the closing sales price of our Series B Preferred Stock on the Pink Sheets was $1.20 per share.

Series C Preferred Stock

Until November 20, 2008, our Series C Preferred Stock was listed on the NYSE under the symbol "IMHPRC." The Series C Preferred Stock is currently quoted on the Pink Sheets under the symbol "IMPHO." There are 4,470,600 shares of Series C Preferred Stock outstanding, held by one holder of record. The holders of the Series C Preferred Stock are entitled to cumulative quarterly dividends equal to 9.125% of the $25.00 liquidation preference, which is equivalent to $2.28125 annually per

share. The following table sets forth, for the periods indicated, the high and low sales prices per share of the Series C Preferred Stock:

	Stock Prices	
	High	Low
2009		
April 1 to May 28, 2009	$ 1.30	$ 0.20
First Quarter ended March 31, 2009	0.80	0.20
2008		
Fourth Quarter ended December 31, 2008	$ 8.00	$ 0.24
Third Quarter ended September 30, 2008	13.24	4.10
Second Quarter ended June 30, 2008	14.80	9.50
First Quarter ended March 31, 2008	14.50	9.10
2007		
Fourth Quarter ended December 31, 2007	$12.00	$ 5.35
Third Quarter ended September 30, 2007	23.00	5.25
Second Quarter ended June 30, 2007	23.25	17.75
First Quarter ended March 31, 2007	23.85	12.30

On May 28, 2009, the closing sales price of our Series C Preferred Stock on the Pink Sheets was $1.17 per share.

If the Offer to Purchase and Consent Solicitation is successfully completed, the extent of the public market for shares of the Preferred Stock and the availability of such quotations would depend upon the number of holders and/or the aggregate market value of the shares of Preferred Stock remaining at such time, the interest in maintaining a market in the shares of Preferred Stock on the part of securities firms and other factors.

DESCRIPTION OF CAPITAL STOCK

Our authorized capital stock consists of 200,000,000 shares of Common Stock, $0.01 par value per share, and 10,000,000 shares of preferred stock, $0.01 par value per share, of which 2,000,000 and 5,500,000 are classified as Series B Preferred Stock and Series C Preferred Stock, respectively.

Common Stock

All shares of Common Stock that we may offer under this Offer to Purchase and Consent Solicitation will be duly authorized, fully paid and nonassessable. The statements below describing our Common Stock are in all respects subject to and qualified in their entirety by reference to the Charter, as amended and supplemented, and the Bylaws, as amended all of which have been included as exhibits to documents filed with the Securities and Exchange Commission.

Subject to the preferential rights of any other class or series of stock, including the Preferred Stock, and to the provisions of the Charter regarding the restrictions on transfer of stock, holders of shares of our Common Stock are entitled to receive dividends on such stock when, as and if authorized by our Board out of funds legally available therefor and declared by us and to share ratably in the assets of our company legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding up after payment of or adequate provision for all known debts and liabilities of our company, including the preferential rights on dissolution of any class or classes of preferred stock, including the our Preferred Stock.

Each share of Common Stock is entitled to one vote, subject to the provisions of our Charter regarding restrictions on transfer of stock, and will be fully paid and nonassessable upon issuance. Shares of Common Stock have no preference, conversion, exchange, redemption, appraisal, sinking

fund, preemptive or cumulative voting rights. Our authorized stock may be increased and altered from time to time in the manner prescribed by Maryland law upon the affirmative vote of stockholders entitled to cast at least a majority of all the votes entitled to be cast on the matter. Our Charter authorizes our Board to reclassify any unissued shares of Common Stock in one or more classes or series of stock, including preferred stock.

Preferred Stock

General

Our Charter authorizes our Board to issue shares of preferred stock and to classify and reclassify any unissued shares of preferred stock into one or more classes or series of stock. The preferred stock may be issued from time to time with such designations, preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption as shall be determined by the Board. There are 2,000,000 shares of our Series B Preferred Stock and 4,470,600 shares of our Series C Preferred Stock outstanding.

The following summary of the terms and provisions of the Preferred Stock does not purport to be complete and is qualified in its entirety by reference to the pertinent sections of our Charter and the articles supplementary creating the Preferred Stock, which have been included as exhibits to documents filed with the Securities and Exchange Commission.

Ranking

The Series B Preferred Stock and Series C Preferred Stock are on parity with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up and each series of Preferred Stock is senior to our Common Stock.

Dividends

Currently, holders of shares of the Series B Preferred Stock and Series C Preferred Stock are entitled to receive, when and as authorized by our Board, out of funds legally available for the payment of dividends, cumulative preferential cash dividends at the rate of 9.375% and 9.125% per annum of the $25.00 liquidation preference (equivalent to $2.34375 per share and $2.28125 per share), respectively. The Preferred Stock dividends are payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year or, if not a business day, the prior preceding business day (each, a "Dividend Payment Date"). Any dividend payable on the Preferred Stock for any partial dividend period is computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends are payable to holders of record as they appear in our stock records at the close of business on the applicable record date, which is the first day of the calendar month in which the applicable Dividend Payment Date falls or on such other date designated by our Board for the payment of dividends that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a "Dividend Record Date").

No dividends on shares of Preferred Stock will be declared by us or paid or set apart for payment by us at such time as the terms and provisions of any of our agreements, including any agreement relating to our indebtedness, prohibit such declaration, payment or setting apart for payment or provide that such declaration, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such declaration or payment shall be restricted or prohibited by law.

Notwithstanding the foregoing, dividends on the Preferred Stock will accrue whether or not current payment of dividends is prohibited, whether or not we have earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared.

Accrued but unpaid dividends on the Preferred Stock will accumulate as of the Dividend Payment Date on which they first become payable.

Except as set forth in the next paragraph, unless full cumulative dividends on the Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then-current dividend period:

(i) no dividends (other than in shares of Common Stock or in shares of any series of preferred stock that we may issue ranking junior to the Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation) shall be declared or paid or set aside for payment;

(ii) no distribution shall be declared or made upon shares of our Common Stock or preferred stock that we may issue ranking junior to or on parity with the Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation; and

(iii) no shares of our Common Stock or preferred stock that we may issue ranking junior to or on parity with the Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation shall be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such shares) by us (except by conversion into or in exchange for our other capital stock that we may issue ranking junior to the Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation).

When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) on the Preferred Stock and the shares of any other series of preferred stock ranking on a parity as to payment of dividends with the Preferred Stock, all dividends declared upon the Preferred Stock and any series of preferred stock ranking on a parity as to payment of dividends with the Preferred Stock will be declared pro rata so that the amount of dividends declared per share of Preferred Stock and such series of preferred stock shall in all cases bear to each other the same ratio that accrued dividends per share on the Preferred Stock and such series of preferred stock (which will not include any accrual in respect of unpaid dividends for prior dividend periods if such preferred stock does not have a cumulative dividend) bear to each other. No interest, or sum of money in lieu of interest, will be payable in respect of any dividend payment or payments on the Preferred Stock which may be in arrears.

Any dividend payment made on shares of the Preferred Stock will first be credited against the earliest accrued but unpaid dividend due with respect to such shares which remains payable. Holders of shares of the Preferred Stock are not entitled to any dividend, whether payable in cash, property or stock, in excess of full cumulative dividends on the Preferred Stock as provided above.

Liquidation Distribution

Currently, upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, each share of the Preferred Stock will receive, before any payments are made to the holders of our Common Stock and any other series of our preferred stock that we may issue ranking junior to the Preferred Stock as to liquidation rights, $25.00 per share, plus a premium of $.50 per share up to but not including November 23, 2009, in the case of the Series C Preferred Stock, and accumulated and unpaid dividends whether or not declared.

In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, our available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Preferred Stock and the corresponding amounts payable on all shares of other classes or series of our capital stock that we may issue ranking on a parity with the Preferred Stock in the

distribution of assets, then the holders of the Preferred Stock and all other such classes or series of capital stock will share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

Holders of the Preferred Stock are entitled to written notice of any such liquidation. After payment of the full amount of the liquidating distributions, including the applicable premium, if any, to which they are entitled, the holders of the Preferred Stock will have no right or claim to any of our remaining assets. The consolidation or merger of us with or into any other corporation, trust or entity or of any other corporation with or into us, or the sale, lease or conveyance of all or substantially all of our assets or business, will not be deemed to constitute a liquidation, dissolution or winding up.

Redemption

The Series B Preferred Stock is currently redeemable. The Series C Preferred Stock is not redeemable prior to November 23, 2009. The Series B Preferred Stock, and on and after November 23, 2009, in the case of the Series C Preferred Stock, we, at our option and upon not less than 30 nor more than 60 days' written notice, may redeem the Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price of $25.00 per share, plus all accumulated and unpaid dividends thereon to and including the date fixed for redemption (except as provided below, when the redemption date falls after the Dividend Record Date and before the corresponding Dividend Payment Date), without interest. Holders of Preferred Stock to be redeemed will surrender the Preferred Stock at the place designated in such notice and will be entitled to the redemption price and any accumulated and unpaid dividends payable upon such redemption following such surrender. If notice of redemption of any shares of Preferred Stock has been given and if the funds necessary for such redemption have been set aside by us in trust for the benefit of the holders of any shares of Preferred Stock so called for redemption, then, from and after the redemption date, dividends will cease to accrue on such shares of Preferred Stock, and such shares of Preferred Stock will no longer be deemed outstanding and all rights of the holders of such shares will terminate, except the right to receive the redemption price. If less than all of the outstanding Preferred Stock is to be redeemed, the Preferred Stock to be redeemed will be selected pro rata (as nearly as may be practicable without creating fractional shares) or by any other equitable method determined by us.

Unless full cumulative dividends on all shares of Preferred Stock have been, or contemporaneously are, declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then-current dividend period, no shares of Preferred Stock will be redeemed unless all outstanding shares of Preferred Stock are simultaneously redeemed, and we will not purchase or otherwise acquire directly or indirectly any shares of Preferred Stock (except in exchange for our capital stock ranking junior to the Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation); *provided*, *however*, that the foregoing will not prevent such action by our Board or its designees pursuant to our Charter to enable the purchase or acquisition by us of shares of Preferred Stock pursuant to a purchase or Offer to Purchase made on the same terms to holders of all outstanding shares of Preferred Stock.

Notice of redemption will be mailed by us, postage prepaid, not less than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of the Preferred Stock to be redeemed at their respective addresses as they appear on our stock transfer records. No failure to give such notice or any defect thereto or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Preferred Stock except as to the holder to whom notice was defective or not given. Each notice will state the place or places where the Series C Preferred Stock is to be surrendered for payment of the redemption price.

Preferred Stock held by any holder is to be redeemed, the notice mailed to such holder will specify the number of shares of Preferred Stock held by such holder to be redeemed. Immediately prior to any

redemption of Preferred Stock, we will pay, in cash, any accumulated and unpaid dividends through and including the redemption date, unless a redemption date falls after a Dividend Record Date and prior to the corresponding Dividend Payment Date, in which case each holder of Preferred Stock at the close of business on such Dividend Record Date will be entitled to the dividend payable on such shares on the corresponding Dividend Payment Date notwithstanding the redemption of such shares before such Dividend Payment Date.

The Preferred Stock has no stated maturity and will not be subject to any sinking fund or mandatory redemption.

Voting Rights

Holders of the Preferred Stock do not have any voting rights, except currently as set forth below.

Whenever dividends on any shares of Preferred Stock or any series of preferred stock ranking on a parity as to the payment of dividends with the Preferred Stock is in arrears for six or more quarterly periods, whether or not consecutive (or a "Preferred Dividend Default"), the holders of the Preferred Stock (voting separately as a single class with the Parity Preferred upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of a total of two additional members of our Board (or "Preferred Stock Directors"), provided that any such directors, if elected, will not cause us to violate any applicable corporate governance requirements of the quotation system or securities exchange then quoting or listing our securities that would require us to maintain a majority of independent directors, and the number of directors on the Board will increase by two, at a special meeting called by the holders of record of at least 20% of the Preferred Stock or any other series of Parity Preferred so in arrears, unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders in which event such election will be held at such next annual or special meeting of stockholders, and at each subsequent annual meeting until all dividends accumulated on such shares of the Preferred Stock and any series of preferred stock ranking on a parity as to the payment of dividends with the Preferred Stock for the past dividend periods and the dividend for the then-current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment.

If and when all accumulated dividends and the dividend for the then-current dividend period on the Preferred Stock and any series of preferred stock ranking on a parity as to the payment of dividends with the Preferred Stock have been paid in full or set aside for payment in full, the holders thereof will be divested of the foregoing voting rights (subject to revesting in the event of each and every subsequent Preferred Dividend Default) and, if all accumulated dividends and the dividend for the then-current period have been paid in full or set aside for payment in full on all series of Parity Preferred upon which like voting rights have been conferred and are exercisable, the term of office of each Preferred Stock Director so elected will terminate and the number of directors on the Board will decrease by two. Any Preferred Stock Director may be removed at any time with or without cause by, and will not be removed otherwise than by the vote of, the holders of record of a majority of the outstanding shares of the Preferred Stock when they have the voting rights described above (voting separately as a single class with all series of Parity Preferred that we may issue upon which like voting rights have been conferred and are exercisable). So long as a Preferred Dividend Default continues, any vacancy in the office of a Preferred Stock Director may be filled by the written consent of the Preferred Stock Directors remaining in office, or if none remains in office, by a vote of the holders of record of a majority of the outstanding shares of Preferred Stock when they have the voting rights described above (voting separately as a single class with all series of Parity Preferred that we may issue upon which like voting rights have been conferred and are exercisable). The Preferred Stock Directors will each be entitled to one vote per director on any matter.

So long as any shares of the Preferred Stock remain outstanding, we will not, without the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting separately as a single class with all series of Parity Preferred that we may issue upon which like voting rights have been conferred and are exercisable),

(a) authorize or create, or increase the authorized or issued amount of, any class or series of capital stock ranking prior to the Preferred Stock with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up or reclassify any of our authorized capital stock into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or

(b) amend, alter or repeal any of the provisions of our Charter so as to affect materially and adversely any preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Preferred Stock, provided that any increase or decrease in the amount of the authorized preferred stock (subject to the limit that the number of authorized shares of preferred stock will not be decreased below the number issued and outstanding at such time), including the Preferred Stock (subject to the limit that the number of authorized shares of each series of preferred stock will not be decreased below the number issued and outstanding at such time), or the creation or issuance of any additional Preferred Stock or other series of preferred stock that we may issue, or any increase in the amount of authorized shares of such series, in each case ranking on a parity with or junior to the Preferred Stock that we may issue with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up, will be deemed not to affect materially and adversely such preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, and terms or conditions of redemption; or

(c) enter into, approve, or otherwise facilitate a binding share exchange or reclassification involving the Preferred Stock that materially and adversely affects any of the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Preferred Stock or a consolidation, merger or similar transaction unless in the case of a binding share exchange, reclassification, consolidation, merger or other similar transactions the Preferred Stock remain outstanding with preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, and terms or conditions of redemption materially unchanged or, in the case of any such merger or consolidation with respect to which we are not the surviving or resulting entity, the shares are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, in each case with preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Preferred Stock that are not individually or in the aggregate materially less favorable to the holders of the Preferred Stock than the preferences, conversion or other rights, voting powers, restrictions, limitation as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Preferred Stock as described herein.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required will be effected, all outstanding shares of the Preferred Stock have been redeemed or called for redemption upon proper notice and sufficient funds have been deposited in trust to effect such redemption.

Conversion

The Preferred Stock is not convertible into or exchangeable for any of our property or securities.

Limitation of Liability

The Maryland General Corporation Law permits the Charter of a Maryland corporation to include a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages, except to the extent that (1) it is proved that the person actually received an improper benefit or profit in money, property or services or (2) a judgment or other final adjudication is entered in a proceeding based on a finding that the person's action, or failure to act, was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding. The Charter provides for elimination of the personal liability of our directors and officers to us or our stockholders for money damages to the maximum extent permitted by Maryland law, as amended from time to time.

Maryland Business Combination Statute

The Maryland General Corporation Law establishes special requirements for certain "business combinations" between a Maryland corporation and "interested stockholders" unless exemptions are applicable. "Business combinations" include a merger, consolidation, share exchange or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. An interested stockholder is any person who beneficially owns 10% or more of the voting power of the outstanding voting stock or is an affiliate or associate of the corporation who, at any time within the two-year period prior to the date on which interested stockholder status is determined, was the beneficial owner of 10% or more of the voting power of the then-outstanding voting stock. Among other things, the law prohibits any business combination between us and an interested stockholder or an affiliate of an interested stockholder for a period of five years after the most recent date on which the interested stockholder became an interested stockholder unless the Board approved in advance the transaction in which the person became an interested stockholder. The Board may provide that its approval is subject to compliance with any terms and conditions determined by the Board.

The business combination statute requires payment of a fair price to stockholders to be determined as set forth in the statute or a supermajority stockholder approval of any transactions between us and an interested stockholder after the end of the five-year period. This approval means that the transaction must be recommended by the Board and approved by at least:

- 80% of the votes entitled to be cast by holders of outstanding voting shares; and
- $66^{2}/_{3}$% of the votes entitled to be cast by holders of outstanding voting shares other than shares held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

The business combination statute restricts the ability of third parties who acquire, or seek to acquire, control of us to complete mergers and other business combinations without the approval of the Board even if such a transaction would be beneficial to stockholder.

The Board has exempted any business combination with any person from the business combination statute, so long as the Board first approves such business combination.

Maryland Control Share Acquisition Statute

The Maryland General Corporation Law provides that "control shares" of a Maryland corporation acquired in a "control share acquisition" have no voting rights except to the extent approved by $66^{2}/_{3}$% of the votes entitled to be cast on the matter. The acquiring person, officers and directors who are also

employees are not entitled to vote on the matter. "Control shares" are shares of stock that, taken together with all other shares of stock owned by the acquiring person or in respect of which the acquiring person is entitled to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiring person to exercise voting power in electing directors in one of the following ranges: 10% or more but less than $33^1/_3$%; $33^1/_3$% or more but less than 50%; or 50% or more. Control shares do not include shares of stock that the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A "control share acquisition" means the acquisition of control shares, subject to certain exceptions.

A person who has made (or proposes to make) a control share acquisition and who satisfies certain conditions (including agreeing to pay the expenses of the meeting) may compel the Board to call a special meeting of stockholders to be held within 50 days of the demand to consider the voting rights of the shares. If such a person makes no request for a meeting, we have the option to present the question at any stockholders' meeting.

If voting rights are not approved at a meeting of stockholders or if the acquiring person does not deliver an acquiring person statement as required by the statute, then we may redeem any or all of the control shares (except those for which voting rights have previously been approved) for fair value. We will determine the fair value of the shares, without regard to the absence of voting rights, as of the date of either:

- the last control share acquisition by the acquiring person; or
- any meeting where stockholders considered and did not approve voting rights of the control shares.

If voting rights for control shares are approved at a stockholders' meeting and the acquiring person becomes entitled to vote a majority of the shares of stock entitled to vote, all other stockholders may exercise appraisal rights. This means that stockholders would be able to require us to redeem shares of our stock from them for fair value. For this purpose, the fair value may not be less than the highest price per share paid by the acquiring person in the control share acquisition. Furthermore, certain limitations otherwise applicable to the exercise of appraisal rights would not apply in the context of a control share acquisition.

The control share acquisition statute would not apply to shares acquired in a merger, consolidation or share exchange if we were a party to the transaction or acquisitions of shares approved or exempted by the Charter or the Bylaws.

The Bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of shares of our stock. There can be no assurance that the Board will not amend or eliminate this provision in the future. The control share acquisition statute could have the effect of discouraging offers to acquire us and of increasing the difficulty of consummating any such offers, even if our acquisition would be in our stockholders' best interests.

Transfer Agent and Registrar

American Stock Transfer and Trust Company, 59 Maiden Lane, New York, New York 10038, is the transfer agent and registrar for our Common Stock, Series B Preferred Stock and Series C Preferred Stock. Its telephone number is (800) 937-5449 (toll-free).

MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following discussion is a general summary of the material U.S. federal income and estate tax consequences to the holders of shares of Preferred Stock who, pursuant to the Offer to Purchase, tender such shares. The discussion does not address all of the tax consequences that may be relevant to particular stockholders in light of their personal circumstances, or to certain types of stockholders (such as certain financial institutions, dealers in securities or commodities, insurance companies, persons who acquired shares as compensation and persons who sold shares as a position in a "straddle" or as part of a "hedging" or "conversion" transaction for federal income tax purposes). Moreover, this discussion assumes that all stockholders hold shares of Preferred Stock as capital assets within the meaning of Section 1221 of the Code.

You should be aware that in this section, when we use the term:

- "Code," we mean the Internal Revenue Code of 1986, as amended;
- "Domestic Stockholder," we mean a Stockholder that is a U.S. Person;
- "Foreign Stockholder," we mean a Stockholder that is not a U.S. Person;
- "IRS," we mean the Internal Revenue Service;
- "Stockholder," we mean a holder of shares of our capital stock;
- "U.S. Person," we mean (i) a citizen or resident of the United States; (ii) a corporation (or entity treated as a corporation for federal income tax purposes) created or organized in the United States or under the laws of the United States or of any state thereof, including, for this purpose, the District of Columbia; (iii) a partnership (or entity treated as a partnership for tax purposes) organized in the United States or under the laws of the United States or of any state thereof, including, for this purpose, the District of Columbia (unless provided otherwise by future Treasury regulations); (iv) an estate whose income is includible in gross income for federal income tax purposes regardless of its source; or (v) a trust, if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. Persons have authority to control all substantial decisions of the trust. Notwithstanding the preceding clause, to the extent provided in Treasury regulations, certain trusts that were in existence on August 20, 1996, that were treated as U.S. Persons prior to such date, and that elect to continue to be treated as U.S. Persons, also are U.S. Persons.

If a partnership, including for this purpose any entity that is treated as a partnership for U.S. federal income tax purposes, holds our stock, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. An investor that is a partnership having foreign persons as partners should consult its tax advisors about the U.S. federal income tax consequences of the acquisition, ownership and disposition of our stock.

The statements in this section are based on the current federal income tax laws. There is no assurance that new laws, interpretations of law or court decisions, any of which may take effect retroactively, will not cause any statement in this section to be inaccurate. There is no assurance that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below.

This summary provides general information only and is not tax advice. We urge you to consult your tax advisor regarding the specific tax consequences to you of a tender of Preferred Stock pursuant to the Offer to Purchase. Specifically, all holders should consult their tax advisor regarding the federal, state, local, foreign and other tax consequences of the exchange of Preferred Stock for cash, as well as potential changes in applicable tax laws.

Treatment of Domestic Stockholders

Treatment of the Offer to Purchase

Our purchase of a U.S. Person's shares will be a taxable transaction for United States federal income tax purposes and may also be a taxable transaction under applicable state, local or foreign tax laws. The amount of cash received that represents the payment of accrued but previously-unpaid dividends will be treated as ordinary dividend income to a U.S. Person for United States federal income tax purposes in the manner described below. Otherwise, except as discussed below, receipt by a U.S. Person of cash for shares validly tendered pursuant to the Offer to Purchase will be treated as a sale or exchange, if certain conditions are met, and the U. S. Holder will recognize gain or loss in an amount equal to the difference between (1) the amount of cash received pursuant to the Offer to Purchase and (2) the U.S. Person's adjusted tax basis in the shares surrendered pursuant to the Offer to Purchase. Any gain or loss recognized by a U.S. Person on the sale or exchange of shares generally will be a capital gain or loss if the shares are a capital asset to the U.S. Person, and will be long-term capital gain or loss if the shares have been held for more than one year at the time the Offer to Purchase is completed. However, the tax consequences of the Offer to Purchase may vary depending on the U.S. Person's particular facts and circumstances, and the entire amount of cash received pursuant to the Offer to Purchase may be treated as a dividend. That is, a U.S. Person may, depending on his or her particular circumstances, be treated not as having sold his or her shares, but rather as having received a distribution in respect of stock from us under Section 302 of the Code or Section 306 of the Code.

Section 302 Analysis

Under Section 302 of the Code, a U.S. Person whose shares are purchased by us will be treated as having sold such holder's shares, and thus will recognize capital gain or loss if the purchase:

- results in a "complete termination" of such holder's equity interest in us; or
- is "not essentially equivalent to a dividend" to such holder.

Both of these tests, referred to herein as the "Section 302 tests," are explained in more detail below. If a U.S. Person satisfies either of the Section 302 tests, the U.S. Person will be treated as if such holder sold shares to us and will recognize capital gain or loss in an amount equal to the difference between (1) the amount of cash received (other than amounts which represent accrued but unpaid dividends) pursuant to the Offer to Purchase and (2) such U.S. Person's adjusted tax basis in the shares surrendered pursuant to the Offer to Purchase. A U.S. Person's adjusted tax basis in the shares generally will equal the cost of the shares held by such holder. Any gain or loss recognized by a U.S. Person on the disposition of shares generally will be long-term capital gain or loss if the U.S. Person's holding period for the shares that were sold exceeds one year as of the date of purchase by us. Long-term capital gains of individuals generally may be subject to tax at a lower rate. The deduction of capital losses is subject to certain limitations. U.S. Persons should consult their tax advisors regarding the treatment of capital gains and losses. Amounts of cash received upon our purchase of shares that represent accrued but unpaid dividends will be subject to taxation as a dividend distribution in the manner discussed in the following paragraph.

If a U.S. Person does not satisfy any of the Section 302 tests explained below, our purchase of such holder's shares will not be treated as a sale or exchange under Section 302 of the Code. Instead, the entire amount received by such U.S. Person as a result of our purchase of shares will be treated as a dividend distribution with respect to the shares owned by such holder, to the extent of such holder's share of our current and accumulated earnings and profits, as calculated for United States federal income tax purposes. To the extent the amount of the distribution exceeds such U.S. Person's share of our current and accumulated earnings and profits, the excess will be treated first as a tax-free return of

capital to the extent of such holder's adjusted tax basis in the Shares owned by such holder and any remainder will be treated as capital gain (which may be long-term capital gain as described above). To the extent that our purchase of a U.S. Person's shares is treated as the receipt by such holder of a dividend, such holder's adjusted tax basis in the purchased shares will be added to any shares of Preferred Stock retained by such holder, and if the U.S. Person retains no such shares, the adjusted tax basis will be added to any other stock of the Company owned by such holder. In addition, such U.S. Holder would not be permitted to recognize any loss on the transaction. A U.S. Person that is a corporation may be eligible for a dividends received deduction for amounts received that are treated as dividends under these rules, and a non-corporate U.S. Person may be able to treat such amounts as "qualified dividend income," which is taxable at the same rate as long-term capital gains.

Constructive Ownership of Stock and Other Issues. In applying each of the Section 302 tests explained below, U.S. Persons must take into account not only shares and any other stock in the Company that they actually own but also shares of Preferred Stock and any other Impac capital stock they are treated as owning under the constructive ownership rules of Section 318 of the Code. Under the constructive ownership rules, a U.S. Person is treated as owning any shares of Preferred Stock and any other Impac stock that is owned (actually, and in some cases, constructively) by certain related individuals and entities, as well as shares of Preferred Stock and any other Impac stock that such holder has the right to acquire by exercise of an option or by conversion or exchange of another security, including any of our debt. Due to the factual nature of the Section 302 tests explained below, U.S. Persons should consult their own tax advisors to determine whether the purchase of their Shares qualifies for sale treatment in their particular circumstances.

Section 302 Tests. One of the following tests must be satisfied with respect to a U.S. Person in order for our purchase of shares to be treated as a sale or exchange by such U.S. Person for United States federal income tax purposes:

Complete Termination Test. Assuming the U.S. Person actually or constructively owns no stock in Impac other than the shares, our purchase of his shares will result in a "complete termination" of such holder's equity interest in the Company if (1) all the shares that are actually owned by such holder are sold to us and (2) all the shares that are constructively owned by such holder, if any, are sold to us or, with respect to shares owned by certain related individuals, such holder effectively waives, in accordance with Section 302(c) of the Code, attribution of shares which otherwise would be considered as constructively owned by such holder. U.S. Persons wishing to satisfy the "complete termination" test through waiver of the constructive ownership rules should consult their own tax advisors.

Not Essentially Equivalent to a Dividend Test. The purchase of a U.S. Person's shares will be treated as "not essentially equivalent to a dividend" if the reduction in such holder's proportionate interest in the Company as a result of the purchase constitutes a "meaningful reduction" given such holder's particular circumstances. Whether the receipt of cash by a U.S. Person who sells shares will be "not essentially equivalent to a dividend" will depend upon such holder's particular facts and circumstances. The factors to be considered in determining whether a reduction in a stockholder's proportionate interest in a corporation results in a "meaningful reduction" relate to the stockholder's right to vote and exercise control, the right to participate in current earnings and accumulated surplus and the right to share in net assets on liquidation. For example, the IRS has ruled that any reduction in a stockholder's proportionate interest is a "meaningful reduction" if the stockholder owns less than 1% of the shares of a corporation and did not have management control over the corporation. U.S. Persons should consult their own tax advisors as to the application of this test in their particular circumstances.

Section 306 Analysis

In general, if the shares constitute Section 306 stock to a U.S. Person, the amount realized by such U.S. Person in redemption of such shares will not be offset by his adjusted tax basis in such shares and

will result in dividend income treatment to the extent of our available earnings and profits, unless the redemption completely terminates such holder's entire actual and constructive ownership interest in our equity (as described under the caption "Complete Termination Test" above). If the redemption of such shares results in dividend income treatment, to the extent the amount of the distribution exceeds a U.S. Person's share of our available earnings and profits, the excess will be treated first as a tax-free return of capital to the extent of such U.S. Person's adjusted tax basis in the shares owned by such holder and any remainder will be treated as capital gain (which may be long-term capital gain as described above). In addition, if amounts received by a U.S. Person are treated as a dividend under these rules, such U.S. Person would not be permitted to recognize any loss. A U.S. Person that is a corporation may be eligible for a dividends received deduction for amounts received that are treated as dividends under these rules, and a non-corporate U.S. Person may be able to treat such amounts as "qualified dividend income." The law is unclear as to the treatment of any unused tax basis in a U.S. Person's shares of Preferred Stock if the redemption of such shares results in dividend income treatment to such U.S. Person under Section 306 of the Code. Section 306 stock generally includes certain preferred stock received as a stock dividend on common stock, certain preferred stock received in a tax-free reorganization and stock the basis of which is determined by reference to Section 306 stock. U.S. Persons should consult their tax advisors as to the particular consequences to them in such a case.

Backup Withholding

Under certain circumstances, U.S. Persons may be subject to backup withholding (currently a rate of 28%) with respect to the amount of consideration received in connection with such holder's sale of shares pursuant to the Offer to Purchase, unless such holder provides proof of an applicable exemption or a correct taxpayer identification number, certifies that such number is correct and otherwise complies with applicable requirements of the backup withholding rules. Amounts withheld under the backup withholding rules are not an additional tax and may be refunded or credited against the U.S. Person's United States federal income tax liability, provided the required information is furnished to the IRS.

The United States federal income tax discussion set forth above is for general information only. It is a summary and does not discuss all aspects of United States federal income taxation that may be relevant to particular U.S. Persons in light of their particular circumstances and income tax situations. U.S. Persons should consult their own tax advisors as to the particular tax consequences to them of the Offer to Purchase, including the effect of any federal, state, local, foreign or other tax laws.

Treatment of Foreign Stockholders

Except as discussed below, gain recognized by a Foreign Stockholder on the sale or exchange of our shares will not be subject to U.S. federal income tax unless our stock constitutes a U.S. real property interest ("USRPI"). Assuming that our stock does not constitute a USRPI, if you are a Foreign Stockholder and you do not hold shares of Preferred Stock in connection with the conduct of a United States trade or business, you will generally not be subject to U.S. federal income tax on any gain resulting from your exchange of Preferred Stock for cash pursuant to the Offer to Purchase. If, however, you are a nonresident alien individual and were present in the United States for 183 days or more during the taxable year, then you will be subject to a 30% tax on any capital gain recognized. If your investment in our stock is effectively connected with your conduct of a U.S. trade or business, you will generally be subject to the same treatment as a Domestic Stockholder with respect to such gain.

Notwithstanding the above, the amount of cash received by a Foreign Stockholder that represents the payment of accrued but previously-unpaid dividends will be treated as ordinary dividend income to the extent of such holder's share of our current and accumulated earnings and profits, as calculated for United States federal income tax purposes. In addition, if a Foreign Stockholder does not satisfy any of the Section 302 tests explained above, the amount received by such Foreign Stockholder as a result of

our purchase of such holder's shares will also be treated as ordinary dividend income to the same extent. Any such amount in excess of such holder's share of our current and accumulated earnings and profits will be treated first as a tax-free return of capital, and thereafter as capital gain. Amounts treated as dividends, to the extent that they are not effectively connected with a U.S. trade or business of the Foreign Stockholder, will be subject to U.S. withholding tax at the rate of 30% (unless reduced by an applicable income tax treaty). In general, a Foreign Stockholder will not be considered engaged in a U.S. trade or business solely as a result of its ownership of our stock. In cases where the dividend income from a Foreign Stockholder's investment in our stock is (or is treated as) effectively connected with the Foreign Stockholder's conduct of a U.S. trade or business, the Foreign Stockholder generally will be subject to U.S. tax at graduated rates, in the same manner as Domestic Stockholders are taxed with respect to such dividends (and may also be subject to the 30% branch profits tax in the case of a Foreign Stockholder that is a foreign corporation).

Gain recognized by a Foreign Stockholder on the sale or exchange of a USRPI is subject to U.S. federal income and withholding taxes pursuant to the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"). Unless our stock constitutes a USRPI, a sale of our stock by a Foreign Stockholder generally will not be subject to U.S. federal income tax under FIRPTA. We do not expect that our stock will constitute a USRPI. Our stock will not constitute a USRPI if less than 50% of our assets throughout a prescribed testing period consist of interests in real property located within the United States, excluding, for this purpose, interest in real property solely in the capacity as a creditor. Even if the foregoing test is not met, our stock will not constitute a USRPI if we are a domestically controlled REIT. A "domestically controlled REIT" is a REIT in which, at all times during a specified testing period, less than 50% in value of its shares is held directly or indirectly by Foreign Stockholders. Even if we do not constitute a domestically controlled REIT, a Foreign Stockholder's gain on the sale of any class of our stock generally will still not be subject to tax under FIRPTA as a sale of a USRPI provided that (i) that class of our stock is "regularly traded" (as defined by applicable Treasury regulations) on an established securities market and (ii) the selling Foreign Stockholder has owned (actually or constructively) 5% or less of such class of our stock at all times during a specified testing period.

If gain on the sale of our stock were subject to taxation under FIRPTA, the Foreign Stockholder would generally be subject to the same treatment as a Domestic Stockholder with respect to such gain (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals) and we, as the purchaser of the stock, could be required to withhold 10% of the purchase price and remit such amount to the IRS.

MISCELLANEOUS

We are not aware of any jurisdiction in which the making of the Offer to Purchase and Consent Solicitation is not in compliance with applicable law. If we become aware of any jurisdiction in which the making of the Offer to Purchase and Consent Solicitation would not be in compliance with applicable law, we will make a good faith effort to comply with any such law. If, after such good faith effort, we cannot comply with any such law, the Offer to Purchase and Consent Solicitation will not be made to (nor will tenders of shares be accepted from or on behalf of) the stockholders residing in such jurisdiction.

No person has been authorized to give any information or make any representation on our behalf not contained in this Offer to Purchase and Consent Solicitation or in the letters of transmittal and consent and, if given or made, such information or representation must not be relied upon as having been authorized.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available over the Internet at the SEC's web site at *www.sec.gov*. You may also read and copy any Offering Circular we file at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for more information on the Public Reference Room and its copy charges.

Our internet website address is *www.impaccompanies.com*. We make available free of charge, through our internet website, under the "Investor Relations—Stockholder Relations—Financial Reports—SEC Filings" section, our annual report on Form 10-K, our quarterly reports on Form 10-Q, our current reports on Form 8-K and any amendments to those reports that we file or furnish pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The information contained in or accessible from our internet website is not part of this Offering Circular.

We filed a Schedule TO pursuant to Rule 13e-4 under the Exchange Act to furnish certain information about the Offer to Purchase and Consent Solicitation. You may obtain copies of the Schedule TO (and any amendments to those documents) in the manner described above.

This Offering Circular incorporates by reference the information we file with the SEC, which means that we can disclose important information to you by referring you to those documents. We have filed the documents listed below with the SEC and these documents are incorporated herein by reference:

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2008, filed on March 13, 2009 (which is included with this Offering Circular); and

- our Quarterly Report on Form 10-Q for the period ended March 31, 2009, filed on May 11, 2009 (which is included with this Offering Circular).

We have not authorized anyone to give any information or make any representation about the Offer to Purchase and Consent Solicitation that is different from, or in addition to, that contained in this Offering Circular. Therefore, you should not rely on any other information. If you are in a jurisdiction where offers to purchase or sell, or solicitations of offers to purchase or sell, the securities offered by this Offering Circular are unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer presented in this Offering Circular does not extend to you. The information contained in this Offering Circular speaks only as of the date of this Offering Circular unless the information specifically indicates that another date applies.

The Information Agent for this Offer to Purchase is:

D.F. King & Co., Inc.
48 Wall Street
New York, New York 10005

Banks and brokers call collect: (212) 269-5550
All others call toll free: (800) 269-6427

ANNEX A

Amendment to the Company's Charter
Series B Preferred Stock

IMPAC MORTGAGE HOLDINGS, INC.

Articles of Amendment~~Articles Supplementary~~
~~9.375% Series B Cumulative Redeemable Preferred Stock~~

Impac Mortgage Holdings, Inc., a Maryland corporation (the "Corporation"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

FIRST: ~~Under a power contained in Article VI of the Articles of Amendment and Restatement of the Corporation, as amended and supplemented (the "Charter"), the Board of Directors by duly adopted resolutions classified and designated 7,500,000 shares of authorized but unissued Preferred Stock (as defined in the Charter) as shares of~~The Articles Supplementary of the Corporation establishing and fixing the rights and preferences of the Corporation's 9.375% Series B Cumulative Redeemable Preferred Stock accepted for record by the State Department of Assessments and Taxation of Maryland on May 26, 2004 (the "Articles Supplementary") and forming a part of the charter of the Corporation (the "Charter") shall be amended as follows: ~~with the following preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemption, which, upon any restatement of the Charter, shall become part of Article VI of the Charter, with any necessary or appropriate renumbering or relettering of the sections or subsections hereof~~.

1. The Articles Supplementary shall be amended and restated and replaced as follows:

Series B Preferred Stock

(1) DESIGNATION AND NUMBER. A series of preferred stock, designated the "9.375% Series B Cumulative Redeemable Preferred Stock" (the "Series B Preferred Stock"), is hereby established. The number of shares of the Series B Preferred Stock shall be ~~7,500,000.~~2,000,000.

(2) RANK. The Series B Preferred Stock shall, with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up of the Corporation, rank (a) senior to all classes or series of Common Stock, to the Series A Junior Participating Preferred Stock (as defined in the Charter) and to all equity securities of the Corporation the terms of which specifically provide that such equity securities rank junior to such Series B Preferred Stock; (b) on a parity with all equity securities issued by the Corporation the terms of which specifically provide that such equity securities rank on parity with the Series B Preferred Stock; and (c) junior to all equity securities issued by the Corporation the terms of which specifically provide that such equity securities rank senior to the Series B Preferred Stock. The term "equity securities" shall not include convertible debt securities.

(3) DIVIDENDS.

(a) Holders of the then outstanding shares of Series B Preferred Stock shall be entitled to receive, when and as authorized by the Board of Directors, out of funds legally available for the payment of dividends, ~~cumulative preferential~~ cash dividends at the rate of 9.375% of the $25.00 liquidation preference per annum (equivalent to a fixed annual amount of $2.34375 per share). Such dividends shall not be cumulative ~~from the first date on which any Series B Preferred Stock is issued~~ and shall, if declared, be payable quarterly ~~in arrears~~ on March 31, June 30, September 30, and December 31 of each year or, if not a business day, the prior preceding business day (each, a "Dividend Payment Date"). Any dividend payable on the Series B Preferred Stock for any partial dividend period will be computed on the basis of a 360-day year consisting of twelve 30-day months ~~(it being understood that the dividend payable on June 30, 2004 will be for less than the full dividend period)~~. Dividends will be payable to holders of record as they appear in the stock records of the Corporation at the close of business on the applicable record date, which shall be the first day of the calendar

month on which the applicable Dividend Payment Date falls or on such other date designated by the Board of Directors of the Corporation for the payment of dividends that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a "Dividend Record Date").

(b) No dividends on shares of Series B Preferred Stock shall be declared by the Corporation or paid or set apart for payment by the Corporation at such time as the terms and provisions of any agreement of the Corporation, including any agreement relating to its indebtedness, prohibit such declaration, payment or setting apart for payment or provide that such declaration, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such declaration or payment shall be restricted or prohibited by law.

(c) ~~Notwithstanding the foregoing, dividends on the Series B Preferred Stock shall accrue whether or not the terms and provisions set forth in Section 3(b) hereof at any time prohibit the current payment of dividends, whether or not the Corporation has earnings. whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared. Accrued but unpaid dividends on the Series B Preferred Stock will accumulate as of the Dividend Payment Date on which they first become payable.~~The Corporation shall not be obligated to pay any unpaid dividend accrued on or prior to the effective date of these Articles of Amendment.

(d) ~~Except as provided in Section 3(e) below, unless full cumulative dividends on the Series B Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then current dividend period, no dividends (other than in shares of Common Stock or in shares of any series of preferred stock making junior to the Series B Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation) shall be declared or paid or set aside for payment nor shall any other distribution be declared or made upon the Common Stock, or any preferred stock of the Corporation ranking junior to or on a parity with the Series B Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation, nor shall any shares of Common Stock, or any shares of preferred stock of the Corporation ranking junior to or on a parity with the Series B Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or nude available for a sinking fund for the redemption of any such shares) by the Corporation (except by conversion into or exchange for other capital stock of the Corporation ranking junior to the Series B Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation and except for transfers made pursuant to the provisions of Article VII of the Charter).~~Intentionally Omitted.

(e) When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) on the Series B Preferred Stock and the shares of any other series of preferred stock ranking on a parity as to dividends with the Series B Preferred Stock, all dividends declared upon the Series B Preferred Stock and any other series of preferred stock ranking on a parity as to dividends with the Series B Preferred Stock in that respective quarter shall be declared pro rata so that the amount of dividends declared per share of Series B Preferred Stock and such other series of preferred stock shall in all cases bear to each other the same ratio ~~that accrued dividends per share on the Series B Preferred Stock and such other series of preferred stock (which shall not include any accrual in respect of unpaid dividends for prior dividend periods if such preferred stock does not have a cumulative dividend) bear to each other~~in that respective quarter.. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on Series B Preferred Stock which ~~may be in arrears~~is declared but unpaid.

(f) Any dividend payment made on shares of the Series B Preferred Stock shall first be credited against the earliest ~~accrued~~declared but unpaid dividend due with respect to such shares which remains payable. Holders of the Series B Preferred Stock shall not be entitled to any dividend, whether payable in cash, property or stock in excess of ~~full cumulative~~ dividends on the Series B Preferred Stock which have been declared as described above.

(4) LIQUIDATION DISTRIBUTION.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of shares of Series B Preferred Stock then outstanding are entitled to be paid out of the assets of the Corporation, legally available for distribution to its stockholders, the sum of ~~(a)~~ a liquidation preference of $25.00 per share~~, (b) an amount equal to any accrued and unpaid dividends (whether or not declared) to the date of payment and (c) the applicable premium (expressed in dollar amount) per share during the applicable period as set forth in the table below,~~ before any distribution of assets is made to holders of Common Stock or any series of preferred stock of the Corporation that ranks junior to the Series B Preferred Stock ~~as to liquidation rights:~~.

~~12 Month Period~~	~~Applicable Premium~~
~~May 28, 2004 to May 27, 2005~~	~~$ 2.00~~
~~May 28, 2005 to May 27, 2006~~	~~$ 1.75~~
~~May 28, 2006 to May 27, 2007~~	~~$ 1.50~~
~~May 28, 2007 to May 27, 2008~~	~~$ 1.00~~
~~May 28, 2008 to May 27, 2009~~	~~$ 0.50~~
~~May 28, 2009 and thereafter~~	~~$ 0.00~~

(b) In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the available assets of the Corporation are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Series B Preferred Stock and the corresponding amounts payable on all shares of other classes or series of capital stock of the Corporation ranking on a parity with the Series B Preferred Stock in the distribution of assets, then the holders of the Series B Preferred Stock and all other such classes or series of capital stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

(c) After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series B Preferred Stock will have no right or claim to any of the remaining assets of the Corporation.

(d) Written notice of any such liquidation, dissolution or winding up of the Corporation, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series B Preferred Stock at the respective addresses of such holders as the same shall appear on the stock transfer records of the Corporation.

(e) The consolidation or merger of the Corporation with or into any other corporation, trust or entity or of any other corporation with or into the Corporation, or the sale, lease or conveyance of all or substantially all of the assets or business of the Corporation, shall not be deemed to constitute a liquidation, dissolution or winding up of the Corporation.

(5) REDEMPTION.

(a) *Right of Optional Redemption.* The Series B Preferred Stock ~~is not redeemable prior to the fifth year anniversary of the issuance of the Series B Preferred Stock,~~ has no stated maturity and will not be subject to any sinking fund or mandatory redemption. ~~However, in~~If applicable,~~I~~ in order to ensure that the Corporation continues to qualify as a real estate investment trust ("REIT") for federal income tax purposes, the Series B Preferred Stock will be subject to the provisions of Article VII of the Charter. Pursuant to Article VII, and without limitation of any provisions of such Article VII, Series B Preferred Stock, together with other equity stock of the Corporation, owned by a stockholder in excess of the Aggregate Stock Ownership Limit (as defined in the Charter) will automatically be transferred to a Trust (as defined in the Charter) for the benefit of a Charitable Beneficiary (as defined in the Charter). ~~On and after the fifth year anniversary of the issuance of the Series B Preferred Stock, the~~The Corporation, at its option and upon not less than 30 nor more than 60 days' written notice, may redeem shares of the Series B Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price of $25.00 per share~~, plus all accrued and unpaid dividends thereon to and including the date fixed for redemption (except as provided in Section 5(c) below), without interest~~. If less than all of the outstanding Series B Preferred Stock is to be redeemed, the Series B Preferred Stock to be redeemed shall be selected pro rata (as nearly as may be practicable without creating fractional shares) or by any other equitable method determined by the Corporation.

(b) ~~*Limitations on Redemption.* Unless full cumulative dividends *on* all shares of Series B Preferred Stock shall have been, or contemporaneously are, declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then current dividend period, no shares of Series B Preferred Stock shall be redeemed unless all outstanding shares of Series B Preferred Stock are simultaneously redeemed, and the Corporation shall not purchase or otherwise acquire directly or indirectly any shares of Series B Preferred Stock (except by exchange for capital stock of the Corporation ranking junior to the Series B Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation); provided, however, that the foregoing shall not prevent such action by the Board of Directors or its designees pursuant to Article VII in order to ensure that the Corporation remains qualified as a REIT for federal income tax purposes or the purchase or acquisition of shares of Series B Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Series B Preferred Stock.~~ Intentionally Omitted.

(c) *Rights to Dividends on Shares Called for Redemption.* ~~Immediately prior to any redemption of Series B Preferred Stock, the Corporation shall pay, in cash, any accumulated and unpaid dividends to and including the redemption date, unless a redemption date falls after a Dividend Record Date and prior to the corresponding Dividend Payment Date, in which case each holder of Series B Preferred Stock at the close of business on such Dividend Record Date shall be entitled to the dividend payable on such shares on the corresponding Dividend Payment Date notwithstanding the redemption of such shares before such Dividend Payment Date. Except as provided above, the~~The Corporation will make no payment or allowance for declared and unpaid dividends~~, whether or not in arrears,~~ on Series B Preferred Stock which is redeemed.

(d) *Procedures for Redemption.*

(i) Notice of redemption will be mailed by the Corporation, postage prepaid, not less than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of the Series B Preferred Stock to be redeemed at their

respective addresses as they appear on the stock transfer records of the Corporation. No failure to give such notice or any defect thereto or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Series B Preferred Stock except as to the holder to whom notice was defective or not given.

(ii) In addition to any information required by law or by the applicable rules of any exchange upon which Series B Preferred Stock may be listed or admitted to trading, such notice shall state: (A) the redemption date; (B) the redemption price; (C) the number of shares of Series B Preferred Stock to be redeemed; and (D) the place or places where the Series B Preferred Stock is to be surrendered for payment of the redemption price~~; and (E) that dividends on the shares to be redeemed will cease to accrue on such redemption date.~~ If less than all of the Series B Preferred Stock held by any holder is to be redeemed, the notice mailed to such holder shall also specify the number of shares of Series B Preferred Stock held by such holder to be redeemed.

(iii) If notice of redemption of any shares of Series B Preferred Stock has been given and if the funds necessary for such redemption have been set aside by the Corporation in trust for the benefit of the holders of any shares of Series B Preferred Stock so called for redemption, then, from and after the redemption date, ~~dividends will cease to accrue on such shares of Series B Preferred Stock,~~ such shares of Series B Preferred Stock shall no longer be deemed outstanding and all rights of the holders of such shares will terminate, except the right to receive the redemption price. Holders of Series B Preferred Stock to be redeemed shall surrender such Series B Preferred Stock at the place designated in such notice~~ and. upon~~Upon surrender in accordance with said notice of the certificates for shares of Series B Preferred Stock so redeemed (properly endorsed or assigned for transfer, if the Corporation shall so require and the notice shall so state), such shares of Series B Preferred Stock shall be redeemed by the Corporation at the redemption price~~ plus any accrued and unpaid dividends payable upon such redemption~~. In case less than all the shares of Series B Preferred Stock represented by any such certificate are redeemed, a new certificate or certificates shall be issued representing the unredeemed shares of Series B Preferred Stock without cost to the holder thereof.

(iv) The deposit of funds with a bank or trust corporation for the purpose of redeeming Series B Preferred Stock shall be irrevocable except that:

(A) the Corporation shall be entitled to receive from such bank or trust corporation the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any share redeemed shall have no claim to such interest or other earnings: and

(B) any balance of monies so deposited by the Corporation and unclaimed by the holders of the Series B Preferred Stock entitled thereto at the expiration of two years from the applicable redemption dates shall be repaid, together with any interest or other earnings thereon, to the Corporation, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Corporation shall look only to the Corporation for payment without interest or other earnings.

(e) *Application of Article VII.* The shares of Series B Preferred Stock are subject to the provisions of Article VII of the Charter, including, without limitation, the provision for the redemption of shares transferred to the Trust (as defined in such Article). For this purpose, the market price of the Series B Preferred Stock shall equal $25.00 per share~~, plus all accrued and unpaid dividends on the shares of Series B Preferred Stock~~.

(f) *Status of Redeemed Shares.* Any shares of Series B Preferred Stock that shall at any time have been redeemed or otherwise acquired by the Corporation shall, after such redemption or acquisition, have the status of authorized but unissued preferred stock, without designation as to series until such shares are once more classified and designated as part of a particular series by the Board of Directors.

(6) VOTING RIGHTS.

(a) Holders of the Series B Preferred Stock will not have any voting rights, except as set forth below.

~~(b) Whenever dividends on any shares of Series B Preferred Stock or any series of preferred stock ranking on parity as to payment of dividends with the Series B Preferred Stock shall be in arrears for six or more quarterly periods, whether or not consecutive (a "Preferred Dividend Default"), the holders of such shares of Series B Preferred Stock (voting separately as a class with any other classes or all other series of our preferred stock ranking on a parity with the Series B Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation ("Parity Preferred"), upon which like voting rights have been conferred and are exercisable), will be entitled to vote for the election of a total of two additional directors of the Corporation, provided that any such directors, if elected, shall not cause the Corporation to violate the requirement of Section 303A.02 of the New York Stock Exchange Listed Company Manual, or any successor provision thereto, that the Corporation have a majority of independent directors (the "Preferred Stock Directors"), and the number of directors on the Board of Directors shall increase by two, at a special meeting called by the holders of record of at least 20% of the Series B Preferred Stock or the holders of any other series of Parity Preferred so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of stockholders in which event such meeting shall be held at such next annual or special meeting of stockholders), and at each subsequent annual meeting until all dividends accumulated on such shares of Series B Preferred Stock and any series of preferred stock ranking on parity as to payment of dividends with the Series B Preferred Stock for the past dividend periods and the dividend for the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment.~~

~~(c) f and when all accumulated dividends and the dividend for the then current dividend period on the Series B Preferred Stock and any series of preferred stock ranking on parity as to payment of dividends with the Series B Preferred Stock shall have been paid in full or set aside for payment in full, the holders of shams of Series B Preferred Stock shall be divested of the voting rights set forth in Section 6(b) hereof (subject to revesting in the event of each and every subsequent Preferred Dividend Default) and, if all accumulated dividends and the dividend for the current dividend period have been paid in full or set aside for payment in full on all other series of Parity Preferred upon which like voting rights have been conferred and are exercisable, the term of office of each Preferred Stock Director so elected shall terminate and the number of directors on the Board of Directors shall decrease by two. Any Preferred Stock Director may be removed at any time with or without cause by the vote of, and shall not be removed otherwise than by the vote of, the holders of record of a majority of the outstanding shares of the Series B Preferred Stock when they have the voting rights set forth in Section 6(b) (voting separately as a class with the Parity Preferred upon which like voting rights have been conferred and are exercisable). So long as a Preferred Dividend Default shall continue, any vacancy in the office of a Preferred Stock Director may be filled by written consent of the Preferred Stock Director remaining in office, or, if none remains in office, by a vote of the holders of record *of a* majority of the outstanding shares of Series B Preferred Stock when they have the voting rights set forth in Section 6(b) (voting separately as a class~~

~~with all other series of Parity Preferred upon which like voting rights have been conferred and are exercisable). The Preferred Stock Directors shall each be entitled to one vote per director on any matter.~~

(~~d~~b) So long as any shares of Series B Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least two-thirds of the shares of the Series B Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting separately as a class with all series of Parity Preferred that the Corporation may issue upon which like voting rights have been conferred and are exercisable), (i) ~~authorize or create, or increase the authorized or issued amount of, any class or series of capital stock ranking prior to the Series B Preferred Stock with respect to payment of distributions and the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock of the Corporation into any such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; (ii)~~ amend, alter or repeal any of the provisions of the Charter, so as to materially and adversely affect any preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Series B Preferred Stock or the holders thereof; provided, however, that any increase or decrease in the number of the authorized preferred stock (subject to the limit that the number of authorized share of preferred stock shall not be decreased below the number issued and outstanding at such time), including the number of Series B Preferred Stock (subject to the limit that the number of authorized shares of Series B Preferred Stock shall not be decreased below the number issued and outstanding at such time), or the creation or issuance of any additional Series B Preferred Stock or other series of preferred stock that the Corporation may issue, or any increase in the amount of authorized shares of such series, in each case ranking senior to or on a parity with or junior to the Series B Preferred Stock that the Corporation may issue with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up, shall be deemed not to materially and adversely affect such preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption; or (~~iii~~ii) enter into, approve, or otherwise facilitate a binding share exchange or reclassification involving the Series B Preferred Stock that materially and adversely affects any of the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Series B Preferred Stock or a consolidation, merger or similar transaction involving the Corporation unless in the case of a binding share exchange, reclassification, consolidation, merger or other similar transactions the shares of Series B Preferred Stock remain outstanding with preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption materially unchanged or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, the shares are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, in each case with preferences, conversion or other rights, voting powers, restrictions, limitation as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Series B Preferred Stock that are not individually or in the aggregate materially less favorable to the holders of the Series B Preferred Stock than the preferences, conversion or other rights, voting powers, restrictions, limitation as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Series B Preferred Stock as described herein.

(~~e~~c) The foregoing ~~voting provisions~~ provision 6(b) will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be

effected, all outstanding shares of Series B Preferred Stock shall have been redeemed or called for redemption upon proper notice and sufficient funds shall have been deposited in trust to effect such redemption.

(7) CONVERSION. The Series B Preferred Stock is not convertible into or exchangeable for any property or securities of the Corporation.

SECOND: The ~~7,500,000~~2,000,000 shares of Series B Preferred Stock have been classified and designated by the Board of Directors under the authority contained in the Charter.

THIRD: ~~These~~ The foregoing amendments to the Charter were advised ~~Articles Supplementary have been approved~~ by the Board of Directors and approved by the stockholders as ~~in the manner and by the vote~~ required by law and the Charter.

FOURTH: The undersigned President of the Corporation acknowledges these Articles ~~Supplementary~~ of Amendment to be the corporate act of the Corporation and, as to all matters or facts required to be verified under oath, the undersigned Secretary and 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 of perjury.

[SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Corporation has caused these Articles ~~Supplementary~~of Amendment to be signed in its name and on its behalf by its President and attested to by its secretary on this day of , ~~2004.~~2009.

ATTEST:	IMPAC MORTGAGE HOLDINGS, INC.
By: _____	By: _____
Name: Ronald M. Morrison Title: Secretary	Name: William S. Ashmore Title: President

ANNEX B

Amendment to the Company's Charter
Series C Preferred Stock

IMPAC MORTGAGE HOLDINGS, INC.

Articles of Amendment~~Articles Supplementary~~
~~9.125% Series C Cumulative Redeemable Preferred Stock~~

Impac Mortgage Holdings, Inc., a Maryland corporation (the "Corporation"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

FIRST: ~~Under a power contained in Article VI of the Articles of Amendment and Restatement of the Corporation, as amended and supplemented (the "Charter"), the Board of Directors by duly adopted resolutions reclassified and designated 5,500,000 shares of authorized but unissued~~ The Articles Supplementary of the Corporation establishing and fixing the rights and preferences of the Corporation's ~~9.375% Series B Cumulative Redeemable Preferred Stock (as defined in the Charter) as shares of~~9.125% Series C Cumulative Redeemable Preferred Stock accepted for record by the State Department of Assessments and Taxation of Maryland on November 18, 2004 (the "Articles Supplementary") and forming a part of the charter of the Corporation (the "Charter") shall be amended as follows: ~~with the following preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemption, which, upon any restatement of the Charter, shall become part of Article VI of the Charter, with any necessary or appropriate renumbering or relettering of the sections or subsections hereof.~~

1. The Articles Supplementary shall be amended and restated and replaced as follows:

Series C Preferred Stock

(1) DESIGNATION AND NUMBER. A series of preferred stock, designated, the "9.125% Series C Cumulative Redeemable Preferred Stock" (the "Series C Preferred Stock"), is hereby established. The number of shares of the Series C Preferred stock shall be 5,500,000.

(2) RANK. The Series C Preferred Stock shall, with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up of the Corporation, rank (a) senior to all classes or series of Common Stock, to the Series A Junior Participating Preferred Stock (as defined in the Charter) and to all equity securities of the Corporation the terms of which specifically provide that such equity securities rank junior to such Series C Preferred Stock; (b) on a parity with the 9.375% Series B Cumulative Redeemable Preferred Stock (as defined in the Charter) and with all other equity securities issued by the Corporation the terms of which specifically provide that such equity securities rank on parity with the Series C Preferred Stock; and (c) junior to all equity securities issued by the Corporation the terms of which specifically provide that such equity securities rank senior to the Series C Preferred Stock. The term "equity securities" shall not include convertible debt securities.

(3) DIVIDENDS.

(a) Holders of the then outstanding shares of Series C Preferred Stock shall be entitled to receive, when and as authorized by the Board of Directors, out of funds legally available for the payment of dividends, ~~cumulative preferential~~ cash dividends at the rate of 9.125% of the $25.00 liquidation preference per annum (equivalent to a fixed annual amount of $2.28125 per share). Such dividends shall not be cumulative~~ from the first date on which any Series C Preferred Stock is issued~~ and shall, if declared, be payable quarterly~~ in arrears~~ on March 31, June 30, September 30, and December 31 of each year or, if not a business day, the, prior preceding business; day (each, a "Dividend Payment Date"). Any dividend payable on the Series C Preferred Stock for any partial dividend period will be computed on the basis of a 360-day year consisting of twelve 30-day months~~ (it being understood that the dividend~~

~~payable on December 31, 2004 will be for less than the full dividend period)~~. Dividends will be payable to holders of record as they appear in the stock records of the Corporation at the close of business on the applicable record date, which shall be the first day of the calendar month on which the applicable Dividend Payment Date falls or on such other date designated by the Board of Directors of the Corporation for the payment of dividends that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a Dividend Record Date).

(b) No dividends on shares of Series C Preferred Stock shall be declared by the Corporation or paid or set apart for payment by the Corporation at such time as the terms and provisions of any agreement of the Corporation, including any agreement relating to its indebtedness, prohibit such declaration, payment or setting apart for payment or provide that such declaration, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such declaration or payment shall be restricted or prohibited by law.

(c) ~~Notwithstanding the foregoing, dividends on the Series C Preferred Stock shall accrue whether or not the terms and provisions set forth in Section 3(b) hereof at any time prohibit the current payment of dividends, whether or not the Corporation has earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared. Accrued but unpaid dividends on the Series C Preferred Stock will accumulate as of the Dividend Payment Date on which they first become payable.~~The Corporation shall not be obligated to pay any unpaid dividend accured on or prior to the effective date of these Articles of Amendment.

(d) ~~Except as provided in Section 3(e) below, unless full cumulative dividends on the Series C Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then current dividend period, no dividends (other than in shares of Common Stock or in shares of any series of preferred stock ranking junior to the Series C Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation) shall be declared or paid r set aside for payment nor shall any other distribution be declared or made upon the Common Stock, or any preferred stock of the Corporation ranking junior to or on a parity with the Series C Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation, nor shall any shares of Common Stock, or any shares of preferred stock of the Corporation ranking junior to or on a parity with the Series C Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such shares) by the Corporation (except by conversion into or exchange for other capital stock of the Corporation ranking junior to the Series C Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation and except for transfers made pursuant to the provisions of Article VII of the Charter).~~Intentionally Omitted.

(e) When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) on the Series C Preferred Stock and the shares of any other series of preferred stock ranking on a parity as to dividends with the Series C Preferred Stock, all dividends declared upon the Series C Preferred Stock and any other series of preferred stock ranking on a parity as to dividends with the Series C Preferred Stock in that respective quarter shall be declared pro rata so that the amount of dividends declared per share of Series C Preferred Stock and such other series of preferred stock shall in all cases bear to each other the same ratio ~~that accrued dividends per share on the Series C Preferred Stock and such other series of preferred stock (which shall not include any accrual in respect of unpaid dividends for prior dividend periods if such preferred stock does not have a cumulative dividend) bear to each~~

~~other~~in that respective quarter. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on Series C Preferred Stock which ~~may be in arrears~~is declared but unpaid.

(f) Any dividend payment made on shares of the Series C Preferred Stock shall first be credited against the earliest ~~accrued~~declared but unpaid dividend due with respect to such shares which remains payable. Holders of the Series C Preferred Stock shall not be entitled to any dividend, whether payable in cash, property or stock in excess of ~~full cumulative~~ dividends on the Series C Preferred Stock which have been declared as described above.

(4) LIQUIDATION DISTRIBUTION.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of shares of Series C Preferred Stock then outstanding are entitled to be paid out of the assets of the Corporation, legally available for distribution to its stockholders, the sum of ~~(a)~~ a liquidation preference of $25.00 per share~~, (b) an amount equal to any accrued and unpaid dividends (whether or not declared) to the date of payment and (c) the applicable premium (expressed in dollar amount) per share during the applicable period as set forth in the table below,~~ before any distribution of assets is made to holders of Common Stock or any series of preferred stock of the Corporation that ranks junior to the Series C Preferred Stock ~~as to liquidation rights:~~.

~~12 Month Period~~	~~Applicable Premium~~
~~November 23, 2004 to November 22, 2005~~	~~$ 2.00~~
~~November 23, 2005 to November 22, 2006~~	~~$ 1.75~~
~~November 23, 2006 to November 22, 2007~~	~~$ 1.50~~
~~November 23, 2007 to November 22, 2008~~	~~$ 1.00~~
~~November 23, 2008 to November 22, 2009~~	~~$ 0.50~~
~~Nov ember 23, 2009 and thereafter~~	~~$ 0.00~~

(b) In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the available assets of the Corporation are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Series C Preferred Stock and the corresponding amounts payable on all shares of other classes or series of capital stock of the Corporation ranking on a parity with the Series C Preferred Stock in the distribution of assets, then the holders of the Series C Preferred Stock and all other such classes or series of capital stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

(c) After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series C Preferred Stock will have no right or claim to any of the remaining assets of the Corporation.

(d) Written notice of any such liquidation, dissolution or winding up of the Corporation, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series C Preferred Stock at the respective addresses of such holders as the same shall appear on the stock transfer records of the Corporation.

(e) The consolidation or merger of the Corporation with or into any other corporation, trust or entity or of any other corporation with or into the Corporation, or the sale, lease or conveyance of all or substantially all of the assets or business of the Corporation, shall not be deemed to constitute a liquidation, dissolution or winding up of the Corporation.

(5) REDEMPTION.

(a) *Right of Optional Redemption*. The Series C Preferred Stock ~~is not redeemable prior to the fifth year anniversary of the issuance of the Series C Preferred Stock,~~ has no stated maturity and will not be subject to any sinking fund or mandatory redemption. ~~However, in~~If applicable, ~~I~~in order to ensure that the Corporation continues to qualify as a real estate investment trust ("REIT") for federal income tax purposes, the Series C Preferred Stock will be subject to the provisions of Article VII of the Charter. Pursuant to Article VII, and without limitation of any provisions of such Article VII, Series C Preferred Stock, together with other equity stock of the Corporation, owned by a stockholder in excess of the Aggregate Stock Ownership Limit (as defined in the Charter) will automatically be transferred to a Trust (as defined in the Charter) for the benefit of a Charitable Beneficiary (as defined in the Charter). ~~On and after the fifth year anniversary of the issuance of the Series C Preferred Stock, the~~The Corporation, ~~t~~at its option and upon not less than 30 nor more than 60 days' written notice, may redeem shares of the Series C Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price of $25.00 per share~~, plus all accrued and unpaid dividends thereon to and including the date fixed for redemption (except as provided n Section 5(c) below), without interest~~. If less than all of the outstanding Series C Preferred Stock is to be redeemed, the Series C Preferred Stock to be redeemed shall be selected pro rata (as nearly as may be practicable without creating fractional shares) fir by any other equitable method determined by the Corporation.

(b) ~~Limitations on Redemption. Unless full cumulative dividends on all shares of Series C Preferred Stock shall have been, or contemporaneously are, declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then current dividend period, no shares of Series C Preferred Stock shall be redeemed unless all outstanding shares of Series C Preferred Stock are simultaneously redeemed, and the Corporation shall not purchase or otherwise acquire directly or indirectly any shares of Series C Preferred Stock (except by exchange for capital stock of the Corporation ranking junior to the Series C Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation); provided, however, that the foregoing, shall not prevent such action by the Board of Directors or its designees pursuant to Article VII in order to ensure that the Corporation remains qualified as a REIT for federal income tax purposes or tie purchase or acquisition of shares of Series C Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Series C Preferred Stock.~~Intentionally Omitted.

(c) *Rights to Dividends on Shares Called for Redemption*. ~~Immediately prior to any redemption of Series C Preferred Stock, the Corporation shall pay in cash, any accumulated and unpaid dividends to and including the redemption date, unless a redemption date falls after a Dividend Record Date and prior to the corresponding Dividend Payment Date, in which case each holder of Series C Preferred Stock at the close of business on such Dividend Record Date shall be entitled to the dividend payable on such shares on the corresponding Dividend Payment Date notwithstanding the redemption of such shares before such Dividend Payment Date. Except as provided above, the~~The Corporation will make no payment or allowance for declared and unpaid dividends~~, whether or not in arrears,~~ on Series C Preferred Stock which is redeemed.

(d) *Procedures for Redemption.*

(i) Notice of redemption will be mail by the Corporation, postage prepaid, not less than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of the Series Preferred Stock to be redeemed at their respective

addresses as they appear on the stock transfer records of the Corporation. No failure to give such notice or any defect thereto or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Series C Preferred Stock except as to the holder to whom notice was defective or not given.

(ii) In addition to any information required by law or by the applicable rules of any exchange upon which Series C Preferred Stock may be listed or admitted to trading, such notice shall state: (A) the redemption date; (B) the redemption price; (C) the number of shares of Series C Preferred Stock to be redeemed; and (D) the place or places where the Series C Preferred Stock is to be surrendered for payment of the redemption price~~; and (E) that dividends on the shares to be redeemed will cease to accrue on such redemption date~~. If less than all of the Series C Preferred Stock held by any holder is to be redeemed, the notice mailed to such holder shall also specify the number of shares of Series C Preferred Stock held by such holder to be redeemed.

(iii) If notice of redemption of any shares of Series C Preferred Stock has been given and if the funds necessary for such redemption have been set aside by the Corporation in trust for the benefit of the holders of any shares of Series C Preferred Stock so called for redemption, then, from and after the redemption date, ~~dividends will cease to accrue on such shares of Series C Preferred Stock,~~ such shares of Series C Preferred Stock shall no longer be deemed outstanding and all rights of the holders of such Shares will terminate, except the right to receive the redemption price. Holders of Series C Preferred Stock to be redeemed shall surrender such Series C Preferred Stock at the place designated in such notice~~ and, upon~~, Upon surrender in accordance with said notice of the certificates for shares of Series C Preferred Stock so redeemed (properly endorsed or assigned for transfer, if the Corporation shall so require and the notice shall so state), such shares of Series C Preferred Stock shall be redeemed by the Corporation at the redemption price~~ plus any accrued and unpaid dividends payable upon such redemption~~. In case less than all the shares of Series C Preferred Stock represented by any such certificate are redeemed, a new certificate or certificates shall be issued representing the unredeemed shares of Series C Preferred Stock without cost to the holder thereof.

(iv) The deposit of funds with a bank or trust corporation for the purpose of redeeming Series C Preferred Stock shall be irrevocable except that:

(A) the Corporation shall be entitled to receive from such bank or trust corporation the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any shares redeemed shall have no claim to such interest or other earnings; and

(B) any balance of monies so deposited by the Corporation and unclaimed by the holders of the Series C Preferred Stock entitled thereto at the expiration of two years from the applicable redemption dates shall be repaid, together with any interest or other earnings thereon, to the Corporation, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Corporation shall look only to the Corporation for payment without interest or other earnings.

(e) *Application of Article VII*. The shares of Series C Preferred Stock are subject to the provisions of Article VII of the Charter, including, without limitation, the provision for the redemption of shares transferred to the Trust (as defined in such Article). For this purpose, the market price of the Series C Preferred Stock shall equal $25.00 per share~~, plus all accrued and unpaid dividends on the shares of Series C Preferred Stock~~.

(f) *Status of Redeemed Shares*. Any shares of Series C Preferred Stock that shall at any time have been redeemed or otherwise acquired by the Corporation shall, after such redemption or acquisition, have the status of authorized but unissued preferred stock, without designation as to series until such shares are once more classified and designated as part of a particular series by the Board of Directors.

(6) VOTING RIGHTS.

(a) Holders of the Series C Preferred Stock will not have any voting rights, except as set forth below.

~~(b) Whenever dividends on any shares of Series C Preferred Stock or any series of preferred stock ranking on parity as to payment of dividends with the Series C Preferred Stock, including the 9.375% Series B Cumulative Redeemable Preferred Stock (as defined in the Charter), shall be in arrears for six or more quarterly periods, whether or not consecutive (a 'Preferred Dividend Default"), the holders of such shares of Series C Preferred Stock (voting separately as a class with ant other classes or all other series of our preferred stock, including the 9.375% Series Cumulative Redeemable Preferred Stock (as defined in the Charter), ranking on a parity with the Series C Preferred Stock as to the payment of distributions and the distribution of assets upon liquidation ("Parity Preferred"), upon which like voting rights have been conferred and are exercisable), will be entitled to vote for the election of a total of two additional directors of the Corporation, provided that any such directors, if elected, shall not cause the Corporation to violate the requirement of Section 303A.02 of the New York Stock Exchange Listed Company Manual, or any successor provision thereto, that the Corporation have a majority of independent directors (the `Preferred Stock Directors"), and the number of directors on the Board of Directors shall increase by two, at a special meeting called by the holders of record of at least 20% of the Series C Preferred Stock or the holders of any other series of Parity Preferred so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of stockholders in which event such meeting shall be held at such next annual or special meeting of stockholders), and at each subsequent annual meeting until all dividends accumulated on such shares of Series C Preferred Stock and any series of preferred stock ranking on parity as to payment of dividends with the Series C Preferred Stock for the past dividend periods and the dividend for the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment t thereof set aside for payment.~~

~~(c) If and when all accumulated dividends and the dividend for the then current dividend period on the Series C Preferred Stock and any series of preferred stock ranking on parity as to payment of dividends with the Series C Preferred Stock, including the 9.375% Series B Cumulative Redeemable Preferred Stock (as defined in the Charter), shall have been paid in full or set aside for payment in full, the holders of shares of Series C Preferred Stock shall be divested of the voting right set forth in Section 6(b) hereof (subject to revesting in the event of each and every subsequent Preferred Dividend Default) and, if all accumulated dividends and the dividend for the current dividend period have been paid in full or set aside for payment in full on all other series of Parity Preferred upon which like voting rights have been conferred and are exercisable, the term of office of each Preferred Stock Director so elected shall terminate and the number of directors on the Board of Directors shall decrease by two. Any Preferred Stock Director may be removed at any time with or without cause by the vote of, and shall not be removed otherwise than by the vote of, the holders of record of 4 majority of the outstanding shares of the Series C Preferred Stock when they have the voting rights set forth in Section 6(b) (voting separately as a class with the Parity Preferred upon which like voting rights have been conferred and are exercisable). So long as a Preferred Dividend Default shall continue, any vacancy in the office of a Preferred Stock Director may~~

~~be filled by written consent of the Preferred Stock Director remaining in office, or, if none remains in office, by a vote of the holders of record of a majority of the outstanding shares of Series C Preferred Stock when they have the voting rights set forth in Section 6(b) (voting separately as a class with all other series of Parity Preferred upon which like voting rights have been conferred and are exercisable). The Preferred Stock Directors shall each be entitled to one vote per director on any matter.~~

(b) ~~(d)~~ So long as any shares of Series C Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least two-thirds of the shares of the Series C Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting separately as a class with all series of Parity Preferred that the Corporation may issue upon which like voting rights have been conferred and are exercisable), (i) ~~authorize or create, or increase the authorized or issued amount of, any class or series of capital stock ranking prior to the Series C Preferred Stock with respect to payment of distributions and the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized capital stock of the Corporation into any such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; (ii)~~ amend, alter or repeal any of the provisions of the Charter, so as to materially and adversely affect any preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Series C Preferred Stock or the holders thereof; provided, however, that any increase or decrease in the number of the authorized preferred stock (subject to the limit that the number of authorized shares of preferred stock shall not be decreased below the number issued and outstanding at such time), including the number of Series C Preferred Stock (subject to the limit that the number of authorized shares of Series C Preferred Stock shall not be decreased below the number issued and outstanding at such time), or the creation or issuance of any additional Series C Preferred Stock or other series of preferred stock that the Corporation may issue, or any increase in the amount of authorized shares of such series, in each case ranking senior to or on a parity with or junior to the Series C Preferred Stock that the Corporation may issue with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up, shall be deemed not to materially and adversely affect such preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption; or (iii) enter into, approve, or otherwise facilitate a binding share exchange or reclassification involving the Series C Preferred Stock that materially and adversely affects any of the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Series C Preferred Stock or a consolidation, merger or similar transaction involving the Corporation unless in the case of a binding share exchange, reclassification, consolidation, merger or other similar transactions the shares of Series C Preferred Stock remain outstanding with preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption materially unchanged or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, the shares are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, in each case with preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Series C Preferred Stock that are not individually or in the aggregate materially less favorable to the holders of the Series C Preferred Stock than the preferences, conversion or other rights, voting powers, restrictions, limitation as to dividends

or other distributions, qualifications, or terms or conditions of redemption of the Series C Preferred Stock as described herein.

(~~e~~c) The foregoing ~~voting provisions~~provision 6(b) will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Series C Preferred Stock shall have been redeemed or called for redemption upon proper notice and sufficient funds shall have been deposited in trust to effect such redemption.

(7) CONVERSION. The Series C Preferred Stock is not convertible into or exchangeable for any property or securities of the Corporation.

SECOND: The 5,500,000 shares of Series C Preferred Stock have been reclassified and designated by the Board of Directors under the authority contained in the Charter.

THIRD: ~~These Articles Supplementary have been approved~~ The foregoing amendments to the Charter were advised by the Board of Directors and approved by the stockholders of the Corporation as ~~in the manner and by the vote~~ required by law and the Charter.

FOURTH: The undersigned President of the Corporation acknowledges these Articles of Amendment ~~Supplementary~~ to be the corporate act of the Corporation and, as to all matters or facts required to be verified under oath, the undersigned Secretary and 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 of perjury.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Corporation has caused ~~those~~these ~~Amended and Restated~~ Articles ~~Supplementary~~of Amendment to be signed in its name and on its behalf by its President and attested to by its Secretary on this day of , ~~2004.~~2009.

ATTEST:

By: _____

Name: Ronald M. Morrison
Title: Secretary

IMPAC MORTGAGE HOLDINGS, INC.

By: _____

Name: William S. Ashmore
Title: President

QuickLinks -- Click here to rapidly navigate through this document

Exhibit (a)(1)(C)(i)

Series B Preferred Stock

LETTER OF TRANSMITTAL AND CONSENT

IMPAC MORTGAGE HOLDINGS, INC.

Offer to purchase all outstanding shares of
9.375% Series B Cumulative Redeemable Preferred Stock (CUSIP No. 45254P300)
9.125% Series C Cumulative Redeemable Preferred Stock (CUSIP No. 45254P409)
and Consent Solicitation

THE OFFER TO PURCHASE AND CONSENT SOLICITATION WILL EXPIRE AT 9:00 A.M., EASTERN DAYLIGHT TIME, ON JUNE 26, 2009, UNLESS EXTENDED OR EARLIER TERMINATED BY IMPAC MORTGAGE HOLDINGS, INC. (SUCH TIME AND DATE, AS THE SAME MAY BE EXTENDED OR EARLIER TERMINATED, THE "EXPIRATION DATE"). TENDERS OF PREFERRED STOCK MAY BE WITHDRAWN AT ANY TIME PRIOR TO 9:00 A.M., EASTERN DAYLIGHT TIME, ON THE EXPIRATION DATE.

The Depositary for the Offer to Purchase and Consent Solicitation is:

American Stock Transfer & Trust Company

By Mail or Overnight Courier:	*By Hand:*
American Stock Transfer & Trust Company Operations Center Attn: Reorganization Department 6201 15th Avenue Brooklyn, NY 11219	American Stock Transfer & Trust Company Attn: Reorganization Department 59 Maiden Lane Concourse Level New York, NY 10038

The Information Agent for the Offer to Purchase and Consent Solicitation is:

D.F. King & Co., Inc.
48 Wall Street, 22nd Floor
New York, NY 10005

Banks and brokers call collect: (212) 269-5550
All others call toll free: (800) 269-6427

For use by holders of record ("Holders") of the 9.375% Series B Cumulative Redeemable Preferred Stock (the "Series B Preferred Stock") of Impac Mortgage Holdings, Inc. (the "Company"). Delivery of this Letter of Transmittal and Consent to an address other than as set forth above, or transmission of this Letter of Transmittal and Consent via facsimile, will not constitute a valid delivery. The method of delivery of all documents, including certificates, is at the option and risk of the Holder. Delivery will be deemed made only when actually received by the Depositary.

The instructions contained within this Letter of Transmittal and Consent should be read carefully before this Letter of Transmittal and Consent is completed.

This Letter of Transmittal and Consent is only to be used by record holders of the Series B Preferred Stock. A separate Letter of Transmittal and Consent is being provided for use by record holders of the 9.125% Series C Cumulative Redeemable Preferred Stock. If you hold your shares of Series B Preferred Stock through a broker, dealer or other nominee, please contact your broker, dealer or other nominee for the appropriate instructions and documents.

DO NOT COMPLETE AND SEND THIS LETTER OF TRANSMITTAL AND CONSENT DIRECTLY TO THE DEPOSITARY IF YOU HOLD SHARES THROUGH A BROKER, DEALER OR OTHER NOMINEE.

DESCRIPTION OF SERIES B PREFERRED STOCK TENDERED

Name(s) and Address(es of Registered Holder(s) (Please fill in, if blank)(1)	Share Certificate(s) and Share(s) Tendered (Please attach additional signed list, if necessary)		
	Series B Preferred Stock Share Certificate Number(s)(2)	Total Number of Shares of Series B Preferred Stock Represented by Share Certificate(s)(2)	Number of Shares of Series B Preferred Stock Tendered(3)
	Total Shares Tendered		

(1) The names and addresses of the registered Holders of the tendered Series B Preferred Stock should be printed, if not already printed above, exactly as they appear on the share certificates tendered hereby.
(2) Need not be completed by Holders tendering shares by book-entry transfer.
(3) Unless otherwise indicated, all Series B Preferred Stock represented by Share Certificates delivered to the Depositary will be deemed to have been tendered. The terms of the Offer to Purchase and Consent Solicitation require that Holders tender all shares they own, and the Company is entitled to reject partial tenders. See Instruction 5.

o Check here if share certificates have been lost or mutilated.

The undersigned hereby acknowledges that he or she has received and read the Offering Circular, dated May 29, 2009 (the "Offering Circular"), of the Company and this Letter of Transmittal and Consent (the "Letter of Transmittal and Consent"), which together constitute the Company's offer to purchase (the "Offer to Purchase") all of the Company's outstanding 9.375% Series B Cumulative Redeemable Preferred Stock, $0.01 par value per share ("Series B Preferred Stock") and 9.125% Series C Cumulative Redeemable Preferred Stock, $0.01 par value per share ("Series C Preferred Stock," and collectively with the Series B Preferred Stock, the "Preferred Stock"), upon the terms and subject to the conditions specified in the Offering Circular. The Company is also soliciting consents (the "Consent Solicitation") from holders of the Preferred Stock (each, a "Holder" and collectively, the "Holders") as of the expiration of the Offer to Purchase and Consent Solicitation, to amend our charter (the "Charter") to modify the terms of such series of Preferred Stock. In the case of the Series B Preferred Stock, the proposed amendment would: (i) make future dividends non-cumulative; (ii) eliminate the provisions prohibiting the payment of dividends on junior stock and prohibiting the purchase or redemption of junior or parity stock if full cumulative dividends for all past dividend periods are not paid or declared and set apart for payment; (iii) eliminate any premiums payable upon the liquidation, dissolution or winding up of the Company; (iv) eliminate the provision prohibiting the Company from electing to redeem Preferred Stock prior to the fifth year anniversary of the issuance of such Preferred Stock; (v) eliminate the provision prohibiting the Company from redeeming less than all of the outstanding Preferred Stock if full cumulative dividends for all past dividend periods have not been paid or declared and set apart for payment; (vi) eliminate the right of holders of Preferred Stock to elect two directors if dividends are in arrears for six quarterly periods; and (vii) eliminate the right of holders of Preferred Stock to consent to or approve the authorization or issuance of preferred stock senior to the Preferred Stock (the "Proposed Amendments").

The elimination of the restrictions described above would allow the Company to declare and pay dividends on shares of common stock or shares of any other class or series of our capital stock, except any class or series of parity stock, or redeem, repurchase or otherwise acquire shares of any class or Series of our capital stock, including common stock and any other series of preferred stock, without paying or setting apart for payment any dividends on shares of any series of preferred stock. The foregoing is only a summary of the Proposed Amendments, and is qualified by reference to the amended text of the affected provisions of our Charter reflecting the Proposed Amendments, set forth as *Annex A* to the Offering Circular.

Holders who desire to tender their shares of Series B Preferred Stock pursuant to the Offer to Purchase and Consent Solicitation for repurchase are required to consent to the Proposed Amendments. The execution and delivery of this Letter of Transmittal and Consent will constitute a Holder's consent to the Proposed Amendments and will also authorize and direct the Depositary to execute and deliver a written consent to the Proposed Amendments on such Holder's behalf with respect to all shares of Preferred Stock owned by such Holder. A Holder of shares of Series B Preferred Stock may not tender Series B Preferred Stock in the Offer to Purchase and Consent Solicitation without delivering its consent to the Proposed Amendments with respect to all shares of Series B Preferred Stock owned by such Holder.

The Company reserves the right, at any time or from time to time, to extend the Offer to Purchase and Consent Solicitation, in which event the term "Expiration Date" shall mean the latest time and date to which the Offer to Purchase and Consent Solicitation is extended. The Company shall notify the Holders of the Series B Preferred Stock of any extension as promptly as practicable with a public announcement thereof.

This Letter of Transmittal and Consent is to be completed by Holders of Series B Preferred Stock (i) if certificates evidencing Series B Preferred Stock (the "share certificates") are to be forwarded herewith or (ii) if delivery of Series B Preferred Stock is to be made by book-entry transfer to the account of American Stock Transfer & Trust Company (the "Depositary") at The Depository Trust Company or "DTC" (also known as the "book-entry transfer facility") pursuant to the book-entry transfer procedure described in the section of the Offering Circular entitled "The Offer to Purchase and Consent Solicitation—Procedure for Tendering and Consenting," and in each case, instructions are not being transmitted through the DTC Automated Tender Offer Program ("ATOP").

Holders of Series B Preferred Stock whose share certificates for such Series B Preferred Stock are not immediately available or who cannot deliver their share certificates and all other required documents to the Depositary prior to the Expiration Date or who cannot complete the procedures for book-entry transfer prior to the Expiration Date must tender their Series B Preferred Stock according to the guaranteed delivery procedures. See Instruction 2.

Delivery of documents to DTC does not constitute delivery to the Depositary.

The undersigned has completed, executed and delivered this Letter of Transmittal and Consent to indicate the action the undersigned desires to take with respect to the Offer to Purchase and Consent Solicitation. The instructions included with this Letter of Transmittal and Consent must be followed.

None of the Company's board of directors (the "Board"), the officers or employees of the Company, the Information Agent, the Depositary or any of the Company's financial advisors is making a recommendation to any Holder of Series B Preferred Stock as to whether you should tender shares in the Offer to Purchase and Consent Solicitation. You must make your own investment decision regarding the Offer to Purchase and Consent Solicitation based upon your own assessment of the market value of the Series B Preferred Stock, the effect of holding shares of the Preferred Stock upon approval of the Proposed Amendments, your liquidity needs, your investment objectives and any other factors you deem relevant.

o **CHECK HERE IF TENDERED SHARES OF SERIES B PREFERRED STOCK ARE BEING DELIVERED BY BOOK-ENTRY TRANSFER MADE TO THE ACCOUNT MAINTAINED BY THE DEPOSITARY WITH DTC AND COMPLETE THE FOLLOWING:**

Name of Tendering Institution: _____

DTC Account Number: _____

Transaction Code Number: _____

o CHECK HERE AND ENCLOSE A PHOTOCOPY OF THE NOTICE OF GUARANTEED DELIVERY IF TENDERED SHARES OF SERIES B PREFERRED STOCK ARE BEING DELIVERED PURSUANT TO A NOTICE OF GUARANTEED DELIVERY PREVIOUSLY SENT TO THE DEPOSITARY AND COMPLETE THE FOLLOWING (See Instruction 2):

Name of Registered Holder: _____

Window Ticket Number (if any): _____

Date of Execution of Notice of Guaranteed Delivery: _____

Name of Institution which executed the notice of Guaranteed Delivery: _____

IF GUARANTEED DELIVERY IS TO BE MADE BY BOOK-ENTRY TRANSFER: _____

Name of Tendering Institution: _____

DTC Account Number: _____

Transaction Code Number: _____

NOTE: SIGNATURES MUST BE PROVIDED BELOW.

PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY.

Ladies and Gentlemen:

Upon the terms and subject to the conditions of the Offer to Purchase and Consent Solicitation, the undersigned hereby tenders to the Company the shares of Series B Preferred Stock set forth in the box above entitled "Description of Series B Preferred Stock Tendered." Subject to, and effective upon, the acceptance for purchase of the Preferred Stock tendered hereby, the undersigned hereby sells, assigns and transfers to, or upon the order of, the Company all right, title and interest in and to such Preferred Stock as are being tendered hereby.

The undersigned understands that the Company is also soliciting consents from Holders of the Series B Preferred Stock to approve the Proposed Amendments. The undersigned understands and agrees that tenders of shares of Preferred Stock in the Offer to Purchase and Consent Solicitation will authorize the Depositary to execute and deliver a written consent approving the Proposed Amendments with respect to the shares of Preferred Stock so tendered on the undersigned's behalf. The undersigned further understands that Holders of shares of Preferred Stock may not tender shares in the Offer to Purchase and Consent Solicitation without delivering their authorization to the Depositary to execute and deliver a written consent to the Proposed Amendments on the undersigned's behalf.

The undersigned understands that, if successfully completed, in the Offer to Purchase and Consent Solicitation for each tendered share of Series B Preferred Stock accepted for purchase by the Company, you will receive $0.29297.

Among the conditions to consummation of the Offer to Purchase and Consent Solicitation, Holders of at least $66^2/_3\%$ of the outstanding Preferred Stock must tender their shares or the Company will not be obligated to purchase any shares. Although the Company may receive the requisite approvals from the Holders of the Preferred Stock and the holders of the common stock to complete the Offer to Purchase and Consent Solicitation, if the Company does not satisfy certain distribution requirements under Maryland law at the expiration date, then the Offer to Purchase and Consent Solicitation will be terminated and the Company will not be obligated to purchase any shares.

Capitalized terms used but not defined herein have the meaning given to them in the Offering Circular.

The undersigned hereby represents and warrants that (i) the undersigned has full power and authority to tender, sell, assign and transfer the Series B Preferred Stock tendered hereby and to grant the consent and the power of attorney set forth herein, (ii) the undersigned is tendering all and not less than all of the Series B Preferred Stock owned by the undersigned, and (iii) the Company will acquire good and unencumbered title thereto, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claim when the same are accepted by the Company.

The undersigned further represents and warrants that the undersigned has read and agrees to all of the terms and conditions of the Offer to Purchase and Consent Solicitation. All authority herein conferred or agreed to be conferred shall survive the death or incapacity of the undersigned, and any obligation of the undersigned hereunder shall be binding upon the heirs, executors, administrators, personal representatives, trustees in bankruptcy, successors and assigns of the undersigned. This tender and grant of authorization to consent are irrevocable; provided that, the Series B Preferred Stock tendered pursuant to the Offer to Purchase and Consent Solicitation may be withdrawn, and as a result, the corresponding consent revoked, at any time on or prior to the Expiration Date, and unless theretofore accepted for purchase and not returned as provided for in the Offering Circular, may also be withdrawn after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation, subject to the withdrawal rights and procedures set forth in the

Offering Circular. The undersigned understands that, if the Company receives the requisite approvals of the Proposed Amendments from the Holders of the Preferred Stock and if a sufficient number of shares of the Preferred Stock have been tendered and accepted in the Offer to Purchase and Consent Solicitation, the Company intends to execute and file Articles of Amendment promptly following the Expiration Date and that, once effective, such amendments will be binding upon each Holder of each series of Preferred Stock, whether or not such Holder consents.

Subject to, and effective upon, the acceptance for purchase of all of the Series B Preferred Stock tendered by this Letter of Transmittal and Consent in accordance with the terms and conditions of the Offer to Purchase and Consent Solicitation (and authorization to consent thereby delivered), the undersigned hereby tenders, sells, assigns and transfers to or upon the order of the Company, all right, title and interest in and to the shares of Series B Preferred Stock tendered by this Letter of Transmittal and Consent, and releases and discharges the Company from any and all claims the undersigned may have now, or may have in the future, arising out of, or related to, the shares of Series B Preferred Stock. The undersigned hereby consents to and approves the Proposed Amendments, described in the Offering Circular, acknowledges receipt of the Offering Circular, the terms of which are incorporated herein by reference, and revokes any proxy heretofore given with respect to the Proposed Amendments. The undersigned hereby irrevocably constitutes and appoints the Depositary as its agent and attorney-in-fact, with full power and authority in its name, place and stead, with full knowledge that the Depositary is also acting as the agent of the Company in connection with the Offer to Purchase and Consent Solicitation, as the undersigned's true and lawful representative, attorney-in-fact and agent with respect to the tendered shares of Series B Preferred Stock, with full power of substitution, such power of attorney being deemed to be an irrevocable power coupled with an interest, subject only to the right of withdrawal described in the Offering Circular, to (1) deliver the tendered shares of Series B Preferred Stock to the Company together with all accompanying evidences of transfer and authenticity to the Company, upon receipt by the Depositary, as its agent, of the purchase price to be paid for the tendered shares of Series B Preferred Stock, (2) present the tendered Series B Preferred Stock for transfer, and to transfer the tendered Series B Preferred Stock on the account books maintained by DTC to, or upon the order of, the Company, (3) present the tendered Series B Preferred Stock for transfer, and to transfer the tendered Series B Preferred Stock on the books of the Company, (4) immediately prior to the Company's acceptance for purchase of the shares of Series B Preferred Stock tendered, consent to and approve the Proposed Amendments on behalf of the undersigned, (5) make, execute, sign, acknowledge, verify, swear to and deliver on behalf of the undersigned any written consent of the stockholders of the Company to approve the Proposed Amendments, (6) receive all benefits and otherwise exercise all rights of ownership of the tendered shares of Series B Preferred Stock, all in accordance with the terms and conditions of the Offer to Purchase and Consent Solicitation and (7) to do and perform each and every act and thing whether necessary or desirable to be done, as fully as the undersigned might or could do if personally present at a meeting of stockholders of the Company or otherwise. Such appointment will be automatically revoked if the Company does not accept for purchase shares of Series B Preferred Stock that a Holder has tendered. That the foregoing power of attorney shall terminate upon execution by the Depositary of an instrument of termination that specifies in writing that the foregoing power of attorney, as applicable, is terminated.

The undersigned will, upon request, execute and deliver any additional documents deemed by the Company to be necessary or desirable to complete (i) the sale, assignment and transfer of the Series B Preferred Stock tendered hereby and (ii) the delivery of authorization to the Depositary to execute and deliver a written consent in the Offer to Purchase and Consent Solicitation on behalf of the undersigned. All authority conferred or agreed to be conferred in this Letter of Transmittal and Consent and every obligation of the undersigned hereunder shall be binding upon the successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

This tender may be withdrawn (and the related consent and grant of power of attorney to the Depositary revoked) only in accordance with the procedures set forth in the section of the Offering Circular entitled "The Offer to Purchase and Consent Solicitation—Withdrawal of Tenders and Revocation of Consents."

Unless otherwise indicated herein in the box entitled "Special Payment Instructions" below, please deliver payment of the purchase price for shares of any Series B Preferred Stock accepted for purchase or return any Series B Preferred Stock not accepted for purchase in the name(s) of the registered Holder(s) appearing above under the above "Description Series B Preferred Stock Tendered" box. Similarly, unless otherwise indicated under "Special Delivery Instructions" herein, please mail the purchase price or return any Series B Preferred Stock not accepted for purchase (and any accompanying documents, as appropriate) to the addresses of the registered Holder(s) appearing under the above "Description of Series B Preferred Stock Tendered" box. In the event that the boxes entitled "Special Payment Instructions" and "Special Delivery Instructions" are both completed, please deliver payment of the purchase price or the Series B Preferred Stock not accepted for purchase, in the name of and/or to the person or persons so indicated. The undersigned recognizes that the Company has no obligation, pursuant to the "Special Payment Instructions" or the "Special Delivery Instructions" to transfer any Series B Preferred Stock from the name of the registered Holder thereof if the Company does not accept for purchase any of the Series B Preferred Stock so tendered.

THE UNDERSIGNED, BY COMPLETING THE ABOVE "DESCRIPTION OF SERIES B PREFERRED STOCK TENDERED" BOX AND SIGNING THIS LETTER, WILL BE DEEMED TO HAVE TENDERED THEIR DESIGNATED SHARES OF SERIES B PREFERRED STOCK AS SET FORTH IN SUCH BOX ABOVE.

BY TENDERING SHARES OF SERIES B PREFERRED STOCK IN THE OFFER TO PURCHASE AND CONSENT SOLICITATION, THE UNDERSIGNED ALSO CONSENTS TO AND APPROVES THE PROPOSED AMENDMENTS, AS SET FORTH IN THE OFFERING CIRCULAR, AND AUTHORIZES THE DEPOSITARY TO CONSENT TO AND APPROVE THE PROPOSED AMENDMENTS ON THE UNDERSIGNED'S BEHALF WITH RESPECT TO THE SHARES OF SERIES B PREFERRED STOCK TENDERED. HOLDERS OF SHARES OF SERIES B PREFERRED STOCK MAY NOT TENDER SHARES IN THE OFFER TO PURCHASE AND CONSENT SOLICITATION WITHOUT AUTHORIZING THE DEPOSITARY TO CONSENT TO AND APPROVE THE PROPOSED AMENDMENTS ON THEIR BEHALF.

COMPLETE THE FOLLOWING TWO BOXES ONLY IF APPLICABLE

SPECIAL PAYMENT INSTRUCTIONS
(See Instruction 7)

To be completed ONLY if the payment of the purchase price for shares of Series B Preferred Stock accepted for purchase is to be issued to the order of someone other than the person or persons whose signature(s) appear(s) within this Letter of Transmittal and Consent or issued to an address different from that shown in the box entitled "Description of Series B Preferred Stock Tendered" within this Letter of Transmittal and Consent.

Issue the payment to:

Name: _____

(Please Print)

Address: _____

(Include Zip Code)

(Taxpayer Identification or Social Security Number)

SPECIAL DELIVERY INSTRUCTIONS
(See Instruction 7)

To be completed ONLY if certificates for shares of Series B Preferred Stock not accepted for purchase are to be sent to someone other than the person or persons whose signature(s) appear(s) within this Letter of Transmittal and Consent or issued to an address different from that shown in the box entitled "Description of Series B Preferred Stock Tendered" within this Letter of Transmittal and Consent.

Deliver the Series B Preferred Stock to:

Name: _____

(Please Print)

Address: _____

(Include Zip Code)

(Taxpayer Identification or Social Security Number)

IMPORTANT
PLEASE SIGN HERE
(Complete the accompanying Substitute Form W-9)

This Letter of Transmittal and Consent must be signed by the Holder(s) of the shares of Series B Preferred Stock being tendered exactly as his, her, its or their name(s) appear(s) on certificate(s) for such shares of Series B Preferred Stock or, if tendered by a participant in DTC, exactly as such participant's name appears on a security position listing as the owner of the shares of Series B Preferred Stock or by person(s) authorized to become Holder(s) by endorsements on certificates for such shares of Series B Preferred Stock or by stock powers transmitted with this Letter of Transmittal and Consent. Endorsements on shares of Series B Preferred Stock and signatures on stock powers by Holders(s) not executing this Letter of Transmittal and Consent must be guaranteed by an Eligible Institution. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer or other person acting in a fiduciary or representative capacity, such person must set forth his or her full title below under "Capacity" and submit evidence satisfactory to the Company and the Depositary of such person's authority to so act. See Instruction 6.

Signature(s) of Holders

Dated: _____

Name(s) _____

Capacity (full title) _____

Address _____

Area Code and Telephone Number _____

GUARANTEE OF SIGNATURE(S)
(IF REQUIRED; SEE INSTRUCTION 1)

Name of Firm _____

Address _____

Authorized Signature _____

Name _____

Area Code and Telephone Number _____

INSTRUCTIONS
FORMING PART OF THE TERMS AND CONDITIONS OF THE
OFFER TO PURCHASE AND CONSENT SOLICITATION

1. *Guarantee of Signatures.* Except as otherwise provided below, all signatures on this Letter of Transmittal and Consent must be guaranteed by a firm that is a member of a registered national securities exchange or the Financial Industry Regulatory Authority, or by a commercial bank or trust company having an office or correspondent in the United States that is a participant in an approved Signature Guarantee Medallion Program (each of the foregoing being referred to as an "Eligible Institution"). Signatures on this Letter of Transmittal and Consent need not be guaranteed if (a) this Letter of Transmittal and Consent is signed by the Holder(s) of record of the shares of Series B Preferred Stock tendered herewith, or by a participant in DTC whose name appears on a security position listing as the owner of the shares of Series B Preferred Stock, and any shares of Series B Preferred Stock not accepted for purchase are to be issued, directly to such Holder(s), or, if signed by a participant in DTC, any shares of Series B Preferred Stock not accepted for purchase are to be credited to such participant's account at DTC, and neither has completed the box entitled "Special Payment Instructions" or the box entitled "Special Delivery Instructions" in this Letter of Transmittal and Consent, or (b) such shares of Series B Preferred Stock are tendered for the account of an Eligible Institution. See Instruction 6.

2. *Delivery of this Letter of Transmittal and Consent and Certificates for Series B Preferred Stock or Book-Entry Confirmations; Guaranteed Delivery Procedures.* This Letter of Transmittal and Consent is to be used by each Holder of the Series B Preferred Stock if (a) share certificates of Series B Preferred Stock are to be physically delivered to the Depositary herewith by such Holder or (b) delivery of Series B Preferred Stock is to be made by book entry transfer, and, in each case, instructions are not being transmitted through the DTC ATOP. For a tender of paper share certificates to be considered validly tendered, the Depositary must receive any required documents at its address indicated on the cover page of this Transmittal Letter and Consent prior to the Expiration Date, subject to the guaranteed delivery procedures described below. The tender by a Holder that is not withdrawn prior to the Expiration Date will constitute a binding agreement between the Holder and the Company in accordance with the terms and subject to the conditions of the Offer to Purchase and Consent Solicitation.

If you are not a holder of record of Series B Preferred Stock, please contact your broker, bank or other nominee for further instructions. Brokers, banks or other nominees that are tendering by book-entry transfer to the Depositary's account at DTC may tender Series B Preferred Stock through the DTC ATOP, for which the Offer to Purchase and Consent Solicitation will be eligible. DTC ATOP instructions should include the name and taxpayer identification number of any beneficial owner tendering shares. DTC will then send an Agent's Message to the Depositary. The term "Agent's Message" means a message transmitted by DTC, received by the Company and forming part of the book-entry confirmation, to the effect that: (i) DTC has received an express acknowledgment from a participant in ATOP that it is tendering shares and submitting authorizations to consent to the Proposed Amendments with respect to the Series B Preferred Stock that is the subject of such book-entry confirmation; (ii) such participant has received and agrees to be bound by the terms of the Offer to Purchase and Consent Solicitation for the Series B Preferred Stock being tendered; and (iii) the agreement may be enforced against such participant. **Accordingly, this Letter of Transmittal and Consent need not be completed by a Holder tendering through ATOP.** However, the Holder will be bound by the terms of the Offer to Purchase and Consent Solicitation. Delivery of documents to DTC does not constitute delivery to the Depositary.

If the Holder beneficially owns shares of Series B Preferred Stock that are held through a bank, broker or other nominee and the Holder wishes to tender those shares of Series B Preferred Stock and

deliver the Holder's consent, the Holder should contact the nominee promptly and instruct it to tender the Holder's shares of Series B Preferred Stock on the Holder's behalf.

Brokers, banks and other nominees that hold shares of Series B Preferred Stock on behalf of a beneficial holder desiring to tender Series B Preferred Stock prior to the Expiration Date through ATOP should allow sufficient time for completion of the ATOP procedures during the normal business hours of DTC prior to such date, subject to the guaranteed delivery procedures described below. The method of delivery of Series B Preferred Stock certificates and all other required documents is at the Holder's own option and risk, and the delivery will be deemed made only when actually received by the Depositary. Likewise, tenders via the DTC ATOP system shall be deemed made only when timely confirmed by DTC. In all cases, the Holder should allow sufficient time to ensure timely processing of the Holder's tender.

Holders who cannot deliver their shares or other required documents to the Depositary on or before the Expiration Date or who cannot complete the procedures for book-entry transfer on a timely basis must tender their shares of Series B Preferred Stock pursuant to the guaranteed delivery procedure. Pursuant to such procedure: (i) you must make your tender by or through an eligible institution; (ii) a properly completed and duly executed notice of guaranteed delivery substantially in the form made available by the Company must be received by the Depositary prior to the Expiration Date; and (iii) the certificates for all physically delivered shares, or a confirmation of a book-entry transfer of the Series B Preferred Stock into the Depositary's account at DTC, as well as the properly completed and duly executed Letter of Transmittal and Consent (or facsimile thereof or, in the case of a book-entry delivery, an Agent's Message) and any other documents required by this Letter of Transmittal and Consent, must be received by the Depositary within three NYSE trading days after the date of execution of such notice of guaranteed delivery.

The method of delivery of share certificates, the Letter of Transmittal and Consent and all other required documents, including delivery through DTC, are at the option and risk of the tendering stockholder, and the delivery will be deemed made only when actually received by the Depositary (including, in the case of a book-entry transfer, receipt of a Book-Entry Confirmation). If delivery is by mail, registered mail with return receipt requested, properly insured, is recommended. In all cases, sufficient time should be allowed to ensure timely delivery.

3. *Consenting in the Offer to Purchase and Consent Solicitation.* By tendering your shares of Series B Preferred Stock in accordance with the procedures described in the Offering Circular and the Letter of Transmittal and Consent, you also consent to and approve the Proposed Amendments, as set forth in the Offering Circular, acknowledge receipt of the Offering Circular and revoke any proxy heretofore given with respect to the Proposed Amendments. You irrevocably constitute and appoint the Depositary as your agent and attorney-in-fact, with full power and authority in your name, place and stead, with full knowledge that the Depositary is also acting as the agent of the Company in connection with the Offer to Purchase and Consent Solicitation, as your true and lawful representative, attorney-in-fact and agent with respect to the tendered shares of Series B Preferred Stock, with full power of substitution, such power of attorney being deemed to be an irrevocable power coupled with an interest, subject only to the right of withdrawal described in the Offering Circular, to (1) deliver the tendered shares of Series B Preferred Stock to the Company together with all accompanying evidences of transfer and authenticity to the Company, upon receipt by the Depositary, as its agent, of the purchase price to be paid for the tendered shares of Series B Preferred Stock, (2) present the tendered Series B Preferred Stock for transfer, and to transfer the tendered Series B Preferred Stock on the account books maintained by DTC to, or upon the order of, the Company, (3) present the tendered Series B Preferred Stock for transfer, and to transfer the tendered Series B Preferred Stock on the books of the Company, (4) immediately prior to the Company's acceptance for purchase of the shares of Series B Preferred Stock tendered, consent to and approve the Proposed Amendments on your behalf, (5) make, execute, sign, acknowledge, verify, swear to and deliver on your behalf any written

consent of the stockholders of the Company to approve the Proposed Amendments, (6) receive all benefits and otherwise exercise all rights of ownership of the tendered shares of Series B Preferred Stock, all in accordance with the terms and conditions of the Offer to Purchase and Consent Solicitation and (7) to do and perform each and every act and thing whether necessary or desirable to be done, as fully as you might or could do if personally present at a meeting of stockholders of the Company or otherwise. Such appointment will be automatically revoked if the Company does not accept for purchase shares of Series B Preferred Stock that a Holder has tendered.

4. *Withdrawal Procedures.* Holders who wish to exercise their right of withdrawal with respect to the Offer to Purchase and Consent Solicitation must give written notice of withdrawal. A Holder may validly withdraw shares of Series B Preferred Stock that the Holder tenders (and revoke the related consent and power of attorney) at any time prior to the Expiration Date. In addition, if not previously returned, the Holder may withdraw any shares of Series B Preferred Stock (and revoke the related consent and power of attorney) that the Holder tenders that are not accepted by the Company for purchase after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation.

If shares of Series B Preferred Stock are held through a broker, bank or other nominee in book-entry form, a withdrawal of shares of Series B Preferred Stock (and a revocation of the related authorization to consent) will be effective if the broker, bank or other nominee complies with the appropriate procedures of DTC's ATOP prior to the Expiration Date or if the Holder's shares are not previously accepted by the Company, after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation. Any notice of withdrawal must identify the beneficial owner of the shares of Series B Preferred Stock to be withdrawn, including the beneficial owner's name and account number and the account at DTC to be credited and otherwise comply with the procedures of DTC.

If the Holder's paper share certificates are registered in the Holder's name, to withdraw the Holder's shares from the Offer to Purchase and Consent Solicitation and revoke the related consent and power of attorney, the Holder must deliver a written notice of withdrawal to the Depositary at the appropriate address specified on the front cover of this Letter of Transmittal and Consent prior to the Expiration Date or, if the Holder's shares are not previously accepted by the Company, after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation. The Holder's notice of withdrawal must comply with the requirements set forth in the Offer to Purchase and Consent Solicitation.

Any shares of Series B Preferred Stock withdrawn will be deemed not to have been validly tendered for purposes of the Offer to Purchase and Consent Solicitation and no cash consideration will be issued in payment unless the shares of Series B Preferred Stock so withdrawn are validly re-tendered.

5. *No Partial Tenders Accepted.* If fewer than all the shares represented by any certificate of Series B Preferred Stock delivered to the Depositary are tendered or if fewer than all of the shares of Preferred Stock owned by a Holder are tendered, the Company will be entitled to reject in its entirety any tender made by such Holder. All Series B Preferred Stock represented by certificates delivered to the Depositary will be deemed to have been tendered.

6. *Signatures on this Letter of Transmittal and Consent; Stock Powers and Endorsements.* If this Letter of Transmittal and Consent is signed by the registered Holder(s) of the shares of Series B Preferred Stock referred to in this Letter of Transmittal and Consent, the signature(s) must correspond with the name(s) as written on the face of the share certificates without alteration, enlargement or any change whatsoever. If this Letter of Transmittal and Consent is signed by a participant in DTC whose name is shown as the owner of the shares of Series B Preferred Stock tendered hereby, the signature

must correspond with the name shown on the security position listing as the owner of the shares of Series B Preferred Stock.

If any of the shares of Series B Preferred Stock tendered are held of record by two or more persons, all such persons must sign the Letter of Transmittal and Consent.

If any of the shares of Series B Preferred Stock tendered are registered in different names or different share certificates, it will be necessary to complete, sign and submit as many separate Letters of Transmittals and Consents as there are different registrations or share certificates.

If this Letter of Transmittal and Consent is signed by the Holder, and the share certificates for any number of shares of Series B Preferred Stock not accepted for purchase are to be issued, or if any shares of Series B Preferred Stock that are not accepted for purchase are to be reissued or returned to, or, if tendered by book-entry transfer, credited to the account at DTC of the Holder, then the Holder need not endorse any share certificates for tendered shares of Series B Preferred Stock, nor provide a separate stock power. In any other case, the Holder must either properly endorse the share certificates for shares of Series B Preferred Stock tendered or transmit a separate properly completed stock power with this Letter of Transmittal and Consent, in either case, executed exactly as the name(s) of the Holder(s) appear(s) on such shares of Series B Preferred Stock, and, with respect to a participant in DTC whose name appears on a security position listing as the owner of the shares of Series B Preferred Stock, exactly as the name(s) of the participant(s) appear(s) on such security position listing, with the signature on the endorsement or stock power guaranteed by an Eligible Institution, unless such certificates or stock powers are executed by an Eligible Institution. See Instruction 1.

If this Letter of Transmittal and Consent is signed by a person other than the registered Holder(s) of the Series B Preferred Stock tendered hereby, certificates must be endorsed or accompanied by appropriate stock powers, in either case, signed exactly as the name(s) of the registered Holder(s) appear(s) on the certificates for such Series B Preferred Stock. Signature(s) on any such certificates or stock powers must be guaranteed by an Eligible Institution. See Instruction 1.

If either the Letter of Transmittal and Consent or any certificate or stock power is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, such person should so indicate when signing, and proper evidence satisfactory to the Company and the Depositary of the authority of such persons to act must be submitted.

Endorsements on share certificates for Series B Preferred Stock and signatures on stock powers provided in accordance with this Instruction 6 by Holders not executing this Letter of Transmittal and Consent must be guaranteed by an Eligible Institution. See Instruction 1.

7. *Special Issuance and Special Delivery Instructions.* Tendering Holders (or participants in DTC whose name appears on a security position listing as the owner of the shares of Series B Preferred Stock) should indicate in the applicable box or boxes the name and address to which the shares of Series B Preferred Stock not accepted for purchase in the Offer to Purchase and Consent Solicitation are to be issued or sent (or are to be credited with respect to such participants in DTC), if different from the name and address of the Holder signing this Letter of Transmittal and Consent. In the case of issuance in a different name, the taxpayer identification or social security number of the person named must also be indicated. If no instructions are given, the shares of Preferred Stock not accepted for purchase will be returned to the Holder of the shares of Series B Preferred Stock tendered.

8. *Transfer Taxes.* The Company will pay all transfer taxes applicable to the purchase and transfer of Series B Preferred Stock pursuant to the Offer to Purchase and Consent Solicitation, however, if the payment of the purchase price is to be made to a person other than the person in whose name the surrendered share certificate formerly evidencing the shares of Series B Preferred Stock is registered on the stock transfer books of the Company, then the share certificate so

surrendered must be endorsed properly or otherwise be in proper form for transfer and the person requesting such payment must have paid all transfer and other taxes required by reason of the payment to a person other than the registered Holder of the share certificate surrendered, or shall have established to the satisfaction of the Company that such taxes either have been paid or are not applicable.

Additionally, if the Holder owns the shares of Series B Preferred Stock through a broker or other nominee, and the broker tenders the shares on the Holder's behalf, the broker may charge the Holder a fee for doing so. The Holder should consult the Holder's broker or nominee to determine whether any charges will apply.

9. *Requests for Assistance or Additional Copies.* Any questions or requests for assistance and additional copies of the Offering Circular, this Letter of Transmittal and Consent or the notice of guaranteed delivery should be directed to the Information Agent at D.F. King & Co., Inc., 48 Wall Street, 22nd Floor, New York, NY 10005. Any questions relating to the tender of physical share certificates should be directed to the Depositary at the address and telephone number listed on the front cover of this Letter of Transmittal and Consent.

10. *Irregularities.* All questions as to the form of documents and the validity, eligibility (including the time of receipt), acceptance for purchase of any tender of shares of Series B Preferred Stock and any withdrawals of the shares of Series B Preferred Stock will be determined by the Company, in its sole discretion, and its determination will be final and binding. The Company reserves the absolute right to reject any and all tenders of shares of Series B Preferred Stock that it determines are not in proper form or the acceptance of or purchase for which may, in the opinion of the Company's counsel, be unlawful. The Company also reserves the absolute right to waive any defect or irregularity in any tender of any shares of Series B Preferred Stock. No tender of shares of Series B Preferred Stock will be deemed to have been made until all defects and irregularities in the tender of such shares have been cured or waived. None of the Company, the Depositary, the Information Agent or any other person will be under any duty to give notice of any defect or irregularity in tenders of shares of Series B Preferred Stock, nor shall any of them incur any liability for failure to give any such notice. The Company's interpretation of the terms of conditions of the Offer to Purchase and Consent Solicitation will be final and binding.

11. *Waiver of Conditions.* Subject to the applicable rules and regulations of the Securities and Exchange Commission, the Company reserves the right to waive certain conditions enumerated in the Offer to Purchase and Consent Solicitation.

12. *Inadequate Space.* If the space provided in the above "Description of Series B Preferred Stock Tendered" box is inadequate, the number of shares of Series B Preferred Stock and any other required information should be listed on a separate signed schedule and attached to this Letter of Transmittal and Consent.

13. *Lost, Destroyed or Stolen Certificates.* If any certificate(s) representing shares of Series B Preferred Stock have been lost, stolen or destroyed, please call the Company's transfer agent, American Stock Transfer & Trust Company (the "Transfer Agent"), at 1-877-248-6417. The Holder may need to complete an Affidavit of Loss with respect to the lost certificate(s) (which will be provided by the Transfer Agent) and payment of an indemnity bond premium fee may be required.

14. *Substitute Form W-9.* Under U.S. federal income tax laws, the Depositary will be required to withhold a portion of the amount of any payments made to certain Holders pursuant to the Offer to Purchase and Consent Solicitation unless each tendering Holder that is a United States citizen, resident or entity, and, if applicable, each other United States payee, must provide the Depositary (as payor) with such Holder's or payee's correct taxpayer identification number ("TIN") and certify that such Holder or payee is not subject to such backup withholding by completing the attached Substitute

Form W-9. Certain Holders or payees (including, among others, corporations, non-resident foreign individuals and foreign entities) are not subject to these backup withholding and reporting requirements provided such holder provides proper certificate exempting such holder from backup withholding. A tendering Holder who is a foreign individual, or a foreign entity should complete, sign, and submit to the Depositary the appropriate Form W-8. A Form W-8BEN may be obtained from the Depositary or downloaded from Internal Revenue Service's website at the following address: *http://www.irs.gov/pub/irs-pdf/fw8ben.pdf*.

All tendering Holders are urged to consult their own tax advisors to determine whether they are exempt from these backup withholding and reporting requirements. For further information concerning backup withholding see the "IMPORTANT TAX INFORMATION" section below.

Failure to complete the Substitute Form W-9 will not, by itself, cause shares of Series B Preferred Stock to be deemed invalidly tendered, but may require the Depositary to withhold a portion of the amount of any payments made pursuant to the Offer to Purchase and Consent Solicitation. NOTE: FAILURE TO COMPLETE AND RETURN THE SUBSTITUTE FORM W-9 MAY RESULT IN BACKUP WITHHOLDING OF A PORTION OF ANY PAYMENT MADE TO YOU PURSUANT TO THE OFFER TO PURCHASE AND CONSENT SOLICITATION. PLEASE REVIEW THE "IMPORTANT TAX INFORMATION" SECTION BELOW AND THE ENCLOSED "GUIDELINES FOR CERTIFICATION OF TIN ON SUBSTITUTE FORM W-9" FOR ADDITIONAL DETAILS.

IMPORTANT TAX INFORMATION

Under U.S. federal income tax law, a Holder whose tendered shares of Series B Preferred Stock are accepted for purchase is required by law to provide the Depositary (as payor) with such Holder's correct TIN on Substitute Form W-9 below. If such Holder is an individual, the TIN is such Holder's social security number. If the Depositary is not provided with the correct TIN, the Holder may be subject to penalties imposed by the Internal Revenue Service ("IRS") and any gross proceeds received pursuant to the Offer to Purchase and Consent Solicitation may be subject to backup withholding.

If backup withholding applies, the Depositary is required to withhold 28% of the amount of gross proceeds received by the Holder. Backup withholding is not an additional tax. Rather, the tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund may be obtained from the IRS provided that the required information is furnished to the IRS.

For further information concerning backup withholding and instructions for completing the Substitute Form W-9 (including how to obtain a TIN if you do not have one and how to complete the Substitute Form W-9 if shares are held in more than one name), consult the enclosed "Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9."

Purpose of Substitute Form W-9

To prevent backup withholding on payments that are made to a United States Holder with respect to the gross proceeds received pursuant to the Offer to Purchase and Consent Solicitation, the Holder is required to notify the Depositary of such Holder's correct TIN by completing the form below certifying, under penalties of perjury, (i) that the TIN provided on Substitute Form W-9 is correct (or that such Holder is awaiting a TIN), (ii) that such Holder is not subject to backup withholding because (a) such Holder has not been notified by the IRS that such Holder is subject to backup withholding as a result of a failure to report all interest or dividends, (b) the IRS has notified such Holder that such Holder is no longer subject to backup withholding or (c) such Holder is exempt from backup withholding, and (iii) that such Holder is a U.S. person.

What Number to Give the Depositary

United States Holders are required to give the Depositary the social security number or employer identification number of the record holder of the shares of Series B Preferred Stock tendered hereby. If the shares of Series B Preferred Stock are in more than one name or are not in the name of the actual owner, consult the enclosed Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9 for additional guidance on which number to report. If the tendering Holder has not been issued a TIN and has applied for a number or intends to apply for a number in the near future, the Holder should check the "Awaiting TIN" box in Part II, sign and date the Substitute Form W-9 and complete the Certificate of Awaiting Taxpayer Identification Number below. Notwithstanding that the "Awaiting TIN" box is checked in Part II and the Certificate of Awaiting Taxpayer Identification Number is completed, the Depositary will withhold 28% of the gross proceeds received by such Holder until a TIN is provided to the Depositary. Such amounts will be refunded to such surrendering Holder if a TIN is provided to the Depositary within 60 days.

Substitute Form W-9—Impac Mortgage Holdings, Inc.

SUBSTITUTE FORM W-9

Department of the Treasury Internal Revenue Service

Request for Taxpayer Identification Number (TIN) and Certification

Part I—Please provide your taxpayer or employee identification number SSN or EIN in the space at right. If awaiting TIN, write "*Applied For*."

Name

Part II—Awaiting TIN o

Address

Part III—Certification. Under penalty of perjury, I certify that:

(1) The number shown on this form is my correct Taxpayer Identification Number (or I am waiting for a number to be issued to me);

(Number and Street)

(2) I am not subject to backup withholding either because (a) I am exempt from backup withholding, (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and

(City)(State)(Zip Code)

(3) I am a United States person (as defined in the W-9 instructions).

Certification Instruction—You must cross out item (2) in Part III above if you have been notified by the IRS that you are subject to backup withholding because of underreporting interest or dividends on your tax return. However, if after being notified by the IRS that you were subject to backup withholding you received notification from the IRS that you are no longer subject to backup withholding, do not cross out item (2).

Sign Here

Signature

Date

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM MAY RESULT IN A $50 PENALTY IMPOSED BY THE INTERNAL REVENUE SERVICE AND BACKUP WITHHOLDING OF 28% OF ANY PROCEEDS RECEIVED BY YOU PURSUANT TO THE OFFER TO PURCHASE AND CONSENT SOLICITATION. PLEASE REVIEW THE ENCLOSED GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9 FOR ADDITIONAL DETAILS.

NOTE: YOU MUST COMPLETE THE FOLLOWING CERTIFICATE IF YOU CHECKED THE BOX IN PART II OF THE SUBSTITUTE FORM W-9.

CERTIFICATION OF AWAITING TAXPAYER IDENTIFICATION NUMBER

I certify under penalties of perjury that a taxpayer identification number has not been issued to me, and either (1) I have mailed or delivered an application to receive a taxpayer identification number to the appropriate Internal Revenue Service Center or Social Security Administration office or (2) I intend to mail or deliver an application in the near future. I understand that if I do not provide a taxpayer identification number by the time of payment, 28% of all reportable gross proceeds received by me thereafter will be withheld until I provide a taxpayer identification number to the payer and that, if I do not provide my taxpayer identification number within sixty days, such retained amounts shall be remitted to the Internal Revenue Service as backup withholding.

Signature _____ Date _____

Any questions and requests for assistance may be directed to the Information Agent at the address and telephone numbers set forth below. Additional copies of the Offering Circular, the Letter of Transmittal and Consent and the notice of guaranteed delivery may be obtained from the Information Agent at the address and telephone numbers set forth below. Holders of Series B Preferred Stock may also contact their broker, dealer, commercial bank or trust company or other nominee for assistance concerning the Offer to Purchase and Consent Solicitation.

The Information Agent for the Offer to Purchase and Consent Solicitation is:

D.F. King & Co., Inc.
48 Wall Street, 22nd Floor
New York, NY 10005

Banks and brokers call collect: (212) 269-5550
All others call toll free: (800) 269-6427

QuickLinks

NOTE: SIGNATURES MUST BE PROVIDED BELOW. PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY.

QuickLinks -- Click here to rapidly navigate through this document

Exhibit (a)(1)(C)(ii)

Series C Preferred Stock

LETTER OF TRANSMITTAL AND CONSENT

IMPAC MORTGAGE HOLDINGS, INC.

Offer to purchase all outstanding shares of
9.375% Series B Cumulative Redeemable Preferred Stock (CUSIP No. 45254P300)
9.125% Series C Cumulative Redeemable Preferred Stock (CUSIP No. 45254P409)
and Consent Solicitation

THE OFFER TO PURCHASE AND CONSENT SOLICITATION WILL EXPIRE AT 9:00 A.M., EASTERN DAYLIGHT TIME, ON JUNE 26, 2009, UNLESS EXTENDED OR EARLIER TERMINATED BY IMPAC MORTGAGE HOLDINGS, INC. (SUCH TIME AND DATE, AS THE SAME MAY BE EXTENDED OR EARLIER TERMINATED, THE "EXPIRATION DATE"). TENDERS OF PREFERRED STOCK MAY BE WITHDRAWN AT ANY TIME PRIOR TO 9:00 A.M., EASTERN DAYLIGHT TIME, ON THE EXPIRATION DATE.

The Depositary for the Offer to Purchase and Consent Solicitation is:

American Stock Transfer & Trust Company

By Mail or Overnight Courier:
American Stock Transfer & Trust Company
Operations Center
Attn: Reorganization Department
6201 15th Avenue
Brooklyn, NY 11219

By Hand:
American Stock Transfer & Trust Company
Attn: Reorganization Department
59 Maiden Lane
Concourse Level
New York, NY 10038

The Information Agent for the Offer to Purchase and Consent Solicitation is:

D.F. King & Co., Inc.
48 Wall Street, 22nd Floor
New York, NY 10005

Banks and brokers call collect: (212) 269-5550
All others call toll free: (800) 269-6427

For use by holders of record ("Holders") of the 9.125% Series C Cumulative Redeemable Preferred Stock (the "Series C Preferred Stock") of Impac Mortgage Holdings, Inc. (the "Company"). Delivery of this Letter of Transmittal and Consent to an address other than as set forth above, or transmission of this Letter of Transmittal and Consent via facsimile, will not constitute a valid delivery. The method of delivery of all documents, including certificates, is at the option and risk of the Holder. Delivery will be deemed made only when actually received by the Depositary.

The instructions contained within this Letter of Transmittal and Consent should be read carefully before this Letter of Transmittal and Consent is completed.

This Letter of Transmittal and Consent is only to be used by record holders of the Series C Preferred Stock. A separate Letter of Transmittal and Consent is being provided for use by record holders of the 9.375% Series B Cumulative Redeemable Preferred Stock. If you hold your shares of Series C Preferred Stock through a broker, dealer or other nominee, please contact your broker, dealer or other nominee for the appropriate instructions and documents.

DO NOT COMPLETE AND SEND THIS LETTER OF TRANSMITTAL AND CONSENT DIRECTLY TO THE DEPOSITARY IF YOU HOLD SHARES THROUGH A BROKER, DEALER OR OTHER NOMINEE.

DESCRIPTION OF SERIES C PREFERRED STOCK TENDERED

Name(s) and Addresses of Registered Holder(s) (Please fill in, if blank)(1)	Share Certificate(s) and Share(s) Tendered (Please attach additional signed list, if necessary)		
	Series C Preferred Stock Share Certificate Number(s)(2)	Total Number of Shares of Series C Preferred Stock Represented by Share Certificate(s)(2)	Number of Shares of Series C Preferred Stock Tendered(3)
	Total Shares Tendered		

(1) The names and addresses of the registered Holders of the tendered Series C Preferred Stock should be printed, if not already printed above, exactly as they appear on the share certificates tendered hereby.
(2) Need not be completed by Holders tendering shares by book-entry transfer.
(3) Unless otherwise indicated, all Series C Preferred Stock represented by Share Certificates delivered to the Depositary will be deemed to have been tendered. The terms of the Offer to Purchase and Consent Solicitation require that Holders tender all shares they own, and the Company is entitled to reject partial tenders. See Instruction 5.

o Check here if share certificates have been lost or mutilated.

The undersigned hereby acknowledges that he or she has received and read the Offering Circular, dated May 29, 2009 (the "Offering Circular"), of the Company and this Letter of Transmittal and Consent (the "Letter of Transmittal and Consent"), which together constitute the Company's offer to purchase (the "Offer to Purchase") all of the Company's outstanding 9.375% Series B Cumulative Redeemable Preferred Stock, $0.01 par value per share ("Series B Preferred Stock") and 9.125% Series C Cumulative Redeemable Preferred Stock, $0.01 par value per share ("Series C Preferred Stock," and collectively with the Series B Preferred Stock, the "Preferred Stock"), upon the terms and subject to the conditions specified in the Offering Circular. The Company is also soliciting consents (the "Consent Solicitation") from holders of the Preferred Stock (each, a "Holder" and collectively, the "Holders") as of the expiration of the Offer to Purchase and Consent Solicitation, to amend our charter (the "Charter") to modify the terms of such series of Preferred Stock. In the case of the Series C Preferred Stock, the proposed amendment would: (i) make future dividends non-cumulative; (ii) eliminate the provisions prohibiting the payment of dividends on junior stock and prohibiting the purchase or redemption of junior or parity stock if full cumulative dividends for all past dividend periods are not paid or declared and set apart for payment; (iii) eliminate any premiums payable upon the liquidation, dissolution or winding up of the Company; (iv) eliminate the provision prohibiting the Company from electing to redeem Preferred Stock prior to the fifth year anniversary of the issuance of such Preferred Stock; (v) eliminate the provision prohibiting the Company from redeeming less than all of the outstanding Preferred Stock if full cumulative dividends for all past dividend periods have not been paid or declared and set apart for payment; (vi) eliminate the right of holders of Preferred Stock to elect two directors if dividends are in arrears for six quarterly periods; and (vii) eliminate the right of holders of Preferred Stock to consent to or approve the authorization or issuance of preferred stock senior to the Preferred Stock (the "Proposed Amendments").

The elimination of the restrictions described above would allow the Company to declare and pay dividends on shares of common stock or shares of any other class or series of our capital stock, except any class or series of parity stock, or redeem, repurchase or otherwise acquire shares of any class or Series of our

capital stock, including common stock and any other series of preferred stock, without paying or setting apart for payment any dividends on shares of any series of preferred stock. The foregoing is only a summary of the Proposed Amendments, and is qualified by reference to the amended text of the affected provisions of our Charter reflecting the Proposed Amendments, set forth as *Annex A* to the Offering Circular.

Holders who desire to tender their shares of Series C Preferred Stock pursuant to the Offer to Purchase and Consent Solicitation for repurchase are required to consent to the Proposed Amendments. The execution and delivery of this Letter of Transmittal and Consent will constitute a Holder's consent to the Proposed Amendments and will also authorize and direct the Depositary to execute and deliver a written consent to the Proposed Amendments on such Holder's behalf with respect to all shares of Preferred Stock owned by such Holder. A Holder of shares of Series C Preferred Stock may not tender Series C Preferred Stock in the Offer to Purchase and Consent Solicitation without delivering its consent to the Proposed Amendments with respect to all shares of Series C Preferred Stock owned by such Holder.

The Company reserves the right, at any time or from time to time, to extend the Offer to Purchase and Consent Solicitation, in which event the term "Expiration Date" shall mean the latest time and date to which the Offer to Purchase and Consent Solicitation is extended. The Company shall notify the Holders of the Series C Preferred Stock of any extension as promptly as practicable with a public announcement thereof.

This Letter of Transmittal and Consent is to be completed by Holders of Series C Preferred Stock (i) if certificates evidencing Series C Preferred Stock (the "share certificates") are to be forwarded herewith or (ii) if delivery of Series C Preferred Stock is to be made by book-entry transfer to the account of American Stock Transfer & Trust Company (the "Depositary") at The Depository Trust Company or "DTC" (also known as the "book-entry transfer facility") pursuant to the book-entry transfer procedure described in the section of the Offering Circular entitled "The Offer to Purchase and Consent Solicitation—Procedure for Tendering and Consenting," and in each case, instructions are not being transmitted through the DTC Automated Tender Offer Program ("ATOP").

Holders of Series C Preferred Stock whose share certificates for such Series C Preferred Stock are not immediately available or who cannot deliver their share certificates and all other required documents to the Depositary prior to the Expiration Date or who cannot complete the procedures for book-entry transfer prior to the Expiration Date must tender their Series C Preferred Stock according to the guaranteed delivery procedures. See Instruction 2.

Delivery of documents to DTC does not constitute delivery to the Depositary.

The undersigned has completed, executed and delivered this Letter of Transmittal and Consent to indicate the action the undersigned desires to take with respect to the Offer to Purchase and Consent Solicitation. The instructions included with this Letter of Transmittal and Consent must be followed.

None of the Company's board of directors (the "Board"), the officers or employees of the Company, the Information Agent, the Depositary or any of the Company's financial advisors is making a recommendation to any Holder of Series C Preferred Stock as to whether you should tender shares in the Offer to Purchase and Consent Solicitation. You must make your own investment decision regarding the Offer to Purchase and Consent Solicitation based upon your own assessment of the market value of the Series C Preferred Stock, the effect of holding shares of the Preferred Stock upon approval of the Proposed Amendments, your liquidity needs, your investment objectives and any other factors you deem relevant.

o **CHECK HERE IF TENDERED SHARES OF SERIES C PREFERRED STOCK ARE BEING DELIVERED BY BOOK-ENTRY TRANSFER MADE TO THE ACCOUNT MAINTAINED BY THE DEPOSITARY WITH DTC AND COMPLETE THE FOLLOWING:**

Name of Tendering Institution: _____

DTC Account Number: _____

Transaction Code Number: _____

o CHECK HERE AND ENCLOSE A PHOTOCOPY OF THE NOTICE OF GUARANTEED DELIVERY IF TENDERED SHARES OF SERIES C PREFERRED STOCK ARE BEING DELIVERED PURSUANT TO A NOTICE OF GUARANTEED DELIVERY PREVIOUSLY SENT TO THE DEPOSITARY AND COMPLETE THE FOLLOWING (See Instruction 2):

Name of Registered Holder: _____

Window Ticket Number (if any): _____

Date of Execution of Notice of Guaranteed Delivery: _____

Name of Institution which executed the notice of Guaranteed Delivery: _____

IF GUARANTEED DELIVERY IS TO BE MADE BY BOOK-ENTRY TRANSFER: _____

Name of Tendering Institution: _____

DTC Account Number: _____

Transaction Code Number: _____

NOTE: SIGNATURES MUST BE PROVIDED BELOW.

PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY.

Ladies and Gentlemen:

Upon the terms and subject to the conditions of the Offer to Purchase and Consent Solicitation, the undersigned hereby tenders to the Company the shares of Series C Preferred Stock set forth in the box above entitled "Description of Series C Preferred Stock Tendered." Subject to, and effective upon, the acceptance for purchase of the Preferred Stock tendered hereby, the undersigned hereby sells, assigns and transfers to, or upon the order of, the Company all right, title and interest in and to such Preferred Stock as are being tendered hereby.

The undersigned understands that the Company is also soliciting consents from Holders of the Series C Preferred Stock to approve the Proposed Amendments. The undersigned understands and agrees that tenders of shares of Preferred Stock in the Offer to Purchase and Consent Solicitation will authorize the Depositary to execute and deliver a written consent approving the Proposed Amendments with respect to the shares of Preferred Stock so tendered on the undersigned's behalf. The undersigned further understands that Holders of shares of Preferred Stock may not tender shares in the Offer to Purchase and Consent Solicitation without delivering their authorization to the Depositary to execute and deliver a written consent to the Proposed Amendments on the undersigned's behalf.

The undersigned understands that, if successfully completed, in the Offer to Purchase and Consent Solicitations for each tendered share of Series C Preferred Stock accepted for purchase by the Company, you will receive $0.28516.

Among the conditions to consummation of the Offer to Purchase and Consent Solicitation, Holders of at least $66^2/_3\%$ of the outstanding Preferred Stock must tender their shares or the Company will not be obligated to purchase any shares. Although the Company may receive the requisite approvals from the Holders of the Preferred Stock and the holders of the common stock to complete the Offer to Purchase and Consent Solicitation, if the Company does not satisfy certain distribution requirements under Maryland law at the expiration date, then the Offer to Purchase and Consent Solicitation will be terminated and the Company will not be obligated to purchase any shares.

Capitalized terms used but not defined herein have the meaning given to them in the Offering Circular.

The undersigned hereby represents and warrants that (i) the undersigned has full power and authority to tender, sell, assign and transfer the Series C Preferred Stock tendered hereby and to grant the consent and the power of attorney set forth herein, (ii) the undersigned is tendering all and not less than all of the Series C Preferred Stock owned by the undersigned, and (iii) the Company will acquire good and unencumbered title thereto, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claim when the same are accepted by the Company.

The undersigned further represents and warrants that the undersigned has read and agrees to all of the terms and conditions of the Offer to Purchase and Consent Solicitation. All authority herein conferred or agreed to be conferred shall survive the death or incapacity of the undersigned, and any obligation of the undersigned hereunder shall be binding upon the heirs, executors, administrators, personal representatives, trustees in bankruptcy, successors and assigns of the undersigned. This tender and grant of authorization to consent are irrevocable; provided that, the Series C Preferred Stock tendered pursuant to the Offer to Purchase and Consent Solicitation may be withdrawn, and as a result, the corresponding consent revoked, at any time on or prior to the Expiration Date, and unless theretofore accepted for purchase and not returned as provided for in the Offering Circular, may also be withdrawn after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation, subject to the withdrawal rights and procedures set forth in the Offering Circular. The undersigned understands that, if the Company receives the requisite approvals of the Proposed Amendments from the Holders of the Preferred Stock and if a sufficient number of shares of the Preferred Stock have been tendered and accepted in the Offer to Purchase and Consent Solicitation, the Company intends to execute and file Articles of Amendment promptly following

the Expiration Date and that, once effective, such amendments will be binding upon each Holder of each series of Preferred Stock, whether or not such Holder consents.

Subject to, and effective upon, the acceptance for purchase of all of the Series C Preferred Stock tendered by this Letter of Transmittal and Consent in accordance with the terms and conditions of the Offer to Purchase and Consent Solicitation (and authorization to consent thereby delivered), the undersigned hereby tenders, sells, assigns and transfers to or upon the order of the Company, all right, title and interest in and to the shares of Series C Preferred Stock tendered by this Letter of Transmittal and Consent, and releases and discharges the Company from any and all claims the undersigned may have now, or may have in the future, arising out of, or related to, the shares of Series C Preferred Stock. The undersigned hereby consents to and approves the Proposed Amendments, described in the Offering Circular, acknowledges receipt of the Offering Circular, the terms of which are incorporated herein by reference, and revokes any proxy heretofore given with respect to the Proposed Amendments. The undersigned hereby irrevocably constitutes and appoints the Depositary as its agent and attorney-in-fact, with full power and authority in its name, place and stead, with full knowledge that the Depositary is also acting as the agent of the Company in connection with the Offer to Purchase and Consent Solicitation, as the undersigned's true and lawful representative, attorney-in-fact and agent with respect to the tendered shares of Series C Preferred Stock, with full power of substitution, such power of attorney being deemed to be an irrevocable power coupled with an interest, subject only to the right of withdrawal described in the Offering Circular, to (1) deliver the tendered shares of Series C Preferred Stock to the Company together with all accompanying evidences of transfer and authenticity to the Company, upon receipt by the Depositary, as its agent, of the purchase price to be paid for the tendered shares of Series C Preferred Stock, (2) present the tendered Series C Preferred Stock for transfer, and to transfer the tendered Series C Preferred Stock on the account books maintained by DTC to, or upon the order of, the Company, (3) present the tendered Series C Preferred Stock for transfer, and to transfer the tendered Series C Preferred Stock on the books of the Company, (4) immediately prior to the Company's acceptance for purchase of the shares of Series C Preferred Stock tendered, consent to and approve the Proposed Amendments on behalf of the undersigned, (5) make, execute, sign, acknowledge, verify, swear to and deliver on behalf of the undersigned any written consent of the stockholders of the Company to approve the Proposed Amendments, (6) receive all benefits and otherwise exercise all rights of ownership of the tendered shares of Series C Preferred Stock, all in accordance with the terms and conditions of the Offer to Purchase and Consent Solicitation and (7) to do and perform each and every act and thing whether necessary or desirable to be done, as fully as the undersigned might or could do if personally present at a meeting of stockholders of the Company or otherwise. Such appointment will be automatically revoked if the Company does not accept for purchase shares of Series C Preferred Stock that a Holder has tendered. That the foregoing power of attorney shall terminate upon execution by the Depositary of an instrument of termination that specifies in writing that the foregoing power of attorney, as applicable, is terminated.

The undersigned will, upon request, execute and deliver any additional documents deemed by the Company to be necessary or desirable to complete (i) the sale, assignment and transfer of the Series C Preferred Stock tendered hereby and (ii) the delivery of authorization to the Depositary to execute and deliver a written consent in the Offer to Purchase and Consent Solicitation on behalf of the undersigned. All authority conferred or agreed to be conferred in this Letter of Transmittal and Consent and every obligation of the undersigned hereunder shall be binding upon the successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned. This tender may be withdrawn (and the related consent and grant of power of attorney to the Depositary revoked) only in accordance with the procedures set forth in the section of the Offering Circular entitled "The Offer to Purchase and Consent Solicitation—Withdrawal of Tenders and Revocation of Consents."

Unless otherwise indicated herein in the box entitled "Special Payment Instructions" below, please deliver payment of the purchase price for shares of any Series B Preferred Stock accepted for purchase or return any Series C Preferred Stock not accepted for purchase in the name(s) of the registered Holder(s) appearing above under the above "Description Series C Preferred Stock Tendered" box. Similarly, unless otherwise indicated under "Special Delivery Instructions" herein, please mail the purchase price or return

any Series C Preferred Stock not accepted for purchase (and any accompanying documents, as appropriate) to the addresses of the registered Holder(s) appearing under the above "Description of Series C Preferred Stock Tendered" box. In the event that the boxes entitled "Special Payment Instructions" and "Special Delivery Instructions" are both completed, please deliver payment of the purchase price or the Series C Preferred Stock not accepted for purchase, in the name of and/or to the person or persons so indicated. The undersigned recognizes that the Company has no obligation, pursuant to the "Special Payment Instructions" or the "Special Delivery Instructions" to transfer any Series C Preferred Stock from the name of the registered Holder thereof if the Company does not accept for purchase any of the Series C Preferred Stock so tendered.

THE UNDERSIGNED, BY COMPLETING THE ABOVE "DESCRIPTION OF SERIES C PREFERRED STOCK TENDERED" BOX AND SIGNING THIS LETTER, WILL BE DEEMED TO HAVE TENDERED THEIR DESIGNATED SHARES OF SERIES C PREFERRED STOCK AS SET FORTH IN SUCH BOX ABOVE.

BY TENDERING SHARES OF SERIES C PREFERRED STOCK IN THE OFFER TO PURCHASE AND CONSENT SOLICITATION, THE UNDERSIGNED ALSO CONSENTS TO AND APPROVES THE PROPOSED AMENDMENTS, AS SET FORTH IN THE OFFERING CIRCULAR, AND AUTHORIZES THE DEPOSITARY TO CONSENT TO AND APPROVE THE PROPOSED AMENDMENTS ON THE UNDERSIGNED'S BEHALF WITH RESPECT TO THE SHARES OF SERIES C PREFERRED STOCK TENDERED. HOLDERS OF SHARES OF SERIES C PREFERRED STOCK MAY NOT TENDER SHARES IN THE OFFER TO PURCHASE AND CONSENT SOLICITATION WITHOUT AUTHORIZING THE DEPOSITARY TO CONSENT TO AND APPROVE THE PROPOSED AMENDMENTS ON THEIR BEHALF.

COMPLETE THE FOLLOWING TWO BOXES ONLY IF APPLICABLE

SPECIAL PAYMENT INSTRUCTIONS
(See Instruction 7)

To be completed ONLY if the payment of the purchase price for shares of Series B Preferred Stock accepted for purchase is to be issued to the order of someone other than the person or persons whose signature(s) appear(s) within this Letter of Transmittal and Consent or issued to an address different from that shown in the box entitled "Description of Series C Preferred Stock Tendered" within this Letter of Transmittal and Consent.

Issue the payment to:

Name: _____

(Please Print)

Address: _____

(Include Zip Code)

(Taxpayer Identification or Social Security Number)

SPECIAL DELIVERY INSTRUCTIONS
(See Instruction 7)

To be completed ONLY if certificates for shares of Series C Preferred Stock not accepted for purchase are to be sent to someone other than the person or persons whose signature(s) appear(s) within this Letter of Transmittal and Consent or issued to an address different from that shown in the box entitled "Description of Series C Preferred Stock Tendered" within this Letter of Transmittal and Consent.

Deliver the Series C Preferred Stock to:

Name: _____

(Please Print)

Address: _____

(Include Zip Code)

(Taxpayer Identification or Social Security Number)

IMPORTANT
PLEASE SIGN HERE
(Complete the accompanying Substitute Form W-9)

This Letter of Transmittal and Consent must be signed by the Holder(s) of the shares of Series C Preferred Stock being tendered exactly as his, her, its or their name(s) appear(s) on certificate(s) for such shares of Series C Preferred Stock or, if tendered by a participant in DTC, exactly as such participant's name appears on a security position listing as the owner of the shares of Series C Preferred Stock or by person(s) authorized to become Holder(s) by endorsements on certificates for such shares of Series C Preferred Stock or by stock powers transmitted with this Letter of Transmittal and Consent. Endorsements on shares of Series C Preferred Stock and signatures on stock powers by Holders(s) not executing this Letter of Transmittal and Consent must be guaranteed by an Eligible Institution. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer or other person acting in a fiduciary or representative capacity, such person must set forth his or her full title below under "Capacity" and submit evidence satisfactory to the Company and the Depositary of such person's authority to so act. See Instruction 6.

Signature(s) of Holders

Dated: _____

Name(s): _____

Capacity (full title): _____

Address: _____

Area Code and Telephone Number: _____

GUARANTEE OF SIGNATURE(S)
(IF REQUIRED; SEE INSTRUCTION 1)

Name of Firm: _____

Address: _____

Authorized Signature: _____

Name: _____

Area Code and Telephone Number: _____

INSTRUCTIONS
FORMING PART OF THE TERMS AND CONDITIONS OF THE
OFFER TO PURCHASE AND CONSENT SOLICITATION

1. *Guarantee of Signatures.* Except as otherwise provided below, all signatures on this Letter of Transmittal and Consent must be guaranteed by a firm that is a member of a registered national securities exchange or the Financial Industry Regulatory Authority, or by a commercial bank or trust company having an office or correspondent in the United States that is a participant in an approved Signature Guarantee Medallion Program (each of the foregoing being referred to as an "Eligible Institution"). Signatures on this Letter of Transmittal and Consent need not be guaranteed if (a) this Letter of Transmittal and Consent is signed by the Holder(s) of record of the shares of Series C Preferred Stock tendered herewith, or by a participant in DTC whose name appears on a security position listing as the owner of the shares of Series C Preferred Stock, and any shares of Series C Preferred Stock not accepted for purchase are to be issued, directly to such Holder(s), or, if signed by a participant in DTC, any shares of Series C Preferred Stock not accepted for purchase are to be credited to such participant's account at DTC, and neither has completed the box entitled "Special Payment Instructions" or the box entitled "Special Delivery Instructions" in this Letter of Transmittal and Consent, or (b) such shares of Series C Preferred Stock are tendered for the account of an Eligible Institution. See Instruction 6.

2. *Delivery of this Letter of Transmittal and Consent and Certificates for Series C Preferred Stock or Book-Entry Confirmations; Guaranteed Delivery Procedures.* This Letter of Transmittal and Consent is to be used by each Holder of the Series C Preferred Stock if (a) share certificates of Series C Preferred Stock are to be physically delivered to the Depositary herewith by such Holder or (b) delivery of Series C Preferred Stock is to be made by book entry transfer, and, in each case, instructions are not being transmitted through the DTC ATOP. For a tender of paper share certificates to be considered validly tendered, the Depositary must receive any required documents at its address indicated on the cover page of this Transmittal Letter and Consent prior to the Expiration Date, subject to the guaranteed delivery procedures described below. The tender by a Holder that is not withdrawn prior to the Expiration Date will constitute a binding agreement between the Holder and the Company in accordance with the terms and subject to the conditions of the Offer to Purchase and Consent Solicitation.

If you are not a holder of record of Series C Preferred Stock, please contact your broker, bank or other nominee for further instructions. Brokers, banks or other nominees that are tendering by book-entry transfer to the Depositary's account at DTC may tender Series C Preferred Stock through the DTC ATOP, for which the Offer to Purchase and Consent Solicitation will be eligible. DTC ATOP instructions should include the name and taxpayer identification number of any beneficial owner tendering shares. DTC will then send an Agent's Message to the Depositary. The term "Agent's Message" means a message transmitted by DTC, received by the Company and forming part of the book-entry confirmation, to the effect that: (i) DTC has received an express acknowledgment from a participant in ATOP that it is tendering shares and submitting authorizations to consent to the Proposed Amendments with respect to the Series C Preferred Stock that is the subject of such book-entry confirmation; (ii) such participant has received and agrees to be bound by the terms of the Offer to Purchase and Consent Solicitation for the Series C Preferred Stock being tendered; and (iii) the agreement may be enforced against such participant. **Accordingly, this Letter of Transmittal and Consent need not be completed by a Holder tendering through ATOP.** However, the Holder will be bound by the terms of the Offer to Purchase and Consent Solicitation. Delivery of documents to DTC does not constitute delivery to the Depositary.

If the Holder beneficially owns shares of Series C Preferred Stock that are held through a bank, broker or other nominee and the Holder wishes to tender those shares of Series C Preferred Stock and deliver the Holder's consent, the Holder should contact the nominee promptly and instruct it to tender the Holder's shares of Series C Preferred Stock on the Holder's behalf.

Brokers, banks and other nominees that hold shares of Series C Preferred Stock on behalf of a beneficial holder desiring to tender Series C Preferred Stock prior to the Expiration Date through ATOP should allow sufficient time for completion of the ATOP procedures during the normal business hours of DTC prior to such date, subject to the guaranteed delivery procedures described below. The method of

delivery of Series C Preferred Stock certificates and all other required documents is at the Holder's own option and risk, and the delivery will be deemed made only when actually received by the Depositary. Likewise, tenders via the DTC ATOP system shall be deemed made only when timely confirmed by DTC. In all cases, the Holder should allow sufficient time to ensure timely processing of the Holder's tender.

Holders who cannot deliver their shares or other required documents to the Depositary on or before the Expiration Date or who cannot complete the procedures for book-entry transfer on a timely basis must tender their shares of Series C Preferred Stock pursuant to the guaranteed delivery procedure. Pursuant to such procedure: (i) you must make your tender by or through an eligible institution; (ii) a properly completed and duly executed notice of guaranteed delivery substantially in the form made available by the Company must be received by the Depositary prior to the Expiration Date; and (iii) the certificates for all physically delivered shares, or a confirmation of a book-entry transfer of the Series C Preferred Stock into the Depositary's account at DTC, as well as the properly completed and duly executed Letter of Transmittal and Consent (or facsimile thereof or, in the case of a book-entry delivery, an Agent's Message) and any other documents required by this Letter of Transmittal and Consent, must be received by the Depositary within three NYSE trading days after the date of execution of such notice of guaranteed delivery.

The method of delivery of share certificates, the Letter of Transmittal and Consent and all other required documents, including delivery through DTC, are at the option and risk of the tendering stockholder, and the delivery will be deemed made only when actually received by the Depositary (including, in the case of a book-entry transfer, receipt of a Book-Entry Confirmation). If delivery is by mail, registered mail with return receipt requested, properly insured, is recommended. In all cases, sufficient time should be allowed to ensure timely delivery.

3. *Consenting in the Offer to Purchase and Consent Solicitation.* By tendering your shares of Series C Preferred Stock in accordance with the procedures described in the Offering Circular and the Letter of Transmittal and Consent, you also consent to and approve the Proposed Amendments, as set forth in the Offering Circular, acknowledge receipt of the Offering Circular and revoke any proxy heretofore given with respect to the Proposed Amendments. You irrevocably constitute and appoint the Depositary as your agent and attorney-in-fact, with full power and authority in your name, place and stead, with full knowledge that the Depositary is also acting as the agent of the Company in connection with the Offer to Purchase and Consent Solicitation, as your true and lawful representative, attorney-in-fact and agent with respect to the tendered shares of Series C Preferred Stock, with full power of substitution, such power of attorney being deemed to be an irrevocable power coupled with an interest, subject only to the right of withdrawal described in the Offering Circular, to (1) deliver the tendered shares of Series C Preferred Stock to the Company together with all accompanying evidences of transfer and authenticity to the Company, upon receipt by the Depositary, as its agent, of the purchase price to be paid for the tendered shares of Series C Preferred Stock, (2) present the tendered Series C Preferred Stock for transfer, and to transfer the tendered Series C Preferred Stock on the account books maintained by DTC to, or upon the order of, the Company, (3) present the tendered Series C Preferred Stock for transfer, and to transfer the tendered Series C Preferred Stock on the books of the Company, (4) immediately prior to the Company's acceptance for purchase of the shares of Series C Preferred Stock tendered, consent to and approve the Proposed Amendments on your behalf, (5) make, execute, sign, acknowledge, verify, swear to and deliver on your behalf any written consent of the stockholders of the Company to approve the Proposed Amendments, (6) receive all benefits and otherwise exercise all rights of ownership of the tendered shares of Series C Preferred Stock, all in accordance with the terms and conditions of the Offer to Purchase and Consent Solicitation and (7) to do and perform each and every act and thing whether necessary or desirable to be done, as fully as you might or could do if personally present at a meeting of stockholders of the Company or otherwise. Such appointment will be automatically revoked if the Company does not accept for purchase shares of Series C Preferred Stock that a Holder has tendered.

4. *Withdrawal Procedures.* Holders who wish to exercise their right of withdrawal with respect to the Offer to Purchase and Consent Solicitation must give written notice of withdrawal. A Holder may validly withdraw shares of Series C Preferred Stock that the Holder tenders (and revoke the related consent and power of attorney) at any time prior to the Expiration Date. In addition, if not previously returned, the Holder may withdraw any shares of Series C Preferred Stock (and revoke the related consent and power of

attorney) that the Holder tenders that are not accepted by the Company for purchase after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation.

If shares of Series C Preferred Stock are held through a broker, bank or other nominee in book-entry form, a withdrawal of shares of Series C Preferred Stock (and a revocation of the related authorization to consent) will be effective if the broker, bank or other nominee complies with the appropriate procedures of DTC's ATOP prior to the Expiration Date or if the Holder's shares are not previously accepted by the Company, after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation. Any notice of withdrawal must identify the beneficial owner of the shares of Series C Preferred Stock to be withdrawn, including the beneficial owner's name and account number and the account at DTC to be credited and otherwise comply with the procedures of DTC.

If the Holder's paper share certificates are registered in the Holder's name, to withdraw the Holder's shares from the Offer to Purchase and Consent Solicitation and revoke the related consent and power of attorney, the Holder must deliver a written notice of withdrawal to the Depositary at the appropriate address specified on the front cover of this Letter of Transmittal and Consent prior to the Expiration Date or, if the Holder's shares are not previously accepted by the Company, after the expiration of 40 business days after the commencement of the Offer to Purchase and Consent Solicitation. The Holder's notice of withdrawal must comply with the requirements set forth in the Offer to Purchase and Consent Solicitation.

Any shares of Series C Preferred Stock withdrawn will be deemed not to have been validly tendered for purposes of the Offer to Purchase and Consent Solicitation and no cash consideration will be issued in payment unless the shares of Series C Preferred Stock so withdrawn are validly re-tendered.

5. *No Partial Tenders Accepted.* If fewer than all the shares represented by any certificate of Series C Preferred Stock delivered to the Depositary are tendered or if fewer than all of the shares of Preferred Stock owned by a Holder are tendered, the Company will be entitled to reject in its entirety any tender made by such Holder. All Series C Preferred Stock represented by certificates delivered to the Depositary will be deemed to have been tendered.

6. *Signatures on this Letter of Transmittal and Consent; Stock Powers and Endorsements.* If this Letter of Transmittal and Consent is signed by the registered Holder(s) of the shares of Series C Preferred Stock referred to in this Letter of Transmittal and Consent, the signature(s) must correspond with the name(s) as written on the face of the share certificates without alteration, enlargement or any change whatsoever. If this Letter of Transmittal and Consent is signed by a participant in DTC whose name is shown as the owner of the shares of Series C Preferred Stock tendered hereby, the signature must correspond with the name shown on the security position listing as the owner of the shares of Series C Preferred Stock.

If any of the shares of Series C Preferred Stock tendered are held of record by two or more persons, all such persons must sign the Letter of Transmittal and Consent.

If any of the shares of Series C Preferred Stock tendered are registered in different names or different share certificates, it will be necessary to complete, sign and submit as many separate Letters of Transmittals and Consents as there are different registrations or share certificates.

If this Letter of Transmittal and Consent is signed by the Holder, and the share certificates for any number of shares of Series C Preferred Stock not accepted for purchase are to be issued, or if any shares of Series C Preferred Stock that are not accepted for purchase are to be reissued or returned to, or, if tendered by book-entry transfer, credited to the account at DTC of the Holder, then the Holder need not endorse any share certificates for tendered shares of Series C Preferred Stock, nor provide a separate stock power. In any other case, the Holder must either properly endorse the share certificates for shares of Series C Preferred Stock tendered or transmit a separate properly completed stock power with this Letter of Transmittal and Consent, in either case, executed exactly as the name(s) of the Holder(s) appear(s) on such shares of Series C Preferred Stock, and, with respect to a participant in DTC whose name appears on a security position listing as the owner of the shares of Series C Preferred Stock, exactly as the name(s) of the participant(s) appear(s) on such security position listing, with the signature on the endorsement or stock power guaranteed by an Eligible Institution, unless such certificates or stock powers are executed by an Eligible Institution. See Instruction 1.

If this Letter of Transmittal and Consent is signed by a person other than the registered Holder(s) of the Series C Preferred Stock tendered hereby, certificates must be endorsed or accompanied by appropriate stock powers, in either case, signed exactly as the name(s) of the registered Holder(s) appear(s) on the certificates for such Series C Preferred Stock. Signature(s) on any such certificates or stock powers must be guaranteed by an Eligible Institution. See Instruction 1.

If either the Letter of Transmittal and Consent or any certificate or stock power is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, such person should so indicate when signing, and proper evidence satisfactory to the Company and the Depositary of the authority of such persons to act must be submitted.

Endorsements on share certificates for Series C Preferred Stock and signatures on stock powers provided in accordance with this Instruction 6 by Holders not executing this Letter of Transmittal and Consent must be guaranteed by an Eligible Institution. See Instruction 1.

7. *Special Issuance and Special Delivery Instructions.* Tendering Holders (or participants in DTC whose name appears on a security position listing as the owner of the shares of Series C Preferred Stock) should indicate in the applicable box or boxes the name and address to which the shares of Series C Preferred Stock not accepted for purchase in the Offer to Purchase and Consent Solicitation are to be issued or sent (or are to be credited with respect to such participants in DTC), if different from the name and address of the Holder signing this Letter of Transmittal and Consent. In the case of issuance in a different name, the taxpayer identification or social security number of the person named must also be indicated. If no instructions are given, the shares of Preferred Stock not accepted for purchase will be returned to the Holder of the shares of Series C Preferred Stock tendered.

8. *Transfer Taxes.* The Company will pay all transfer taxes applicable to the purchase and transfer of Series C Preferred Stock pursuant to the Offer to Purchase and Consent Solicitation, however, if the payment of the purchase price is to be made to a person other than the person in whose name the surrendered share certificate formerly evidencing the shares of Series C Preferred Stock is registered on the stock transfer books of the Company, then the share certificate so surrendered must be endorsed properly or otherwise be in proper form for transfer and the person requesting such payment must have paid all transfer and other taxes required by reason of the payment to a person other than the registered Holder of the share certificate surrendered, or shall have established to the satisfaction of the Company that such taxes either have been paid or are not applicable.

Additionally, if the Holder owns the shares of Series C Preferred Stock through a broker or other nominee, and the broker tenders the shares on the Holder's behalf, the broker may charge the Holder a fee for doing so. The Holder should consult the Holder's broker or nominee to determine whether any charges will apply.

9. *Requests for Assistance or Additional Copies.* Any questions or requests for assistance and additional copies of the Offering Circular, this Letter of Transmittal and Consent or the notice of guaranteed delivery should be directed to the Information Agent at D.F. King & Co., Inc., 48 Wall Street, 22nd Floor, New York, NY 10005. Any questions relating to the tender of physical share certificates should be directed to the Depositary at the address and telephone number listed on the front cover of this Letter of Transmittal and Consent.

10. *Irregularities.* All questions as to the form of documents and the validity, eligibility (including the time of receipt), acceptance for purchase of any tender of shares of Series C Preferred Stock and any withdrawals of the shares of Series C Preferred Stock will be determined by the Company, in its sole discretion, and its determination will be final and binding. The Company reserves the absolute right to reject any and all tenders of shares of Series C Preferred Stock that it determines are not in proper form or the acceptance of or purchase for which may, in the opinion of the Company's counsel, be unlawful. The Company also reserves the absolute right to waive any defect or irregularity in any tender of any shares of Series C Preferred Stock. No tender of shares of Series C Preferred Stock will be deemed to have been made until all defects and irregularities in the tender of such shares have been cured or waived. None of the Company, the Depositary, the Information Agent or any other person will be under any duty to give notice

of any defect or irregularity in tenders of shares of Series C Preferred Stock, nor shall any of them incur any liability for failure to give any such notice. The Company's interpretation of the terms of conditions of the Offer to Purchase and Consent Solicitation will be final and binding.

11. *Waiver of Conditions.* Subject to the applicable rules and regulations of the Securities and Exchange Commission, the Company reserves the right to waive certain conditions enumerated in the Offer to Purchase and Consent Solicitation.

12. *Inadequate Space.* If the space provided in the above "Description of Series C Preferred Stock Tendered" box is inadequate, the number of shares of Series C Preferred Stock and any other required information should be listed on a separate signed schedule and attached to this Letter of Transmittal and Consent.

13. *Lost, Destroyed or Stolen Certificates.* If any certificate(s) representing shares of Series C Preferred Stock have been lost, stolen or destroyed, please call the Company's transfer agent, American Stock Transfer & Trust Company (the "Transfer Agent"), at 1-877-248-6417. The Holder may need to complete an Affidavit of Loss with respect to the lost certificate(s) (which will be provided by the Transfer Agent) and payment of an indemnity bond premium fee may be required.

14. *Substitute Form W-9.* Under U.S. federal income tax laws, the Depositary will be required to withhold a portion of the amount of any payments made to certain Holders pursuant to the Offer to Purchase and Consent Solicitation unless each tendering Holder that is a United States citizen, resident or entity, and, if applicable, each other United States payee, must provide the Depositary (as payor) with such Holder's or payee's correct taxpayer identification number ("TIN") and certify that such Holder or payee is not subject to such backup withholding by completing the attached Substitute Form W-9. Certain Holders or payees (including, among others, corporations, non-resident foreign individuals and foreign entities) are not subject to these backup withholding and reporting requirements provided such holder provides proper certificate exempting such holder from backup withholding. A tendering Holder who is a foreign individual, or a foreign entity should complete, sign, and submit to the Depositary the appropriate Form W-8. A Form W-8BEN may be obtained from the Depositary or downloaded from Internal Revenue Service's website at the following address: http://www.irs.gov/pub/irs-pdf/fw8ben.pdf.

All tendering Holders are urged to consult their own tax advisors to determine whether they are exempt from these backup withholding and reporting requirements. For further information concerning backup withholding see the "IMPORTANT TAX INFORMATION" section below.

Failure to complete the Substitute Form W-9 will not, by itself, cause shares of Series C Preferred Stock to be deemed invalidly tendered, but may require the Depositary to withhold a portion of the amount of any payments made pursuant to the Offer to Purchase and Consent Solicitation. NOTE: FAILURE TO COMPLETE AND RETURN THE SUBSTITUTE FORM W-9 MAY RESULT IN BACKUP WITHHOLDING OF A PORTION OF ANY PAYMENT MADE TO YOU PURSUANT TO THE OFFER TO PURCHASE AND CONSENT SOLICITATION. PLEASE REVIEW THE "IMPORTANT TAX INFORMATION" SECTION BELOW AND THE ENCLOSED "GUIDELINES FOR CERTIFICATION OF TIN ON SUBSTITUTE FORM W-9" FOR ADDITIONAL DETAILS.

IMPORTANT TAX INFORMATION

Under U.S. federal income tax law, a Holder whose tendered shares of Series C Preferred Stock are accepted for purchase is required by law to provide the Depositary (as payor) with such Holder's correct TIN on Substitute Form W-9 below. If such Holder is an individual, the TIN is such Holder's social security number. If the Depositary is not provided with the correct TIN, the Holder may be subject to penalties imposed by the Internal Revenue Service ("IRS") and any gross proceeds received pursuant to the Offer to Purchase and Consent Solicitation may be subject to backup withholding.

If backup withholding applies, the Depositary is required to withhold 28% of the amount of gross proceeds received by the Holder. Backup withholding is not an additional tax. Rather, the tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund may be obtained from the IRS provided that the required information is furnished to the IRS.

For further information concerning backup withholding and instructions for completing the Substitute Form W-9 (including how to obtain a TIN if you do not have one and how to complete the Substitute Form W-9 if shares are held in more than one name), consult the enclosed "Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9."

Purpose of Substitute Form W-9

To prevent backup withholding on payments that are made to a United States Holder with respect to the gross proceeds received pursuant to the Offer to Purchase and Consent Solicitation, the Holder is required to notify the Depositary of such Holder's correct TIN by completing the form below certifying, under penalties of perjury, (i) that the TIN provided on Substitute Form W-9 is correct (or that such Holder is awaiting a TIN), (ii) that such Holder is not subject to backup withholding because (a) such Holder has not been notified by the IRS that such Holder is subject to backup withholding as a result of a failure to report all interest or dividends, (b) the IRS has notified such Holder that such Holder is no longer subject to backup withholding or (c) such Holder is exempt from backup withholding, and (iii) that such Holder is a U.S. person.

What Number to Give the Depositary

United States Holders are required to give the Depositary the social security number or employer identification number of the record holder of the shares of Series C Preferred Stock tendered hereby. If the shares of Series C Preferred Stock are in more than one name or are not in the name of the actual owner, consult the enclosed Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9 for additional guidance on which number to report. If the tendering Holder has not been issued a TIN and has applied for a number or intends to apply for a number in the near future, the Holder should check the "Awaiting TIN" box in Part II, sign and date the Substitute Form W-9 and complete the Certificate of Awaiting Taxpayer Identification Number below. Notwithstanding that the "Awaiting TIN" box is checked in Part II and the Certificate of Awaiting Taxpayer Identification Number is completed, the Depositary will withhold 28% of the gross proceeds received by such Holder until a TIN is provided to the Depositary. Such amounts will be refunded to such surrendering Holder if a TIN is provided to the Depositary within 60 days.

Substitute Form W-9—Impac Mortgage Holdings, Inc.

SUBSTITUTE FORM W-9

Department of the Treasury Internal Revenue Service

Request for Taxpayer Identification Number (TIN) and Certification

Part 1—Please provide your taxpayer or employee identification number SSN or EIN in the space at right. If awaiting TIN, write "*Applied For*."

Name

Part 2—Awaiting TIN o

Address

Part III—*Certification* Under penalty of perjury, I certify that:

(1) The number shown on this form is my correct Taxpayer Identification Number (or I am waiting for a number to be issued to me);

(Number and Street)

(2) I am not subject to backup withholding either because (a) I am exempt from backup withholding, (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and

(City)(State)(Zip Code)

(3) I am a United States person (as defined in the W-9 instructions).

Certification Instruction—You must cross out item (2) in Part III above if you have been notified by the IRS that you are subject to backup withholding because of underreporting interest or dividends on your tax return. However, if after being notified by the IRS that you were subject to backup withholding you received notification from the IRS that you are no longer subject to backup withholding, do not cross out item (2).

Sign Here

Signature

Date

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM MAY RESULT IN A $50 PENALTY IMPOSED BY THE INTERNAL REVENUE SERVICE AND BACKUP WITHHOLDING OF 28% OF ANY PROCEEDS RECEIVED BY YOU PURSUANT TO THE OFFER TO PURCHASE AND CONSENT SOLICITATION. PLEASE REVIEW THE ENCLOSED GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9 FOR ADDITIONAL DETAILS.

YOU MUST COMPLETE THE FOLLOWING CERTIFICATE IF YOU CHECKED THE BOX IN PART II OF THE SUBSTITUTE FORM W-9.

CERTIFICATION OF AWAITING TAXPAYER IDENTIFICATION NUMBER

I certify under penalties of perjury that a taxpayer identification number has not been issued to me, and either (1) I have mailed or delivered an application to receive a taxpayer identification number to the appropriate Internal Revenue Service Center or Social Security Administration office or (2) I intend to mail or deliver an application in the near future. I understand that if I do not provide a taxpayer identification number by the time of payment, 28% of all reportable gross proceeds received by me thereafter will be withheld until I provide a taxpayer identification number to the payer and that, if I do not provide my taxpayer identification number within sixty days, such retained amounts shall be remitted to the Internal Revenue Service as backup withholding.

Signature _____ Date _____

Any questions and requests for assistance may be directed to the Information Agent at the address and telephone numbers set forth below. Additional copies of the Offering Circular, the Letter of Transmittal and Consent and the notice of guaranteed delivery may be obtained from the Information Agent at the address and telephone numbers set forth below. Holders of Series C Preferred Stock may also contact their broker, dealer, commercial bank or trust company or other nominee for assistance concerning the Offer to Purchase and Consent Solicitation.

The Information Agent for the Offer to Purchase and Consent Solicitation is:

D.F. King & Co., Inc.
48 Wall Street, 22nd Floor
New York, NY 10005

Banks and brokers call collect: (212) 269-5550
All others call toll free: (800) 269-6427

QuickLinks

QuickLinks -- Click here to rapidly navigate through this document

Exhibit (a)(1)(D)

IMPAC MORTGAGE HOLDINGS, INC.

Offer to Purchase

Offer to purchase all outstanding shares of

9.375% Series B Cumulative Redeemable Preferred Stock (CUSIP No. 45254P300)
9.125% Series C Cumulative Redeemable Preferred Stock (CUSIP No. 45254P409)

and Consent Solicitation

THE OFFER TO PURCHASE AND CONSENT SOLICITATION WILL EXPIRE AT 9:00 A.M., EASTERN DAYLIGHT TIME, ON JUNE 26, 2009, UNLESS EXTENDED OR EARLIER TERMINATED (SUCH TIME AND DATE, AS THE SAME MAY BE EXTENDED, THE "EXPIRATION DATE"). TENDERS OF PREFERRED STOCK MAY BE WITHDRAWN AT ANY TIME PRIOR TO 9:00 A.M., EASTERN DAYLIGHT TIME, ON THE EXPIRATION DATE.

To Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees:

Impac Mortgage Holdings, Inc., a Maryland corporation (the "Company"), is making an offer to purchase all outstanding shares of 9.375% Series B Cumulative Redeemable Preferred Stock, $0.01 par value per share ("Series B Preferred Stock") and 9.125% Series C Cumulative Redeemable Preferred Stock, $0.01 par value per share, ("Series C Preferred Stock," and collectively with the Series B Preferred Stock, the "Preferred Stock"), upon the terms and subject to the conditions specified in the Offering Circular, dated May 29, 2009 (the "Offering Circular"), and the related Letter of Transmittal and Consent (which together, as amended, supplemented or otherwise modified from time to time, collectively constitute the "Offer to Purchase").

We are also soliciting consents (the "Consent Solicitation") from holders of the Preferred Stock (each, a "Holder" and collectively, the "Holders") as of the expiration of the Offer to Purchase and Consent Solicitation, to amend our charter (the "Charter") to modify the terms of each series of Preferred Stock to: (i) make future dividends non-cumulative; (ii) eliminate the provisions prohibiting the payment of dividends on junior stock and prohibiting the purchase or redemption of junior or parity stock if full cumulative dividends for all past dividend periods are not paid or declared and set apart for payment; (iii) eliminate any premiums payable upon the liquidation, dissolution or winding up of the Company; (iv) eliminate the provision prohibiting the Company from electing to redeem Preferred Stock prior to the fifth year anniversary of the issuance of such Preferred Stock; (v) eliminate the provision prohibiting the Company from redeeming less than all of the outstanding Preferred Stock if full cumulative dividends for all past dividend periods have not been paid or declared and set apart for payment; (vi) eliminate the right of holders of Preferred Stock to elect two directors if dividends are in arrears for six quarterly periods; and (vii) eliminate the right of holders of Preferred Stock to consent to or approve the authorization or issuance of preferred stock senior to the Preferred Stock (the "Proposed Amendments").

The elimination of the restrictions described above would allow us to declare and pay dividends on shares of common stock or shares of any other class or series of our capital stock, except any class or series of parity stock, or redeem, repurchase or otherwise acquire shares of any class or series of our capital stock, including our common stock and any other series of preferred stock, without paying or setting apart for payment any dividends on shares of any series of preferred stock. The foregoing is only a summary of the Proposed Amendments, and is qualified by reference to the amended text of the affected provisions of our Charter reflecting the Proposed Amendments, set forth as *Annex A* and *Annex B* to the Offering Circular.

In connection with the Offer to Purchase and Consent Solicitation, we are requesting that you contact your clients for whom you hold Preferred Stock registered in your name or in the name of your nominee, or who hold Preferred Stock registered in their own names.

For forwarding to your clients, we are enclosing the following documents:

1. Offering Circular, dated May 29, 2009;

2. Letters of Transmittal and Consent for the information of your clients;

3. A form of notice of guaranteed delivery; and

4. A form letter, along with Instructions of Beneficial Owner form, which may be sent to your clients for whose account you hold Preferred Stock registered in your name or the name of your nominee, to obtain such clients' instructions with regard to the Offer to Purchase and Consent Solicitation.

YOUR PROMPT ACTION IS REQUESTED. THE OFFER TO PURCHASE AND CONSENT SOLICITATION WILL EXPIRE AT 9:00 A.M., EASTERN DAYLIGHT TIME, ON JUNE 26, 2009, UNLESS EXTENDED OR EARLIER TERMINATED (SUCH TIME AND DATE, AS THE SAME MAY BE EXTENDED OR EARLIER TERMINATED, THE "EXPIRATION DATE"). TENDERS OF PREFERRED STOCK MAY BE WITHDRAWN AT ANY TIME PRIOR TO 9:00 A.M., EASTERN DAYLIGHT TIME, ON THE EXPIRATION DATE.

Brokers, banks of other nominees that are tendering by book-entry transfer to the Depositary's Agent's account at DTC may tender Preferred Stock through the DTC ATOP, for which the Offer to Purchase and Consent Solicitation will be eligible. DTC ATOP instructions should include the name and taxpayer identification number of any beneficial owner shares. DTC will then send an Agent's Message to the Depositary. The term "Agent's Message" means a message transmitted by DTC, received by the Company and forming part of the book-entry confirmation, to the effect that: (i) DTC has received an express acknowledgment from a participant in ATOP that it is tendering shares and submitting authorizations to consent to the Proposed Amendments with respect to the Preferred Stock that is the subject of such book-entry confirmation; (ii) such participant has received and agrees to be bound by the terms of the Offer to Purchase and Consent Solicitation for the Preferred Stock being tendered; and (iii) the agreement may be enforced against such participant. **Accordingly, the Letter of Transmittal and Consent need not be completed when tendering through ATOP.** However, the beneficial holder will be bound by the terms of the Offer to Purchase and Consent Solicitation. Delivery of documents to DTC does not constitute delivery to the Depositary.

Brokers, banks and other nominees that hold shares of Preferred Stock on behalf of a beneficial holder desiring to tender Preferred Stock prior to the Expiration Date through ATOP should allow sufficient time for completion of the ATOP procedures during the normal business hours of DTC prior to such date, subject to the guaranteed delivery procedures described below. Tenders via the DTC ATOP system shall be deemed made only when timely confirmed by DTC. In all cases, the Holder should allow sufficient time to ensure timely processing of the Holder's tender. If you cannot complete the procedures for book-entry transfer on a timely basis you must tender shares of Preferred Stock pursuant to the guaranteed delivery procedure. Pursuant to such procedure: (i) you must make your tender by or through an eligible institution; (ii) a properly completed and duly executed notice of guaranteed delivery substantially in the form made available by the Company must be received by the Depositary prior to the Expiration Date; and (iii) a confirmation of a book-entry transfer of the Preferred Stock into the Depositary's account at DTC, as well as an Agent's Message and any other documents required by this letter, must be received by the Depositary within three NYSE trading days after the date of execution of such notice of guaranteed delivery.

In order to accept the Offer to Purchase and Consent Solicitation and consent to the Proposed Amendments an Agent's Message (as defined in the Offering Circular) in connection with a book-entry delivery of Preferred Stock and any other required documents must be received by the Depositary by 9:00 A.M., Eastern Daylight Time, on June 26, 2009.

The Company will not pay any fees or commissions to any broker, dealer or other person for soliciting tenders of Preferred Stock pursuant to the Offer to Purchase and Consent Solicitation. The Company will, however, upon request, reimburse brokers, dealers, banks and trust companies for customary clerical and mailing expenses incurred by them in forwarding materials to their customers. The Company will pay all stock transfer taxes applicable to its repurchase of Preferred Stock pursuant

to the Offer to Purchase and Consent Solicitation, subject to Instruction 8 of the Letter of Transmittal and Consent.

Any inquiries you may have with respect to the Offer to Purchase and Consent Solicitation should be addressed to, and additional copies of the enclosed materials may be obtained from, the Information Agent at the address and telephone numbers set forth on the back cover of the Offering Circular.

Sincerely,

IMPAC MORTGAGE HOLDINGS, INC.

NOTHING CONTAINED HEREIN OR IN THE ENCLOSED DOCUMENTS SHALL RENDER YOU THE AGENT OF THE COMPANY, THE INFORMATION AGENT OR THE DEPOSITARY, OR AUTHORIZE YOU OR ANY OTHER PERSON TO USE ANY DOCUMENT OR MAKE ANY STATEMENT ON BEHALF OF ANY OF THEM IN CONNECTION WITH THE OFFER TO PURCHASE AND CONSENT SOLICITATION NOT CONTAINED IN THE OFFERING CIRCULAR, THE LETTER OF TRANSMITTAL AND CONSENT OR THE NOTICE OF GUARANTEED DELIVERY.

QuickLinks

QuickLinks -- Click here to rapidly navigate through this document

Exhibit (a)(1)(E)

LETTER TO CLIENTS

Offer to Purchase
Offer to purchase all outstanding shares of

9.375% Series B Cumulative Redeemable Preferred Stock (CUSIP No. 45254P300)
9.125% Series C Cumulative Redeemable Preferred Stock (CUSIP No. 45254P409)

and Consent Solicitation
of
IMPAC MORTGAGE HOLDINGS, INC.

THE OFFER TO PURCHASE AND CONSENT SOLICITATION WILL EXPIRE AT 9:00 A.M., EASTERN DAYLIGHT TIME, ON JUNE 26, 2009, UNLESS EXTENDED OR EARLIER TERMINATED (SUCH TIME AND DATE, AS THE SAME MAY BE EXTENDED, THE "EXPIRATION DATE"). TENDERS OF PREFERRED STOCK MAY BE WITHDRAWN AT ANY TIME PRIOR TO 9:00 A.M., EASTERN DAYLIGHT TIME, ON THE EXPIRATION DATE.

To Our Clients:

Enclosed for your consideration is an Offering Circular, dated May 29, 2009 (as amended, supplemented or otherwise modified from time to time, the "Offering Circular"), the related Letter of Transmittal and Consent, and an Instructions From Beneficial Owner form relating to the offer of Impac Mortgage Holdings, Inc., a Maryland corporation (the "Company"), to purchase all outstanding shares of 9.375% Series B Cumulative Redeemable Preferred Stock, $0.01 par value per share ("Series B Preferred Stock") and 9.125% Series C Cumulative Redeemable Preferred Stock, $0.01 par value per share ("Series C Preferred Stock," and collectively with the Series B Preferred Stock, the "Preferred Stock"), upon the terms and subject to the conditions specified in the Offering Circular (the "Offer to Purchase").

The Company is also soliciting consents (the "Consent Solicitation") from holders of the Preferred Stock (each, a "Holder" and collectively, the "Holders") as of the expiration of the Offer to Purchase and Consent Solicitation, to amend its charter (the "Charter") to modify the terms of each series of Preferred Stock to: (i) make future dividends non-cumulative; (ii) eliminate the provisions prohibiting the payment of dividends on junior stock and prohibiting the purchase or redemption of junior or parity stock if full cumulative dividends for all past dividend periods are not paid or declared and set apart for payment; (iii) eliminate any premiums payable upon the liquidation, dissolution or winding up of the Company; (iv) eliminate the provision prohibiting the Company from electing to redeem Preferred Stock prior to the fifth year anniversary of the issuance of such Preferred Stock; (v) eliminate the provision prohibiting the Company from redeeming less than all of the outstanding Preferred Stock if full cumulative dividends for all past dividend periods have not been paid or declared and set apart for payment; (vi) eliminate the right of holders of Preferred Stock to elect two directors if dividends are in arrears for six quarterly periods; and (vii) eliminate the right of holders of Preferred Stock to consent to or approve the authorization or issuance of preferred stock senior to the Preferred Stock (the "Proposed Amendments").

The elimination of the restrictions described above would allow the Company to declare and pay dividends on shares of its common stock or shares of any other class or series of our capital stock, except any class or series of parity stock, or redeem, repurchase or otherwise acquire shares of any class or series of our capital stock, including common stock and any other series of preferred stock, without paying or setting apart for payment any dividends on shares of any series of preferred stock. The foregoing is only a summary of the Proposed Amendments, and is qualified by reference to the amended text of the affected provisions of the Company's Charter reflecting the Proposed Amendments, set forth as *Annex A* and *Annex B* to the Offering Circular.

We are the holder of record (directly or indirectly) of shares of Preferred Stock held for your account. A tender of such shares can be made only by us pursuant to your instructions. PLEASE DO

NOT COMPLETE THE LETTER OF TRANSMITTAL AND CONSENT. The enclosed Letter of Transmittal and Consent is furnished to you for your information only and cannot be used by you to tender shares of Preferred Stock held by us for your account.

We, as holders of Preferred Stock on your behalf, are being requested to tender shares of Preferred Stock for repurchase by the Company pursuant to the terms and conditions of the Offer to Purchase and consent to the Proposed Amendments, as described in the Offering Circular.

We, as holders of Preferred Stock on your behalf, can not tender your shares of Preferred Stock and consent to the Proposed Amendments unless you instruct us to take such actions by completing, executing and returning to us the Instructions From Beneficial Owner form enclosed herein. Your Instructions From Beneficial Owner form should be forwarded to us in ample time to permit us to submit a tender and consent on your behalf by the date of expiration of the Offer to Purchase and Consent Solicitation.

YOUR PROMPT ACTION IS REQUESTED. THE OFFER TO PURCHASE AND CONSENT SOLICITATION WILL EXPIRE AT 9:00 A.M., EASTERN DAYLIGHT TIME, ON JUNE 26, 2009, UNLESS EXTENDED OR EARLIER TERMINATED (SUCH TIME AND DATE, AS THE SAME MAY BE EXTENDED OR EARLIER TERMINATED, THE "EXPIRATION DATE"). TENDERS OF PREFERRED STOCK MAY BE WITHDRAWN AT ANY TIME PRIOR TO 9:00 A.M., EASTERN DAYLIGHT TIME, ON THE EXPIRATION DATE.

Accordingly, we request instructions as to whether you wish us to tender on your behalf the Preferred Stock held by us for your account and consent to the Proposed Amendments, pursuant to the terms and conditions set forth in the enclosed Offering Circular. Your instructions should be forwarded to us as promptly as possible in order to permit us to tender the Preferred Stock and consent on your behalf to the Proposed Amendments in accordance with the terms and conditions of the Offer to Purchase and Consent Solicitation.

Your attention is directed to the following:

1. The Offer to Purchase and Consent Solicitation are for all outstanding shares of Series B Preferred Stock and Series C Preferred Stock.

2. The Offer to Purchase and Consent Solicitation are subject to certain conditions set forth in the Offering Circular in the section captioned "The Offer to Purchase and Consent Solicitation—Conditions of the Offer to Purchase."

3. The Offer to Purchase and Consent Solicitation and withdrawal rights expire at 9:00 A.M., Eastern Daylight Time, on June 26, 2009, unless extended by the Company.

4. The terms of the Offer to Purchase and Consent Solicitation require that you tender all shares that you own of Series B Preferred Stock and Series C Preferred Stock. The Company is entitled to reject partial tenders.

5. By tendering your Preferred Stock in accordance with the procedures described in the Offering Circular, you will also authorize the Depositary to consent to the Proposed Amendments on your behalf on the record date.

If you wish to have us tender your Preferred Stock and consent to the Proposed Amendments, please so instruct us by completing, executing and returning to us the Instructions From Beneficial Owner form on the back of this letter.

PLEASE RETURN THIS FORM TO THE BROKERAGE FIRM MAINTAINING YOUR ACCOUNT

INSTRUCTIONS FROM BENEFICIAL OWNER
WITH RESPECT TO
the
Offer to Purchase all outstanding shares of

9.375% Series B Cumulative Redeemable Preferred Stock (CUSIP No. 45254P300)
9.125% Series C Cumulative Redeemable Preferred Stock (CUSIP No. 45254P409)

and Consent Solicitation
of
IMPAC MORTGAGE HOLDINGS, INC.

The undersigned acknowledge(s) receipt of your letter and the enclosed materials referred to therein relating to the Offer to Purchase and Consent Solicitation made by the Company with respect to its outstanding shares of Preferred Stock.

Instruction to tender shares: This will instruct you to tender all the Preferred Stock held by you for the account of the undersigned, upon and subject to the terms and conditions set forth in the Offering Circular as set forth below.

Instruction to consent: This will also instruct you to consent and authorize the Depositary to consent to the Proposed Amendments in the Offer to Purchase and Consent Solicitation, upon and subject to the terms of the Offer to Purchase and Consent Solicitation.

The undersigned expressly agrees to be bound by the terms of the Offer to Purchase and Consent Solicitation as set forth in the Offering Circular and such terms may be enforced against the undersigned.

9.375% Series B Cumulative Redeemable Preferred Stock

Please tender all shares of 9.375% Series B Cumulative Redeemable Preferred Stock, $0.01 par value per share, held by you for my account as indicated below and consent to the Proposed Amendments in the Offer to Purchase and Consent Solicitation.

9.125% Series C Cumulative Redeemable Preferred Stock

Please tender all shares of 9.125% Series C Cumulative Redeemable Preferred Stock, $0.01 par value per share, held by you for my account as indicated below and consent to the Proposed Amendments in the Offer to Purchase and Consent Solicitation.

Signature(s) of Holder(s):

Name(s) of beneficial holder(s) (Please Print)

Capacity (full title)

Dated: , 2009

Address

City Zip Code

Area Code and Telephone No.

Tax ID No. or Social Security No.

NONE OF THE PREFERRED STOCK HELD BY US FOR YOUR ACCOUNT WILL BE TENDERED UNLESS WE RECEIVE WRITTEN INSTRUCTIONS FROM YOU TO DO SO.

QuickLinks

QuickLinks -- Click here to rapidly navigate through this document

Exhibit (a)(1)(F)

FOR U.S. SHAREHOLDERS ONLY
GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION
NUMBER ON SUBSTITUTE FORM W-9

Guidelines for Determining the Proper Identification Number to give the Payor. Social Security Numbers have nine digits separated by two hyphens: i.e., 000-00-0000. Employer Identification Numbers have nine digits separated by only one hyphen: i.e., 00-0000000. The table below will help determine the number to give the payor.

	For this type of account	Give the SOCIAL SECURITY number of:
1.	An individual's account	The individual
2.	Two or more individuals (joint account)	The actual owner of the account or, if combined funds, any one of the individuals(1)
3.	Husband and wife (joint account)	The actual owner of the account or, if joint funds, either person(1)
4.	Custodian account of a minor (Uniform Gift to Minors Act)	The minor(2)
5.	Adult and minor (joint account)	The adult or, if the minor is the only contributor, the minor(1)
6.	Account in the name of guardian or committee for a designated ward, minor, or incompetent person	The ward, minor, or incompetent person(3)
7. a.	The usual revocable savings trust account (grantor is also trustee)	The grantor-trustee(1)
b.	So-called trust account that is not a legal or valid trust under State law	The actual owner(1)

	For this type of account	Give the SOCIAL SECURITY number of:
8.	Sole proprietorship account	The owner(4)
9.	A valid trust, estate or pension trust	The legal entity (Do not furnish the identifying number of the personal representative or trustee unless the legal entity itself is not designated in the account title)(5)
10.	Corporate account	The corporation
11.	Religious, charitable, or educational organization	The organization
12.	Partnership account held in the name of the partnership	The partnership
13.	Association, club, or other tax-exempt	The organization
14.	A broker or registered nominee	The broker or nominee
15.	Account with the Department of Agriculture in the name of a public entity (such as a State or local government, school district, or prison) that receives agricultural program payments The public entity	The public entity

(1) List first and circle the name of the person whose number you furnish.

(2) Circle the minor's name and furnish the minor's social security number.

(3) Circle the ward's, minor's or incompetent person's name and furnish such person's social security number.

(4) You must show your individual name, but you may also enter your business or "doing business" name. You may use either your Social Security Number or Employer Identification Number.

(5) List first and circle the name of the legal trust, estate, or pension trust.

NOTE: If no name is circled when there is more than one name, the number will be considered to be that of the first name listed.

OBTAINING A NUMBER

If you do not have a taxpayer identification number or if you do not know your number, obtain Form SS-5, Application for Social Security Number Card, or Form SS-4, Application for Employer Identification Number, at the local office of the Social Security Administration or the Internal Revenue Service (the "IRS") and apply for a number.

BACKUP WITHHOLDING

Payees generally exempt from backup withholding on payments by brokers include the following:

A corporation.

A financial institution.

An organization exempt from a tax under Section 501(a) of the Internal Revenue Code of 1986, as amended, (the "Code") or an individual retirement plan or a custodial account under Section 403(b)(7) of the Code if the account satisfies the requirements of Section 401(F)(2) of the Code.

The United States or any agency or instrumentality thereof.

A State, the District of Columbia, a possession of the United States or any subdivision or instrumentality thereof.

A foreign government, a political subdivision of a foreign government or any agency or instrumentality thereof.

An international organization or any agency or instrumentality thereof.

A registered dealer in securities or commodities registered in the U.S. or a possession of the U.S.

A real estate investment trust.

A common trust fund operated by a bank under Section 584(a) of the Code.

An entity registered at all times under the Investment Company Act of 1940.

A foreign central bank of issue.

A futures commission merchant registered with the Commodity Futures Trading Commission.

A person registered under the Investment Advisors Act of 1940 who regularly acts as a broker.

Payments of dividends and patronage dividends not generally subject to backup withholding include the following:

Payments to nonresident aliens subject to withholding under Section 1441 of the Code.

Payments to partnerships not engaged in a trade or business in the U.S. and which have at least one nonresident partner.

Payments of patronage dividends where the amount received is not paid in money.

Payments made by certain foreign organizations.

Payments made to a nominee.

Payments of interest not generally subject to backup withholding include the following:

Payments of interest on obligations issued by individuals. Note: You may be subject to backup withholding if this interest is $600 or more and is paid in the course of the payer's trade or business and you have not provided your correct taxpayer identification number to the payer.

Payments of tax-exempt interest (including exempt-interest dividends under Section 852 of the Code).

Payments described in Section 6049(b)(5) of the Code nonresident aliens.

Payments on tax-free covenant bonds under Section 1451 of the Code.

Payments made by certain foreign corporations.

Payments made to a nominee.

Exempt payees described above should provide an IRS Form W-9 or the Substitute Form W-9 to avoid possible erroneous backup withholding. **PROVIDE THIS FORM TO THE PAYOR, FURNISH YOUR TAXPAYER IDENTIFICATION NUMBER, CHECK THE "EXEMPT FROM BACKUP WITHHOLDING" BOX ON THE FORM, SIGN AND DATE THE FORM AND RETURN IT TO THE PAYOR.**

Certain payments other than interest, dividends and patronage dividends, which are not subject to information reporting are also not subject to backup withholding. For details, see the regulations under Sections 6041, 6041(A)(a), 6045, and 6050A of the Code.

PRIVACY ACT NOTICE—Section 6109 of the Code requires most recipients of dividend, interest or other payments to give taxpayer identification numbers to payers who must report the payments to IRS. IRS uses the numbers for identification purposes. Payors must be given the numbers whether or not recipients are required to file tax returns. Beginning January 1, 1993, payors must generally withhold a portion of taxable interest, dividend and certain other payments to a payee who does not furnish a taxpayer identification number to a payer. Certain penalties may also apply.

PENALTIES

PENALTY FOR FAILURE TO FURNISH TAXPAYER IDENTIFICATION NUMBER—If you fail to furnish your taxpayer identification number to a payer, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

CIVIL PENALTY FOR FALSE INFORMATION WITH RESPECT TO WITHHOLDING—If you make a false statement with no reasonable basis which results in no imposition of backup withholding, you are subject to a penalty of $500.

CRIMINAL PENALTY FOR FALSIFYING INFORMATION—Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

FOR ADDITIONAL INFORMATION CONTACT YOUR TAX CONSULTANT OR THE INTERNAL REVENUE SERVICE.

QuickLinks

Exhibit (a)(1)(G)

NOTICE OF GUARANTEED DELIVERY
TO TENDER SHARES OF

9.375% Series B Cumulative Redeemable Preferred Stock (CUSIP No. 45254P300)
9.125% Series C Cumulative Redeemable Preferred Stock (CUSIP No. 45254P409)

OF

Impac Mortgage Holdings, Inc.
Pursuant to its Offer to Purchase and Consent Solicitation
Described in the Offering Circular dated May 29, 2009

This form, or a substantially equivalent form, must be used to accept the Offer to Purchase (as defined in the Offering Circular) if the certificates for shares of any of the above referenced series of preferred stock (collectively, the "Preferred Stock"), of Impac Mortgage Holdings, Inc., and any other documents required by the Letter(s) of Transmittal and Consent cannot be delivered to the Depositary by the Expiration Date or if the procedures for book-entry transfer cannot be complete on a timely basis. Such form may be delivered by hand, by facsimile transmission, or mail to the Depositary. See "*The Offer to Purchase and Consent Solicitation—Procedure for Tendering and Consenting*" of the Offering Circular. Capitalized terms used by not defined herein have the meanings ascribed to them in the Offering Circular or the Letter of Transmittal and Consent.

THE OFFER AND YOUR WITHDRAWAL RIGHTS WILL EXPIRE AT 9:00 A.M., EASTERN DAYLIGHT TIME, ON JUNE 26, 2009, UNLESS THE OFFER TO PURCHASE AND CONSENT SOLICITATION IS EXTENDED.

The Depositary for the Offer to Purchase and Consent Solicitation is:

American Stock Transfer & Trust Company

By Mail or Overnight Courier:	*By Hand:*
American Stock Transfer & Trust Company Operations Center Attn: Reorganization Department 6201 15th Avenue Brooklyn, NY 11219	American Stock Transfer & Trust Company Attn: Reorganization Department 59 Maiden Lane Concourse Level New York, NY 10038

DELIVERY OF THIS NOTICE OF GUARANTEED DELIVERY TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE OR TRANSMISSION HEREOF VIA FACSIMILE OTHER THAN AS SET FORTH ABOVE WILL NOT CONSTITUTE A VALID DELIVERY.

Do not send certificates evidencing Preferred Stock with this form. Actual surrender of shares of Preferred Stock must be made pursuant to, and be accompanied by, a properly completed and validly executed Letter of Transmittal and Consent and any other required documents.

This Notice of Guaranteed Delivery is not to be used to guarantee signatures. If a signature on a Letter of Transmittal and Consent is required to be guaranteed by an Eligible Institution under the instructions thereto, such signature guarantee must appear in the applicable space provided in the signature box on the Letter of Transmittal and Consent.

Ladies and Gentlemen:

The undersigned hereby tenders to the Company, upon the terms and subject to the conditions set forth in the Offering Circular and the related Letter of Transmittal and Consent, receipt of which is hereby acknowledged, shares of the series of Preferred Stock, pursuant to the guaranteed delivery procedure set forth in the Offering Circular under "*The Offer to Purchase and Consent Solicitation—Procedure for Tendering and Consenting.*" By so tendering, the undersigned does hereby make, at and as of the date hereof, the representations and warranties of a tendering holder set forth in the Letter of Transmittal and Consent.

All authority herein conferred or agreed to be conferred by this Notice of Guaranteed Delivery shall survive the death or incapacity of the undersigned and every obligation of the undersigned hereunder shall be binding upon the heirs, personal representatives, executors, successors, assigns, trustees in bankruptcy or other legal representative of the undersigned.

Series of Preferred Stock covered by this Notice of Guaranteed Delivery:

_____	_____
_____	_____
Certificate Numbers (if available)	
	_____
	_____
	Name(s) (Please Print)

If delivery will be by book-entry transfer

_____	_____
Name of Tendering Institution	
_____	_____
Account Number	Address(es) (Include Zip Code)
	_____
	Area Code and Telephone Number

This Notice of Guaranteed Delivery must be signed by the Holder(s) of the shares of Preferred Stock being tendered exactly as his, her, its or their name(s) appear(s) on certificate(s) for such shares of Preferred Stock or, if tendered by a participant in DTC, exactly as such participant's name appears on a security position listing as the owner of the shares of Preferred Stock or by person(s) authorized to become Holder(s) by endorsements on certificates for such shares of Preferred Stock or by stock powers transmitted with this Notice of Guaranteed Delivery. Endorsements on shares of Preferred Stock and signatures on stock powers by Holders(s) not executing this Notice of Guaranteed Delivery must be guaranteed by an Eligible Institution. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer or other person acting in a fiduciary or representative capacity, such person must set forth his or her full title below under "Capacity" and submit evidence satisfactory to the Company and the Depositary of such person's authority to so act.

Signature(s) of Holders

Dated: _____

Name(s) _____

Capacity (full title) _____

Address _____

Area Code and Telephone No. _____

GUARANTEE
(Not to be used for signature guarantee)

The undersigned, a firm that is a participant in the Securities Transfer Agents Medallion Program or an "Eligible Guarantor Institution" (as such term is defined in Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended), hereby guarantees that, within three New York Stock Exchange trading days after the date of execution of this Notice of Guaranteed Delivery, a properly completed and duly executed Letter of Transmittal and Consent (or manually signed facsimile thereof), the shares of Preferred Stock, in proper form for transfer, or a book-entry confirmation of transfer of such shares of Preferred Stock into the Depositary's account at The Depository Trust Company, including the Agent's Message instead of a Letter of Transmittal and Consent, as the case may be, with any required signature guarantees and any other documents required by the Letter of Transmittal and Consent, will be deposited by the undersigned with the Despositary.

THE UNDERSIGNED ACKNOWLEDGES THAT IT MUST DELIVER THE LETTER OF TRANSMITTAL AND CONSENT AND THE SHARES OF PREFERRED STOCK TENDERED HEREBY, OR, IN THE CASE OF A BOOK-ENTRY TRANSFER, AN AGENT'S MESSAGE INSTEAD OF A LETTER OF TRANSMITTAL AND CONSENT, TO THE DEPOSITARY WITHIN THE TIME PERIOD SET FORTH ABOVE AND THAT FAILURE TO DO SO COULD RESULT IN FINANCIAL LOSS TO THE UNDERSIGNED.

_____
(Name of Firm)

_____
(Address)

_____
(Zip Code)

_____
(Authorized Signature)

_____
(Name)

_____
(Area Code and Telephone Number)

Dated: , 2009.

QuickLinks

Exhibit (a)(5)

IMPAC ANNOUNCES COMMENCEMENT OF
OFFER TO PURCHASE AND CONSENT SOLICITATION
FOR ALL OUTSTANDING PREFERRED STOCK

Friday, May 29, 2009

Irvine, California - Impac Mortgage Holdings, Inc. (Pink Sheets: IMPM), or the "Company," a Maryland corporation, announced today that it is commencing an offer to purchase all outstanding shares of its 9.375% Series B Cumulative Redeemable Preferred Stock (Pink Sheets: IMPHP) and 9.125% Series C Cumulative Redeemable Preferred Stock (Pink Sheets: IMPHO) (the "Offer to Purchase"). In connection with the Offer to Purchase, the Company is also soliciting consents from holders of each series of preferred stock to amend the company's Charter to modify the terms of such series of preferred stock (the "Consent Solicitation"). Holders may not tender their shares of preferred stock in the Offer to Purchase and Consent Solicitation without consenting to each of the applicable proposed Charter amendments.

The Company is offering $0.29297 in cash for each share of Series B Preferred Stock and $0.28516 in cash for each share of Series C Preferred Stock validly tendered in the Offer to Purchase and Consent Solicitation. The Offer to Purchase and Consent Solicitation is being commenced today, Friday, May 29, 2009, and will expire at 9 a.m., Eastern time, on June 26, 2009, unless extended or terminated by the Company. There are a number of conditions to the Company's obligation to accept the shares of preferred stock tendered and consents delivered and to pay the consideration offered, including that it receive valid tenders for at least 66 2/3% of the aggregate liquidation preference of each series of the Company's outstanding Series B and C Preferred Stock, a majority of the outstanding shares of common stock approve the proposed Charter amendments, and the Company satisfies the distribution requirements under Maryland law at the time of closing. If the Offer to Purchase and Consent Solicitation is successfully completed, the Company will also contemporaneously pay all accumulated and unpaid dividends on the Preferred Stock, which are $1.17 per share of Series B Preferred Stock and $1.14 per share of Series C Preferred Stock. The terms of the Offer to Purchase and Consent Solicitation are set forth in more detail in the Company's Offering Circular dated May 29, 2009 and related materials.

IMPORTANT NOTICE: This press release is for informational purposes only and is not an offer to buy or the solicitation of an offer to sell any of the Company's preferred stock. The solicitation of offers to buy the Company's preferred stock will only be made pursuant to the offer to purchase, the letter of transmittal and related documents. Holders of preferred stock should read those materials carefully because they will contain important information, including the various terms of, and conditions to, the tender offer. Holders of Preferred Stock may obtain the offer to purchase, the letter of transmittal and related documents without charge from the Securities and Exchange Commission's Website at www.sec.gov or from our information agent, D.F. King and Co., at 48 Wall Street, New York, New York 10005; (800) 269-6427 (toll free). Holders of preferred stock are urged to read carefully those materials prior to making any decisions with respect to the tender offer.

About the Company

Impac Mortgage Holdings, Inc. which through its Long Term Investment Operations is primarily invested in non-conforming mortgage loans and to a lesser extent small balance commercial and multi-family loans.

For additional information, questions or comments, please call Justin Moisio in Investor Relations at (949) 475-3988 or email jmoisio@impaccompanies.com. Web site: www.impaccompanies.com

This press release contains forward-looking statements. These forward-looking statements are based on management's current expectations and are subject to uncertainty and changes in circumstance due to a number of factors, including but not limited to: the Company's ability to complete the Offer to Purchase and Consent Solicitation for all of its outstanding preferred stock; and other risk factors discussed in the company's Offering Circular and SEC reports, including its most recent quarterly report on Form 10-Q, and annual report on Form 10-K. 3. These forward-looking statements speak only as of the date on which they are made and, except as required by law, the Company does not intend to update such statements to reflect events or circumstances arising after such date.

EXCHANGE AGREEMENT

among

IMPAC MORTGAGE HOLDINGS, INC.

and

TABERNA PREFERRED FUNDING I, LTD.,

and

TABERNA PREFERRED FUNDING II, LTD.

Dated as of May 8, 2009

EXCHANGE AGREEMENT

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

R E C I T A L :

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

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

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

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

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

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

Simultaneously herewith, the Company and BNYM, as trustee (the "**New Indenture Trustee**") have entered into (i) that certain Junior Subordinated Indenture ("**New Indenture I**") pursuant to which the Company proposes to issue a Junior Subordinated Note due 2034 in the original principal amount of Thirty Million Two Hundred Forty-Four Thousand Dollars ($30,244,000) and (ii) that certain Junior Subordinated Indenture ("**New Indenture II,**" together with New Indenture I, the "**New Indentures**") pursuant to which the Company proposes to issue a Junior Subordinated Note due 2034 in the original principal amount of Thirty-One Million Seven Hundred Fifty-Six Thousand Dollars ($31,756,000). Pursuant to the New Indentures, the Company proposes to issue such Junior Subordinated Notes as follows (collectively, the "**Securities**"):

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

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

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

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

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

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

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

"**BNYM**" has the meaning set forth in the Recitals.

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

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

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

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

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

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

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

"**Delaware Trustee**" has the meaning set forth in the Recitals.

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

"**Environmental Laws**" shall have the correlative meaning.

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

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

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

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

"**Existing Indenture**" has the meaning set forth in the Recitals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Property Trustee**" has the meaning set forth in the Recitals.

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

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

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

"**Securities**" has the meaning set forth in the Recitals.

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

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

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

"**Significant Subsidiary**" means any Person wherein at least ten percent (10%) of the Equity Interests is owned, directly or indirectly, by the Company, including any subsidiary listed on Schedule 1 attached hereto. "**Significant Subsidiaries**" means, collectively, each and every Significant Subsidiary.

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

"**Taberna I**" has the meaning set forth in the Recitals.

"**Taberna II**" has the meaning set forth in the Recitals.

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

(i) the applicable Existing Indentures and Trust Agreements;

(ii) all amounts payable to such Taberna entity under the applicable Original Preferred Securities, the applicable Existing Indentures and/or the applicable Trust Agreements;

(iii) all claims (including "claims" as defined in Bankruptcy Code §101(5)), suits, causes of action, and any other right of Taberna, whether known or unknown, against the Company or any of its affiliates (including the Trust), agents, representatives, contractors, advisors, or any other entity that in any way is based upon, arises out of or is related to any of the foregoing, including all claims (including contract claims, tort claims, malpractice claims, and claims under any law governing the exchange of, purchase and sale of, or indentures for, securities), suits, causes of action, and any other right of Taberna against any attorney, accountant, financial advisor, or other entity arising under or in connection with the Original Preferred Securities, the Existing Indentures, the Trust Agreements or the transactions related thereto or contemplated thereby;

(iv) all guarantees and all collateral and security of any kind for or in respect of the foregoing;

(v) all cash, securities, or other property, and all setoffs and recoupments, to be received, applied, or effected by or for the account of Taberna under the Original Preferred Securities, other than fees, costs and expenses payable to Taberna hereunder and all cash, securities, interest, dividends, and other property that may be exchanged for, or distributed or collected with respect to, any of the foregoing; and

(vi) all proceeds of the foregoing.

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

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

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

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

"**Trust Agreements**" has the meaning set forth in the Recitals.

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

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

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

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

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

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

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

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

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

---

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

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

(viii) Intentionally Omitted.

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

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

(b) K&L Gates LLP, counsel for the Company (the "**Company Counsel**"), shall have delivered opinions with respect to each New Indenture and the related Operative Documents, dated the Closing Date, addressed to the Holders and its successors and assigns and to the New Indenture Trustee, in substantially the form set out in Annex A hereto and the Company shall have furnished to the Holders of the Securities a certificate signed by the Company's Chief Executive Officer, President, an Executive Vice President, Chief Financial Officer, Treasurer or Assistant Treasurer, dated the Closing Date, addressed to the applicable Holders of the Securities, in substantially the form set out in Annex D hereto. In rendering its opinions, the Company Counsel may rely as to factual matters upon certificates or other documents furnished by officers, directors and trustees of the Company and by government officials;

provided, however, that copies of any such certificates or documents are delivered to the Holders) and by and upon such other documents as such counsel may, in its reasonable opinion, deem appropriate as a basis for the Company Counsel's opinions. The Company Counsel may specify the jurisdictions in which they are admitted to practice and that they are not admitted to practice in any other jurisdiction and is not an expert in the law of any other jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Intentionally omitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) All of the issued and outstanding shares of capital stock of the Company and each of its subsidiaries are validly issued, fully paid and non-assessable; all of the issued and outstanding capital stock of each subsidiary of the Company is owned by the Company, directly or through

subsidiaries, free and clear of any Lien, claim or equitable right; and none of the issued and outstanding capital stock of the Company or any subsidiary was issued in violation of any preemptive or similar rights arising by operation of law, under the charter or by-laws of such entity or under any agreement to which the Company or any of its subsidiaries is a party.

(t) Except as set forth in Schedule 2, neither the Company nor any of its subsidiaries is (i) in violation of its respective charter or by-laws or similar organizational documents or (ii) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which the Company or any such subsidiary is a party or by which it or any of them may be bound or to which any of the property or assets of any of them is subject, except, in the case of clause (ii), where such violation or default would not, singly or in the aggregate, have a Material Adverse Effect.

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

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

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

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

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

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

---

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

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

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

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

(dd) Intentionally Omitted.

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

---

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

(g) Intentionally Omitted.

(h) Intentionally Omitted.

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

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

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

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

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

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

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

could be responsible.

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

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

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

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

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

(c) Intentionally Omitted.

(d) Intentionally Omitted.

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

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

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

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

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

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

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

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

---

and maturity date), which will be specified by the Holders of the Securities. In no event will the interest payment dates (and corresponding redemption date and maturity date) on the Replacement Securities vary by more than sixty (60) calendar days from the original interest payment dates (and corresponding redemption date and maturity date) under the Securities. The Company agrees to cooperate with all reasonable requests of the Holders of the Securities, as

applicable in connection with any of the foregoing, provided that no action requested of the Company in connection with such cooperation shall materially increase the obligations or materially decrease the rights of the Company pursuant to such documents.

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

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

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

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

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

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

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

---

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

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

AFORESAID COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

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

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

[Signature Page Follows]

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

IMPAC MORTGAGE HOLDINGS, INC.

By: /s/ Todd Taylor
Name: Todd Taylor
Title: CFO

(Signatures continue on the next page)

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

TABERNA PREFERRED FUNDING I, LTD.

By: /s/ Alasdair Foster
Name: Alasdair Foster
Title: Director

TABERNA PREFERRED FUNDING II, LTD.

By: /s/ Alasdair Foster
Name: Alasdair Foster
Title: Director

EXHIBIT A-1

Copy of Trust #3 Preferred Securities

A-1

EXHIBIT A-2

Copy of Trust #1 Preferred Securities

A-2

EXHIBIT B-1

Copy of Note 1

B-1

EXHIBIT B-2

EXHIBIT C

Notice Information

Taberna:

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

Impac Mortgage Holdings, Inc.:

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

SCHEDULE 1

List of Significant Subsidiaries

Impac Funding Corporation

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

Impac Warehouse Lending Group, Inc.

IMH Assets Corp.

Schedule 2

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

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

Schedule 3

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

ANNEX B

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

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

ANNEX C

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

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

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

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

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

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

ANNEX D

Officer's Financial Certificate

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

As of [Quarterly/Annual Financial Date], 20

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

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

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

The financial statements fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("GAAP"), the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the date, and for the **[**

quarter interim**]** **[**annual**]** period ended **[**date**]**, 20 , and such financial statements have been prepared in accordance with GAAP consistently applied throughout the period involved (expect as otherwise noted therein).

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

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

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

IMPAC MORTGAGE HOLDINGS, INC.

[company address]

Exhibit (d)(6)

JUNIOR SUBORDINATED INDENTURE

between

IMPAC MORTGAGE HOLDINGS, INC.

and

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

as Trustee

Dated as of May 8, 2009

TABLE OF CONTENTS

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

RECITALS OF THE COMPANY

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

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

NOW, THEREFORE, this Indenture Witnesseth:

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

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.1. *Definitions.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"*Calculation Agent*" has the meaning specified in Section 10.4.

"*Commission*" has the meaning specified in Section 7.3.

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

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

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

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

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

"*Defaulted Interest*" has the meaning specified in Section 3.1.

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

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

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

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

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

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

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

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

"*Expiration Date*" has the meaning specified in Section 1.4.

"*Fixed Rate Period"* shall mean the period commencing on May 8, 2009 and ending on March 29, 2018.

"*Fixed Rate"* means a fixed rate equal to (a) for the Interest Period ending on June 29, 2009, and for each Interest Period thereafter through and including the Interest Period ending on March 29, 2014, two percent (2.00%) per annum, (b) for the Interest Period commencing on March 30 2014 and for

each Interest Period thereafter through and including the Interest Period ending on March 29, 2015, three percent (3.00%) per annum, (c) from the Interest Period commencing on March 30, 2015 and for each Interest Period thereafter through and including the Interest Period ending on March 29, 2016, four percent (4.00%) per annum, (d) from the Interest Period commencing on March 30, 2016 and for each Interest Period thereafter through and including the Interest Period ending on March 29, 2017, five percent (5.00%) per annum, (e) from the Interest Period commencing on March 30, 2017 and for each Interest Period commencing on March 30, 2018 thereafter through and including the Interest Period ending on March 29, 2018, six percent (6.00%) per annum.

"*Floating Rate*" means for each Interest Period from and after March 30, 2018, through and including the Stated Maturity Date, a rate equal to LIBOR for the applicable Interest Period plus three and three quarters of one percent (3.75%) per annum.

"*GAAP*" means United States generally accepted accounting principles, consistently applied, from time to time in effect.

"*Global Security*" means a Security that evidences all or part of the Securities, the ownership and transfers of which shall be made through book entries by a Depositary.

"*Government Obligation*" means (a) any security that is (i) a direct obligation of the United States of America of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (b) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any Government Obligation that is specified in clause (a) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any

specific payment of principal of or interest on any Government Obligation that is so specified and held, provided, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

"*Holder*" or "*Holders*" means a Person or collectively all Persons in whose name a Security is registered in the Securities Register.

"*Indenture*" means this instrument as originally executed or as it may from time to time be amended or supplemented by one or more amendments or indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

"*Interest Payment Date*" means June 30, September 30, December 30 and March 30 of each year, commencing on June 30, 2009, during the term of this Indenture.

"*Interest Period*" means the period commencing on, and including, an Interest Payment Date and continuing through and including the day prior to the next succeeding Interest Payment Date.

"*Interest Rate*" means with respect to any Interest Period, either the Fixed Rate or Floating Rate in effect during such Interest Rate.

"*Investment Company Act*" means the Investment Company Act of 1940 or any successor statute thereto, in each case as amended from time to time.

"*Investment Company Event*" means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of the occurrence of a change in law or regulation (including any announced prospective change) or a written change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is more than an insubstantial risk that the Company is or, within ninety (90) days of the date of such opinion will be, considered an "investment company" that is required to be registered under the Investment Company Act, which change or prospective change becomes effective or would become effective, as the case may be, on or after the date of the issuance of the Securities.

"*LIBOR*" has the meaning specified in Schedule A.

"*LIBOR Business Day*" has the meaning specified in Schedule A.

"*LIBOR Determination Date*" has the meaning specified in Schedule A.

"*Maturity*," when used with respect to any Security, means the date on which the principal of such Security or any installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"*Notice of Default*" means a written notice of the kind specified in Section 5.1(c).

"*Officers' Certificate*" means a certificate signed by the Chairman of the Board, a Vice Chairman of the Board, the Chief Executive Officer, the President or a Vice President, and by the Chief Financial Officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company and delivered to the Trustee.

"*Opinion of Counsel*" means a written opinion of counsel, who may be counsel for or an employee of the Company or any Affiliate of the Company.

"*Optional Redemption Price*" has the meaning set forth in Section 11.1.

"*Original Issue Date*" means the date of original issuance of each Security.

"*Other Taxes*" has the meaning set forth in Section 3.11(c).

"*Outstanding*" means, when used in reference to any Securities, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent in trust for the Holders of such Securities; provided, that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities that have been paid or in substitution for or in lieu of which other Securities have been authenticated and delivered pursuant to the provisions of this Indenture, unless proof satisfactory to the Trustee is presented that any such Securities are held by Holders in whose hands such Securities are valid, binding and legal obligations of the Company;

provided, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company, if any, or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding unless the Company shall hold all Outstanding Securities, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

"*Paying Agent*" means the Trustee or any Person authorized by the Trustee (other than the Company or any Affiliate of the Company) to pay the principal of or any premium or interest on, or other amounts in respect of, any Securities on behalf of the Company.

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

"*Place of Payment*" means, with respect to the Securities, the Corporate Trust Office of the Trustee.

"*Predecessor Security*" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security. For the purposes of this definition, any security authenticated and delivered under Section 3.6 in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"*Proceeding*" has the meaning specified in Section 12.2 (b).

"*Redemption Date*" means, when used with respect to any Security to be redeemed, the date fixed for such redemption by or pursuant to this Indenture.

"*Redemption Price*" means, when used with respect to any Security to be redeemed, in whole or in part, the Special Redemption Price or the Optional Redemption Price, as applicable, at which such Security or portion thereof is to be redeemed as fixed by or pursuant to this Indenture.

"*Reference Banks*" has the meaning specified in Schedule A.

"*Regular Record Date*" for the interest payable on any Interest Payment Date with respect to the Securities means the date that is fifteen (15) days preceding such Interest Payment Date (whether or not a Business Day).

"*Responsible Officer*" means, when used with respect to the Trustee, the officer in the Global Corporate Trust department of the Trustee having direct responsibility for the administration of this Indenture.

"*Rights Plan*" means a plan of the Company providing for the issuance by the Company to all holders of its Equity Interests of rights entitling the holders thereof to subscribe for or purchase Equity Interests any class or series of Equity Interests in the Company which rights (i) are deemed to be transferred with such Equity Interests and (ii) are also issued in respect of future issuances of such Equity Interests, in each case until the occurrence of a specified event or events.

"*Securities*" or "*Security"* means any debt securities or debt security, as the case may be, authenticated and delivered under this Indenture.

"*Securities Act*" means the Securities Act of 1933 or any successor statute thereto, in each case as amended from time to time.

"*Securities Register*" and "*Securities Registrar*" have the respective meanings specified in Section 3.5.

"*Senior Debt*" means the principal of and any premium and interest on (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company, whether or not such claim for post-petition interest is allowed in such proceeding) all Debt of the Company, whether incurred on or prior to the date of this Indenture or thereafter incurred, unless it is provided in the instrument creating or evidencing the same or pursuant to which the same is outstanding, that such obligations are not superior in right of payment to the Securities issued under this Indenture provided, that Senior Debt shall not be deemed to include any (i) debt or (ii) other debt securities (and guarantees, if any, in respect of such debt securities) issued to any trust (or a trustee of any such trust), partnership or other entity affiliated with the Company that is a financing vehicle of the Company (a "financing entity") in connection with the issuance by such financing entity of equity securities or other securities, in each case of (i) or (ii) pursuant to an instrument that ranks pari passu with or junior in right of payment to this Indenture.

"*Series B Preferred Stock*" has the meaning set forth in Section 10.6(b).

"*Series C Preferred Stock*" has the meaning set forth in Section 10.6(b).

"*Special Event*" means the occurrence of an Investment Company Event or a Tax Event pursuant to Section 3.1.

"*Special Record Date*" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.1.

"*Special Redemption Price*" has the meaning set forth in Section 11.2.

"*Stated Maturity*" means March 30, 2034.

"*Subordinated Debt*" means any Debt that is subordinated in right of payment and security to the Securities.

"*Subsidiary*" of a Person means (a) any corporation more than fifty percent (50%) of the outstanding voting stock or other voting interest of which shall at the time be owned, directly or indirectly, by such Person and/or by one or more of its Subsidiaries or (b) any partnership, limited liability company, association, joint venture or similar business organization more than 50% of the ownership interests having ordinary voting power of which shall at the time be owned or Controlled, directly or indirectly, by such Person and/or by one or more of its Subsidiaries. For purposes of this definition, "voting stock" means stock that ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a Subsidiary of the Company.

"*Taberna*" means, initially, Taberna Capital Management, LLC, having and address at 450 Park Avenue, New York, New York 10022, Attn: Rafael Licht (or such other address and notice party so designated by Taberna Capital Management, LLC, and, after written notice from

the Holders delivered to the Trustee and the Company by Holders owning a majority in aggregate principal amount of Outstanding Securities, such successor representative of the Holders so designated in such notice; provided, there shall only be one such Holder's representative at any one time).

"*Tax Event*" means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of (a) any amendment to or change (including any announced prospective change) in the laws or any regulations thereunder of the United States or any political subdivision or taxing authority thereof or therein or (b) any judicial decision or any official administrative pronouncement (including any private letter ruling, technical advice memorandum or field service advice) or regulatory procedure, including any notice or announcement of intent to adopt any such pronouncement or procedure (an "*Administrative Action*"), regardless of whether such judicial decision or Administrative Action is issued to or in connection with a proceeding involving the Company and whether or not subject to review or appeal, which amendment, change, judicial decision or Administrative Action is enacted, promulgated or announced, in each case, on or after the date of issuance of the Securities, there is more than an insubstantial risk that interest payable by the Company on the Securities is not, or within ninety (90) days of the date of such opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes.

"*Trustee*" means the Person named as the "*Trustee*" in the first paragraph of this instrument, solely in its capacity as such and not in its individual capacity, until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and, thereafter, "*Trustee*" shall mean or include each Person who is then a Trustee hereunder.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939, as amended and as in effect on the date as of this Indenture.

SECTION 1.2. *Compliance Certificate and Opinions*.

(a) Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officers' Certificate stating that all conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, have been complied with.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificate provided pursuant to Section 10.3) shall include:

(i) a statement by each individual signing such certificate or opinion that such individual has read such covenant or condition and the definitions herein relating thereto;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions of such individual contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether, in the opinion of such individual, such condition or covenant has been complied with.

SECTION 1.3. *Forms of Documents Delivered to Trustee*.

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to matters upon which his or her certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to such matters are erroneous.

(c) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

(d) Whenever, subsequent to the receipt by the Trustee of any Board Resolution, Officers' Certificate, Opinion of Counsel or other document or instrument, a clerical, typographical or other inadvertent or unintentional error or omission shall be discovered therein, a new document or instrument may be substituted therefor in corrected form with the same force and effect as if originally received in the corrected form and, irrespective of the date or dates of the actual execution and/or delivery thereof, such substitute document or instrument shall be deemed to have been executed and/or delivered as of the date or dates required with respect to the document or instrument for which it is substituted. Without limiting the generality of the foregoing, any Securities issued under the authority of such defective document or instrument shall nevertheless be the valid obligations of the Company entitled to the benefits of this Indenture equally and ratably with all other Outstanding Securities.

SECTION 1.4. *Acts of Holders*.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given to or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent thereof duly appointed in writing; and, except as herein otherwise

expressly provided, such action shall become effective when such instrument or instruments (including any appointment of an agent) is or are delivered to the Trustee, and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.4.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him or her the execution thereof. Where such execution is by a Person acting in other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority. The fact and date of the execution by any Person of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine.

(c) The ownership of the Securities shall be proved by the Securities Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

(f) Except as set forth in paragraph (g) of this Section 1.4, the Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of the Securities. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; provided, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date (as defined in Section 1.4(h)) by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities in the manner set forth in Section 1.6.

(g) The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration or rescission or annulment thereof referred to in Section 5.2, (iii) any request to institute proceedings referred to in Section 5.7(b) or (iv) any direction referred to in Section 5.12. If any record date is set pursuant to this paragraph, the

Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; provided, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of the Securities in the manner set forth in Section 1.6.

(h) With respect to any record date set pursuant to paragraph (f) or (g) of this Section 1.4, the party hereto that sets such record date may designate any day as the "*Expiration Date*" and from time to time may change the Expiration Date to any earlier or later day; provided, that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of the Securities in the manner set forth in Section 1.6, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section 1.4, the party hereto that set such record date shall be deemed to have initially designated the ninetieth (90th) day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the one hundred eightieth (180th) day after the applicable record date.

SECTION 1.5. *Notices, Etc. to Trustee and Company*.

(a) Any request, demand, authorization, direction, notice, consent, waiver, Act of Holders, or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(i) the Trustee by any Holder, or the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with and received by the Trustee at its Corporate Trust Office, or

(ii) the Company by the Trustee, or any Holder shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, to the Company addressed to it at 19500 Jamboree Road, Irvine, CA 92612 or at any other address previously furnished in writing to the Trustee by the Company.

(b) The Trustee may, but is not required to, rely upon and comply with instructions and directions sent by email or facsimile, (or any other reasonable means of communication) by persons believed by the Trustee in good faith to be authorized to provide such instructions or direction; provided, however, that the Trustee may require such additional evidence, confirmation or certification from any such party or parties as the Trustee, in its reasonable discretion, deems necessary or advisable before acting or refraining from acting upon any such instruction or direction.

(c) The Trustee agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured email, facsimile transmission or other similar unsecured electronic methods; *provided*, however, that any Person providing such instructions or directions shall provide to the Trustee an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If such Person elects to give the Trustee email or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. Each Person providing instructions or directions to the Trustee hereunder agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting, in good faith, on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 1.6. *Notice to Holders; Waiver*.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first class, postage prepaid, to each Holder affected by such event to the address of such Holder as it appears in the Securities Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. If, by reason of the suspension of or irregularities in regular mail service or for any other reason, it shall be impossible or impracticable to mail notice of any event to Holders when said notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 1.7. *Effect of Headings and Table of Contents*.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction of this Indenture.

SECTION 1.8. *Successors and Assigns*.

This Indenture shall be binding upon and shall inure to the benefit of any successor to the Company and the Trustee, including any successor by operation of law. Except in connection with a transaction involving the Company that is permitted under Article VIII and pursuant to which the assignee agrees in writing to perform the Company's obligations hereunder, the Company shall not assign its obligations hereunder.

SECTION 1.9. *Separability Clause*.

If any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

SECTION 1.10. *Benefits of Indenture*.

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors and assigns, the holders of Senior Debt and the Holders of the Securities and any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 1.11. *Governing Law*.

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

SECTION 1.12. *Submission to Jurisdiction*.

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

SECTION 1.13. *Non-Business Days*.

If any Interest Payment Date, Redemption Date or Stated Maturity of any Security shall not be a Business Day, then (notwithstanding any other provision of this Indenture or the Securities) payment of interest, premium, if any, or principal or other amounts in respect of such Security shall not be made on such date, but shall be made on the next succeeding Business Day

(and no interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, until such next succeeding Business Day) except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the Interest Payment Date or Redemption Date or at the Stated Maturity.

ARTICLE II
SECURITY FORMS

SECTION 2.1. *Form of Security*.

Any Security issued hereunder shall be in substantially the following form:

IMPAC MORTGAGE HOLDINGS, INC.

Junior Subordinated Note due 2034

No.

$31,756,000

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

During the Fixed Rate Period, the amount of interest shall be computed on the basis of a 360-day year of twelve 30-day months and the amount payable for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any Interest Period will be computed on the basis of a 360 day year and the actual number of days

elapsed in the relevant Interest Period. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities not less than ten (10) days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

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

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

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

[FORM OF REVERSE OF SECURITY]

This Security is one of a duly authorized issue of securities of the Company (the "*Securities*") issued under the Junior Subordinated Indenture, dated as of May 8, 2009 (the

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

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

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

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

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

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

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

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is restricted to transfers to "Qualified Purchasers" (as such term is defined in the Investment Company Act of 1940, as amended), and is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar and duly executed by, the Holder hereof or such Holder's attorney duly authorized in writing, and thereupon one or more new Securities, of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

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

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

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

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

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

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

IMPAC MORTGAGE HOLDINGS, INC.

By: _____
Name:
Title:

SECTION 2.2. *Restricted Legend.*

(a) Any Security issued hereunder shall bear a legend in substantially the following form:

"**[IF THIS SECURITY IS A GLOBAL SECURITY INSERT:** THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY ("DTC") OR A NOMINEE OF DTC. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

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

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

THE SECURITIES WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN BLOCKS HAVING AN AGGREGATE PRINCIPAL AMOUNT OF NOT LESS THAN $100,000. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY ATTEMPTED TRANSFER OF

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

THE HOLDER OF THIS SECURITY, OR ANY INTEREST THEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF ALSO AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH A "PLAN"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS SECURITY OR ANY INTEREST THEREIN. ANY PURCHASER OR HOLDER OF THE SECURITIES OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF SECTION 3(3) OF ERISA, OR A PLAN TO WHICH SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF AN EMPLOYEE BENEFIT PLAN OR PLAN, OR ANY OTHER PERSON OR ENTITY USING THE ASSETS OF ANY EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE."

(b) The above legends shall not be removed from any Security unless there is delivered to the Company satisfactory evidence, which may include an Opinion of Counsel, as may be reasonably required to ensure that any future transfers thereof may be made without restriction under or violation of the provisions of the Securities Act and other applicable law.

Upon provision of such satisfactory evidence, the Company shall execute and deliver to the Trustee, and the Trustee shall deliver, upon receipt of a Company Order directing it to do so, a Security that does not bear the legend.

SECTION 2.3. *Form of Trustee's Certificate of Authentication.*

The Trustee's certificate of authentication shall be in substantially the following form:

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

Dated:

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

By: _____
Authorized signatory

SECTION 2.4. *Temporary Securities.*

(a) Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

(b) If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for the definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for that purpose without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of any authorized denominations having the same Original Issue Date and Stated Maturity and having the same terms as such temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

SECTION 2.5. *Definitive Securities.*

The Securities issued on the Original Issue Date shall be in definitive form. The definitive Securities shall be printed, lithographed or engraved, or produced by any combination of these methods, if required by any securities exchange on which the Securities may be listed, on a steel engraved border or steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

ARTICLE III

THE SECURITIES

SECTION 3.1. *Payment of Principal and Interest.*

(a) The unpaid principal amount of the Securities shall bear interest at the applicable Fixed Rate through the Interest Payment Date in March, 2018 and thereafter at the applicable Floating Rate until paid or duly provided for, such interest to accrue from May 8, 2009 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, and any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at the Fixed Rate through the Fixed Rate Period, and thereafter at the Floating Rate, compounded quarterly from the dates such amounts are due until they are paid or funds for the payment thereof are made available for payment.

(b) Interest and Additional Interest on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, except that interest and any Additional Interest payable on the Stated Maturity (or any date of principal repayment upon early maturity) of the principal of a Security or on a Redemption Date shall be paid to the Person to whom principal is paid. The initial payment of interest on any Security that is issued between a Regular Record Date and the related Interest Payment Date shall be payable as provided in such Security.

(c) Any interest on any Security that is due and payable, but is not timely paid or duly provided for, on any Interest Payment Date for the Securities (herein called "*Defaulted Interest*") shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in paragraph (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on a special record date for the payment of such Defaulted Interest (a "*Special Record Date*"), which shall be fixed in the following manner. At least thirty (30) days prior to the date of the proposed payment, the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest, which shall be not more than fifteen (15) days and not less than ten (10) days prior to the date of the proposed payment and not less

than ten (10) days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class, postage prepaid, to each Holder of a Security at the address of such Holder as it appears in the Securities Register not less than ten (10) days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered on such Special Record Date; or

(ii) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Securities may be listed, traded or quoted, and, upon such notice as may be required by such exchange or automated quotation system (or by the Trustee if the Securities are not listed), if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such payment shall be deemed practicable by the Trustee.

(d) Payments of interest on the Securities shall include interest accrued to but excluding the respective Interest Payment Dates. During the Fixed Rate Period, the amount of interest payable for any Interest Period for the Securities shall be computed and paid on the basis of a 360-day year of twelve 30-day months and the amount payable for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any Interest Period will be computed on the basis of a 360 day year and the actual number of days elapsed in the relevant Interest Period.

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

(f) Subject to the foregoing provisions of this Section 3.1, each Security delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Security.

SECTION 3.2. *Denominations.*

The Securities shall be in registered form without coupons and shall be issuable in minimum denominations of $100,000 and any integral multiple of $1,000 in excess thereof.

SECTION 3.3. *Execution, Authentication, Delivery and Dating.*

(a) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver the Securities in an aggregate principal amount (including all then Outstanding Securities) not in excess of Thirty-One Million Seven Hundred Fifty-Six Thousand Dollars ($31,756,000) executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and shall be fully protected in relying upon:

(i) a copy of any Board Resolution relating thereto; and

(ii) an Opinion of Counsel stating that: (1) such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute, and the Indenture constitutes, valid and legally binding obligations of the Company, each enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles; (2) the Securities have been duly authorized and executed by the Company and have been delivered to the Trustee for authentication in accordance with this Indenture; (3) the Securities are not required to be registered under the Securities Act; and (4) the Indenture is not required to be qualified under the Trust Indenture Act.

(b) The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its President or one of its Vice Presidents. The signature of any of these officers on the Securities may be manual or facsimile. Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

(c) No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by the manual signature of one of its authorized signatories, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 3.8, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

(d) Each Security shall be dated the date of its authentication.

SECTION 3.4. *Global Securities.*

(a) Upon the election of the Holder after the Original Issue Date, which election need not be in writing, the Securities owned by such Holder shall be issued in the form of one or more Global Securities registered in the name of the Depositary or its nominee. Each Global Security issued under this Indenture shall be registered in the name of the Depositary designated by the Company for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for registered Securities, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (i) such Depositary advises the Trustee and the Company in writing that such Depositary is no longer willing or able to properly discharge its responsibilities as Depositary with respect to such Global Security, and no qualified successor is appointed by the Company within ninety (90) days of receipt by the Company of such notice, (ii) such Depositary ceases to be a clearing agency registered under the Exchange Act and no successor is appointed by the Company within ninety (90) days after obtaining knowledge of such event, (iii) the Company executes and delivers to the Trustee a Company Order stating that the Company elects to terminate the book-entry system through the Depositary or (iv) an Event of Default shall have occurred and be continuing. Upon the occurrence of any event specified in clause (i), (ii), (iii) or (iv) above, the Trustee shall notify the Depositary and instruct the Depositary to notify all owners of beneficial interests in such Global Security of the occurrence of such event and of the availability of Securities to such owners of beneficial interests requesting the same. The Trustee may conclusively rely, and be protected in relying, upon the written identification of the owners of beneficial interests furnished by the Depositary, and shall not be liable for any delay resulting from a delay by the Depositary. Upon the issuance of such Securities and the registration in the Securities Register of such Securities in the names of the Holders of the beneficial interests therein, the Trustees shall recognize such holders of beneficial interests as Holders.

(c) If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, then either (i) such Global Security shall be so surrendered for exchange or cancellation as provided in this Article III or (ii) the principal amount thereof shall be reduced or increased by an amount equal to (x) the portion thereof to be so exchanged or canceled, or (y) the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Securities Registrar, whereupon the Trustee, in accordance with the Applicable Depositary Procedures, shall instruct the Depositary or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security by the Depositary,

accompanied by registration instructions, the Company shall execute and the Trustee shall authenticate and deliver any Securities issuable in exchange for such Global Security (or any portion thereof) in accordance with the instructions of the Depositary. The Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

(d) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depositary for such Global Security or a nominee thereof.

(e) The Depositary or its nominee, as the registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under this Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Depositary Procedures. Accordingly, any such owner's beneficial interest in a Global Security shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Depositary Participants. The Securities Registrar and the Trustee shall be entitled to deal with the Depositary for all purposes of this Indenture relating to a Global Security (including the payment of principal and interest thereon and the giving of instructions or directions by owners of beneficial interests therein and the giving of notices) as the sole Holder of the Security and shall have no obligations

to the owners of beneficial interests therein. Neither the Trustee nor the Securities Registrar shall have any liability in respect of any transfers effected by the Depositary.

(f) The rights of owners of beneficial interests in a Global Security shall be exercised only through the Depositary and shall be limited to those established by law and agreements between such owners and the Depositary and/or its Depositary Participants.

(g) No holder of any beneficial interest in any Global Security held on its behalf by a Depositary shall have any rights under this Indenture with respect to such Global Security, and such Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. None of the Company, the Trustee nor any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or maintaining, supervising or reviewing any records relating to such beneficial ownership interests. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by a Depositary or impair, as between a Depositary and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depositary (or its nominee) as Holder of any Security.

SECTION 3.5. *Registration, Transfer and Exchange Generally.*

(a) The Trustee shall cause to be kept at the Corporate Trust Office a register (the "*Securities Register*") in which the registrar and transfer agent with respect to the Securities (the "*Securities Registrar*"), subject to such reasonable regulations as it may prescribe, shall provide

for the registration of Securities and of transfers and exchanges of Securities. The Trustee shall at all times also be the Securities Registrar. The provisions of Article VI shall apply to the Trustee in its role as Securities Registrar.

(b) Subject to compliance with Section 2.2(b), upon surrender for registration of transfer of any Security at the offices or agencies of the Company designated for that purpose the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations of like tenor and aggregate principal amount.

(c) At the option of the Holder, Securities may be exchanged for other Securities of any authorized denominations, of like tenor and aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

(d) All Securities issued upon any transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such transfer or exchange.

(e) Every Security presented or surrendered for transfer or exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar, duly executed by the Holder thereof or such Holder's attorney duly authorized in writing.

(f) No service charge shall be made to a Holder for any transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities.

(g) Neither the Company nor the Trustee shall be required pursuant to the provisions of this Section 3.5 (g): (i) to issue, register the transfer of or exchange any Security during a period beginning at the opening of business fifteen (15) days before the day of selection for redemption of Securities pursuant to Article XI and ending at the close of business on the day of mailing of the notice of redemption or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except, in the case of any such Security to be redeemed in part, any portion thereof not to be redeemed.

(h) The Company shall designate an office or offices or agency or agencies where Securities may be surrendered for registration or transfer or exchange. The Company initially designates the Corporate Trust Office as its office and agency for such purposes. The Company shall give prompt written notice to the Trustee and to the Holders of any change in the location of any such office or agency.

(i) The Securities may only be transferred to the Company or a "Qualified Purchaser" as such term is defined in Section 2(a)(51) of the Investment Company Act.

(j) Neither the Trustee nor the Securities Registrar shall be responsible for ascertaining whether any transfer hereunder complies with the registration provisions of or any exemptions from the Securities Act, applicable state securities laws or the applicable laws of any other jurisdiction, ERISA, the United States Internal Revenue Code of 1986, as amended, or the Investment Company Act; provided, that if a certificate is specifically required by the express terms of this Section 3.5 to be delivered to the Trustee or the Securities Registrar by a Holder or transferee of a Security, the Trustee and the Securities Registrar shall be under a duty to receive and examine the same to determine whether or not the certificate substantially conforms on its face to the requirements of this Indenture and shall promptly notify the party delivering the same if such certificate does not comply with such terms.

SECTION 3.6. *Mutilated, Destroyed, Lost and Stolen Securities.*

(a) If any mutilated Security is surrendered to the Trustee together with such security or indemnity as may be required by the Trustee to save the Company and the Trustee harmless, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and aggregate principal amount and bearing a number not contemporaneously outstanding.

(b) If there shall be delivered to the Trustee (i) evidence to its satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by it to save each of the Company and the Trustee harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a *bona fide* purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and aggregate principal amount as such destroyed, lost or stolen Security, and bearing a number not contemporaneously outstanding.

(c) If any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

(d) Upon the issuance of any new Security under this Section 3.6, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(e) Every new Security issued pursuant to this Section 3.6 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

(f) The provisions of this Section 3.6 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 3.7. *Persons Deemed Owners.*

The Company, the Trustee and any agent of the Company or the Trustee shall treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any interest on such Security and for all other purposes whatsoever, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 3.8. *Cancellation.*

All Securities surrendered for payment, redemption, transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Securities surrendered directly to the Trustee for any such purpose shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section 3.8, except as expressly permitted by this Indenture. All canceled Securities shall be retained or disposed of by the Trustee in accordance with its customary practices and the Trustee shall deliver to the Company a certificate of such disposition.

SECTION 3.9. *Reserved.*

SECTION 3.10. *Reserved.*

SECTION 3.11. *Agreed Tax Treatment.*

(a) Each Security issued hereunder shall provide that the Company and, by its acceptance or acquisition of a Security or a beneficial interest therein, the Holder of, and any Person that acquires a direct or indirect beneficial interest in, such Security, intend and agree to treat such Security as indebtedness of the Company for United States Federal, state and local tax purposes. The provisions of this Indenture shall be interpreted to further this intention and agreement of the parties.

(b) Any and all payments by or for the account of the Holders, or in respect of the Securities, shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding net income taxes and franchise taxes imposed on (or measured by) net income imposed on any Holder, or any other recipient of any payment to be made by or on account of any obligation of the Company hereunder as a result of a present or former connection between such Person and the jurisdiction imposing such tax levy, impost or withholding or any political subdivision or taxing authority thereof or therein, other than any such connection arising solely from such Holder having executed, delivered or performed its obligations or received a payment under, or enforced, the Securities (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities in respect of payments hereunder or under the Securities being hereinafter referred to as "*Taxes*"). If any Holder shall be required by law to deduct or withhold any Taxes from or in respect of any sum payable hereunder or under any Security, (i) the sum payable by the Company shall be increased as may be necessary so that after the

Company and such Holder, as the case may be, have made all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 3.11) such Holder receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the Company shall make all such deductions or withholdings, and (iii) the Company shall pay the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with applicable law.

(c) In addition, the Company shall pay to the relevant taxing authority in accordance with applicable law, and indemnify and hold the Holders harmless from, any present or future stamp, documentary, excise, property or similar taxes, charges or levies that arise from any payment made hereunder or under the Securities or from the execution, delivery or registration of, performance under, or otherwise with respect to, this Indenture or the Securities (hereinafter referred to as "*Other Taxes*").

(d) The Company shall indemnify each Holder for and hold each Holder harmless against the full amount of Taxes and Other Taxes, and for the full amount of Taxes and Other Taxes of any kind imposed by any jurisdiction on amounts payable under this Section 3.11, imposed on or paid by

any such Holder and any liability (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto. This indemnification shall be made within thirty (30) days from the date any such Holder makes written demand therefor.

(e) Within thirty (30) days after the date of any payment of Taxes, the Company shall furnish to any such Holder the original or a certified copy of a receipt evidencing such payment.

SECTION 3.12. *CUSIP Numbers.*

The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption and other similar or related materials as a convenience to Holders; *provided*, that any such notice or other materials may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption or other materials and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers.

SECTION 3.13 *Shareholders Communications Act*

(a) With respect to securities under and as defined in the Shareholders Communications Act of 1985 (the "SCA") issued in the United States, the SCA requires the Trustee to disclose to the issuers, upon their request, the name, address and securities position of its customers who are (i) the "beneficial owners" (as defined in the SCA) of the issuer's securities, if the beneficial owner does not object to such disclosure, or (ii) acting as a "respondent bank" (as defined in the SCA) with respect to the securities. (Under the SCA, "respondent banks" do not have the option of objecting to such disclosure upon the issuers' request.) The SCA defines a "beneficial owner" as any person who has, or shares, the power to vote a security (pursuant to an agreement or otherwise), or who directs the voting of a security.

The SCA defines a "respondent bank" as any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with a bank, such as Trustee. Under the SCA, each Holder is either the "beneficial owner" or a "respondent bank."

(b) For Purposes of this Indenture, until Trustee receives a contrary written instruction from a Holder, Trustee shall assume that such Holder is the beneficial owner of the Securities.

(c) For purposes of this Indenture, until Trustee receives a contrary instruction from a Holder, Trustee shall release the name, address and securities position to the Issuer, if the Issuer requests such information pursuant to the SCA for the specific purpose of direct communications between such Issuer and such Holder. With respect to securities issued outside of the United States, if applicable, information shall be released to issuers only if required by law or regulation of the particular country in which the securities are located.

ARTICLE IV

SATISFACTION AND DISCHARGE

SECTION 4.1. *Satisfaction and Discharge of Indenture.*

This Indenture shall, upon Company Request, cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for and as otherwise provided in this Section 4.1) and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) either

(i) all Securities theretofore authenticated and delivered (other than (A) Securities that have been mutilated, destroyed, lost or stolen and that have been replaced or paid as provided in Section 3.6 and (B) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided in Section 10.2) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee for cancellation

(A) have become due and payable, or

(B) will become due and payable at their Stated Maturity within one year of the date of deposit, or

(C) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of subclause (ii)(A), (B) or (C) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose (x) an amount in the currency or currencies in which the Securities are payable, (y) Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount or (z) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest (including any Additional Interest) to the date of

such deposit (in the case of Securities that have become due and payable) or to the Stated Maturity (or any date of principal repayment upon early maturity) or Redemption Date, as the case may be;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.6, the obligations of the Company to any Authenticating Agent under Section 6.11 and, if money shall have been deposited with the Trustee pursuant to subclause (a)(ii) of this Section 4.1, the obligations of the Trustee under Section 4.2 and Section 10.2(e) shall survive.

SECTION 4.2. *Application of Trust Money.*

Subject to the provisions of Section 10.2(d), all money deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by the Trustee, in accordance with the provisions of the Securities and this Indenture, to the payment in accordance with Section 3.1, either directly or through any Paying Agent as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest (including any Additional Interest) for the payment of which such money or obligations have been deposited with or received by the Trustee. Moneys held by the Trustee under this Section 4.2 shall not be subject to the claims of holders of Senior Debt under Article XII.

ARTICLE V

REMEDIES

SECTION 5.1. *Events of Default.*

"*Event of Default*" means, wherever used herein with respect to the Securities, any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any interest upon any Security, including any Additional Interest in respect thereof, when it becomes due and payable, and continuance of such default for a period of thirty (30) days;

(b) default in the payment of the principal of or any premium on any Security at its Maturity;

(c) except as otherwise set forth in this Section 5.1, default in the performance, or breach, of any representation, covenant or warranty of the Company in this Indenture or the Exchange Agreement and continuance of such default or breach for a period of thirty (30) days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least twenty five percent (25%) in aggregate principal amount of the Outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(d) the entry by a court having jurisdiction in the premises of a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of sixty (60) consecutive days;

(e) the institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by the Company to the institution of bankruptcy or insolvency proceedings against it, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt or insolvent, or the taking of corporate action by the Company in furtherance of any such action;

(f) default in the performance or breach of any covenant or warranty of the Company set forth in Sections 10.5 and 10.6 and continuance of such default or breach for a period of fifteen (15) days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least twenty five percent (25%) in aggregate principal amount of the Outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(g) default under that certain Junior Subordinated Indenture ("*Indenture I*") and other agreements related thereto, dated concurrently herewith, by and among the Company and the Trustee, whereby the Company has agreed to issue a Junior Subordinated Note due 2034 in the original principal amount of Thirty Million Two Hundred Forty-Four Thousand Dollars ($30,244,000) under the terms and conditions set forth in Indenture I.

SECTION 5.2. *Acceleration of Maturity; Rescission and Annulment.*

(a) If an Event of Default occurs and is continuing, then and in every such case the Trustee or the Holders of not less than twenty five percent (25%) in aggregate principal amount of the Outstanding Securities may declare the principal amount of all the Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration the principal amount of and the accrued interest (including any Additional Interest) on all the Securities shall become immediately due and payable.

(b) At any time after such a declaration of acceleration with respect to Securities has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in this Article V, the Holders of a majority in aggregate principal amount of the Outstanding Securities, by written notice to the Trustee, may rescind and annul such declaration and its consequences if:

(i) the Company has paid or deposited with the Trustee a sum sufficient to pay:

(A) all overdue installments of interest on all Securities,

(B) any accrued Additional Interest on all Securities,

(C) the principal of and any premium on any Securities that have become due otherwise than by such declaration of acceleration and interest (including any Additional Interest) thereon at the rate borne by the Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(ii) all Events of Default with respect to Securities, other than the non-payment of the principal of Securities that has become due solely by such acceleration, have been cured or waived as provided in Section 5.13;

No such rescission shall affect any subsequent default or impair any right consequent thereon.

SECTION 5.3. *Collection of Indebtedness and Suits for Enforcement by Trustee.*

(a) The Company covenants that if:

(i) default is made in the payment of any installment of interest (including any Additional Interest) on any Security when such interest becomes due and payable and such default continues for a period of thirty (30) days, or

(ii) default is made in the payment of the principal of and any premium on any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium and interest (including any Additional Interest) and, in addition thereto, all amounts owing the Trustee under Section 6.6.

(b) If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

(c) If an Event of Default with respect to Securities occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 5.4. *Trustee May File Proofs of Claim.*

In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or similar judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized hereunder in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to first pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6.

SECTION 5.5. *Trustee May Enforce Claim Without Possession of Securities.*

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, subject to Article XII and after provision for the payment of all the amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

SECTION 5.6. *Application of Money Collected.*

Any money or property collected or to be applied by the Trustee with respect to the Securities pursuant to this Article V shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money or property on account of principal or any premium or

interest (including any Additional Interest), upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee, any predecessor Trustee and other Persons under Section 6.6;

SECOND: To the payment of all Senior Debt of the Company if and to the extent required by Article XII;

THIRD: Subject to Article XII, to the payment of the amounts then due and unpaid upon the Securities for principal and any premium and interest (including any Additional Interest) in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and any premium and interest (including any Additional Interest), respectively; and

FOURTH: The balance, if any, to the Person or Persons entitled thereto.

SECTION 5.7. *Limitation on Suits.*

Subject to Section 5.8, no Holder of any Securities shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a custodian, receiver, assignee, trustee, liquidator, sequestrator (or other similar official) or for any other remedy hereunder, unless:

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities;

(b) the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding for sixty (60) days; and

(e) no direction inconsistent with such written request has been given to the Trustee during such sixty (60)-day period by the Holders of a majority in aggregate principal amount of the Outstanding Securities;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Securities, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

SECTION 5.8. *Unconditional Right of Holders to Receive Principal, Premium, if any, and Interest.*

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium on such Security at its Maturity and payment of interest (including any Additional Interest) on such Security when due and payable and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

SECTION 5.9. *Restoration of Rights and Remedies.*

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or such Holder then and in every such case the Company, the Trustee and such Holders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and such Holder shall continue as though no such proceeding had been instituted.

SECTION 5.10. *Rights and Remedies Cumulative.*

Except as otherwise provided in Section 3.6(f), no right or remedy herein conferred upon or reserved to the Trustee or the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 5.11. *Delay or Omission Not Waiver.*

No delay or omission of the Trustee or any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or

constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article V or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or the Holders as the case may be.

SECTION 5.12. *Control by Holders.*

The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; *provided*, that:

(a) such direction shall not be in conflict with any rule of law or with this Indenture,

(b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction, and

(c) subject to the provisions of Section 6.2, the Trustee shall have the right to decline to follow such direction if a Responsible Officer or Officers of the Trustee shall, in good faith, reasonably determine that the proceeding so directed would be unjustly prejudicial to the Holders not joining in any such direction or would involve the Trustee in personal liability.

SECTION 5.13. *Waiver of Past Defaults.*

(a) The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities may waive any past Event of Default hereunder and its consequences except an Event of Default:

(i) in the payment of the principal of or any premium or interest (including any Additional Interest) on any Outstanding Security (unless such Event of Default has been cured and the Company has paid to or deposited with the Trustee a sum sufficient to pay all installments of interest (including any Additional Interest) due and past due and all principal of and any premium on all Securities due otherwise than by acceleration), or

(ii) in respect of a covenant or provision hereof that under Article IX cannot be modified or amended without the consent of each Holder of any Outstanding Security.

(b) Any such waiver shall be deemed to be on behalf of the Holders of all the Outstanding Securities.

(c) Upon any such waiver, such Event of Default shall cease to exist and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

SECTION 5.14. *Undertaking for Costs.*

All parties to this Indenture agree, and each Holder of any Security by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.14 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than ten percent (10%) in aggregate principal amount of the Outstanding Securities, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or any premium on the Security after the Stated Maturity or any interest (including any Additional Interest) on any Security after it is due and payable.

SECTION 5.15. *Waiver of Usury, Stay or Extension Laws.*

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VI

THE TRUSTEE

SECTION 6.1. *Corporate Trustee Required.*

There shall at all times be a Trustee hereunder with respect to the Securities. The Trustee shall be a corporation or national banking association organized and doing business under the laws of the United States or of any state thereof, authorized to exercise corporate trust powers, having a combined capital and surplus of at least $50,000,000, subject to supervision or examination by Federal or state authority and having an office within the United States. If such entity publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then, for the purposes of this Section 6.1, the combined capital and surplus of such entity shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.1, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VI.

SECTION 6.2. *Certain Duties and Responsibilities.*

Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; *provided*, that in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they substantially conform on their face to the requirements of this Indenture.

(b) If an Event of Default known to the Trustee has occurred and is continuing, the Trustee shall, prior to the receipt of directions, if any, from the Holders of at least a majority in aggregate principal amount of the Outstanding Securities, exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.2. To the extent that, at law or in equity, the Trustee has duties and liabilities relating to the Holders, the Trustee shall not be liable to any Holder for the Trustee's good faith reliance on the provisions of this Indenture. The provisions of this Indenture, to the extent that they restrict the duties and liabilities of the Trustee otherwise existing at law or in equity, are agreed by the Company and the Holders to replace such other duties and liabilities of the Trustee.

(d) No provisions of this Indenture shall be construed to relieve the Trustee from liability with respect to matters that are within the authority of the Trustee under this Indenture for its own negligent action, negligent failure to act or willful misconduct, except that:

(i) the Trustee shall not be liable for any error or judgment made in good faith by an authorized officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of at least a majority in aggregate principal amount of the Outstanding Securities; and

(iii) the Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company and money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law.

SECTION 6.3. *Notice of Defaults.*

Within ninety (90) days after the occurrence of any default actually known to the Trustee, the Trustee shall give the Holders notice of such default unless such default shall have been cured or waived; *provided*, that except in the case of a default in the payment of the principal of or any premium or interest on any Securities, the Trustee shall be fully protected in withholding the notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that withholding the notice is in the interest of holders of Securities; and *provided*, *further*, that in the case of any default of the character specified in Section 5.1(c), no such notice to Holders shall be given until at least thirty (30) days after the occurrence thereof. For the purpose of this Section 6.3, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

SECTION 6.4. *Certain Rights of Trustee.*

Subject to the provisions of Section 6.2:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting in good faith and in accordance with the terms hereof upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) if (i) in performing its duties under this Indenture the Trustee is required to decide between alternative courses of action, (ii) in construing any of the provisions of this Indenture the Trustee finds ambiguous or inconsistent with any other provisions contained herein or (iii) the Trustee is unsure of the application of any provision of this Indenture, then, except as to any matter as to which the Holders are entitled to decide under the terms of this Indenture, the Trustee shall deliver a notice to the Company requesting the Company's written instruction as to the course of action to be taken and the Trustee shall take such action, or refrain from taking such action, as the Trustee shall be instructed in writing to take, or to refrain from taking, by the Company; *provided*, that if the Trustee does not receive such instructions from the Company within ten (10) Business Days after it has delivered such notice or such reasonably shorter period of time set forth in such notice the Trustee may, but shall be under no duty to, take such action, or refrain from taking such action, as the Trustee shall deem advisable and in the best interests of the Holders, in which event the Trustee shall have no liability except for its own negligence, bad faith or willful misconduct;

(c) any request or direction of the Company shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(d) the Trustee may consult with counsel (which counsel may be counsel to the Trustee, the Company or any of its Affiliates, and may include any of its employees) and the

advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction, including reasonable advances as may be requested by the Trustee;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, indenture, note or other paper or document, but the Trustee in its discretion may make such inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent, attorney, custodian or nominee appointed with due care by it hereunder;

(h) whenever in the administration of this Indenture the Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action with respect to enforcing any remedy or right hereunder, the Trustee (i) may request instructions from the Holders (which instructions may only be given by the Holders of the same aggregate principal amount of Outstanding Securities as would be entitled to direct the Trustee under this Indenture in respect of such remedy, right or action), (ii) may refrain from enforcing such remedy or right or taking such action until such instructions are received and (iii) shall be protected in acting in accordance with such instructions;

(i) except as otherwise expressly provided by this Indenture, the Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Indenture;

(j) without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with any bankruptcy, insolvency or other proceeding referred to in clauses (d) or (e) of the definition of Event of Default, such expenses (including legal fees and expenses of its agents and counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy laws or law relating to creditors rights generally;

(k) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate addressing such matter, which, upon receipt of such request, shall be promptly delivered by the Company;

(l) the Trustee shall not be charged with knowledge of any Event of Default unless either (i) a Responsible Officer of the Trustee shall have actual knowledge or (ii) the Trustee shall have received written notice thereof from the Company or a Holder; and

(m) in the event that the Trustee is also acting as Paying Agent, Authenticating Agent or Securities Registrar hereunder, the rights and protections afforded to the Trustee pursuant to this Article VI shall also be afforded such Paying Agent, Authenticating Agent, or Securities Registrar.

SECTION 6.5. *May Hold Securities.*

The Trustee, any Authenticating Agent, any Paying Agent, any Securities Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Securities Registrar or such other agent.

SECTION 6.6. *Compensation; Reimbursement; Indemnity*

(a) The Company agrees:

(i) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder in such amounts as the Company and the Trustee shall agree from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, bad faith or willful misconduct; and

(iii) to the fullest extent permitted by applicable law, to indemnify the Trustee and its Affiliates, and their officers, directors, shareholders, agents, representatives and employees for, and to hold them harmless against, any loss, damage, liability, tax (other than income, franchise or other taxes imposed on amounts paid pursuant to (i) or (ii) hereof), penalty, expense or claim of any kind or nature whatsoever incurred without negligence, bad faith or willful misconduct on its part arising out of or in connection with the acceptance or administration of this trust or the performance of the Trustee's duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

(b) To secure the Company's payment obligations in this Section 6.6, the Company hereby grants and pledges to the Trustee and the Trustee shall have a lien prior to the Securities

on all money or property held or collected by the Trustee, other than money or property held in trust to pay principal and interest on particular Securities. Such lien shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee.

(c) The obligations of the Company under this Section 6.6 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal of the Trustee.

(d) In no event shall the Trustee be liable for any indirect, special, punitive or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(e) In no event shall the Trustee be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Indenture.

SECTION 6.7. *Resignation and Removal; Appointment of Successor.*

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article VI shall become effective until the acceptance of appointment by the successor Trustee under Section 6.8.

(b) The Trustee may resign at any time by giving written notice thereof to the Company.

(c) The Trustee may be removed by the Act of the Holders of at least a majority in aggregate principal amount of the Outstanding Securities, delivered to the Trustee and the Company.

(d) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any reason, the Holders of the Outstanding Securities shall promptly appoint a successor Trustee, and such successor Trustee and the retiring Trustee shall comply with the applicable requirements of Section 6.8. If no successor Trustee shall have been so appointed by the Holders and accepted appointment within sixty (60) days after the giving of a notice of resignation by the Trustee or the removal of the Trustee in the manner required by Section 6.8, any Holder who has been a bona fide Holder of a Security for at least six months (or, if the Securities have been Outstanding for less than six (6) months, the entire period of such lesser time) may, on behalf of such Holder and all others similarly situated, and any resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee.

SECTION 6.8. *Acceptance of Appointment by Successor.*

(a) In case of the appointment hereunder of a successor Trustee, each successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of

the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all rights, powers and trusts referred to in paragraph (a) of this Section 6.8.

(c) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article VI.

SECTION 6.9. *Merger, Conversion, Consolidation or Succession to Business.*

Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided*, that such Person shall be otherwise qualified and eligible under this Article VI. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation or as otherwise provided above in this Section 6.9 to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated, and in case any Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor Trustee or in the name of such successor Trustee, and in all cases the certificate of authentication shall have the full force which it is provided anywhere in the Securities or in this Indenture that the certificate of the Trustee shall have.

SECTION 6.10. *Not Responsible for Recitals or Issuance of Securities.*

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Securities or the proceeds thereof.

SECTION 6.11. *Appointment of Authenticating Agent.*

(a) The Trustee may appoint an Authenticating Agent or Agents with respect to the Securities, which shall be authorized to act on behalf of the Trustee to authenticate Securities issued upon original issue and upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.6, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, or of any State or Territory thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by Federal or state authority. If such Authenticating Agent publishes reports of condition at least annually pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 6.11 the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.11, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 6.11.

(b) Any Person into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of an Authenticating Agent shall be the successor Authenticating Agent hereunder, provided such Person shall be otherwise eligible under this Section 6.11, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

(c) An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.11, the Trustee may appoint a successor Authenticating Agent eligible under the provisions of this Section 6.11, which shall be acceptable to the Company, and shall give notice of such appointment to all Holders. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent.

(d) The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.11 in such amounts as the Company and the Authenticating Agent shall agree from time to time.

(e) If an appointment of an Authenticating Agent is made pursuant to this Section 6.11, the Securities may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

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

Dated:

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

By: _____
Authenticating Agent

By: _____
Authorized Signatory

ARTICLE VII

HOLDER'S LISTS AND REPORTS BY COMPANY

SECTION 7.1. *Company to Furnish Trustee Names and Addresses of Holders.*

The Company will furnish or cause to be furnished to the Trustee:

(a) Upon any change in Holder, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a date not more than fifteen (15) days prior to the delivery thereof, and

(b) at such other times as the Trustee may request in writing, within thirty (30) days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than fifteen (15) days prior to the time such list is furnished,

in each case to the extent such information is in the possession or control of the Company and has not otherwise been received by the Trustee in its capacity as Securities Registrar.

SECTION 7.2. *Preservation of Information, Communications to Holders.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Securities Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, shall be as provided in the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of information as to the names and addresses of the Holders made pursuant to the Trust Indenture Act.

SECTION 7.3. *Reports by Company.*

(a) The Company shall furnish to the Holders and to prospective purchasers of Securities, upon their request, the information required to be furnished pursuant to Rule 144A(d)(4) under the Securities Act. The delivery requirement set forth in the preceding sentence may be satisfied by compliance with Section 7.3(b) hereof.

(b) The Company shall furnish to each of (i) the Trustee, (ii) the Holders and to subsequent holders of Securities, (iii) Taberna Capital Management, LLC, 450 Park Avenue, New York, New York 10022, Attn: Raphael Licht (or such other address as designated by Taberna Capital Management, LLC) and (iv) any beneficial owner of the Securities reasonably identified to the Company (which identification may be made either by such beneficial owner or by Taberna Capital Management, LLC), a duly completed and executed certificate substantially and substantively in the form attached hereto as Exhibit A, including the financial statements referenced in such Exhibit, which certificate and financial statements shall be so furnished by the Company not later than forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company and not later than ninety (90) days after the end of each fiscal year of the Company.

(c) If the Company intends to file its annual and quarterly information with the Securities and Exchange Commission (the "*Commission*") in electronic form pursuant to Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval ("*EDGAR*") system, the Company shall notify the Trustee in the manner prescribed herein of each such annual and quarterly filing. The Trustee is hereby authorized and directed to access the EDGAR system for purposes of retrieving the financial information so filed. Compliance with the foregoing shall constitute delivery by the Company of its financial statements to the Trustee in compliance with the provisions of Section 314(a) of the Trust Indenture Act, if applicable. The Trustee shall have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of reports, information and documents to the Trustee pursuant to this Section 7.3(c) shall be solely for purposes of compliance with this Section 7.3(c) and, if applicable, with Section 314(a) of the Trust Indenture Act. The Trustee's receipt of such reports, information and documents shall not constitute notice to it of the content thereof or any matter determinable from the content thereof, including the Company's compliance with any of its covenants hereunder, as to which the Trustee is entitled to rely upon Officers' Certificates.

ARTICLE VIII

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 8.1. *Company May Consolidate, Etc., Only on Certain Terms.*

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and no Person shall consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(a) if the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the entity formed by such consolidation or into which the Company is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of the Company substantially as an entirety shall be an entity organized and existing under the laws of the United States of America or any State or Territory thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest (including any Additional Interest) on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event of Default, and no event that, after notice or lapse of time, or both, would constitute an Event of Default, shall have happened and be continuing; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, any such supplemental indenture comply with this Article VIII and that all conditions precedent herein provided for relating to such transaction have been complied with; and the Trustee may rely upon such Officers' Certificate and Opinion of Counsel as conclusive evidence that such transaction complies with this Section 8.1.

SECTION 8.2. *Successor Company Substituted.*

(a) Upon any consolidation or merger by the Company with or into any other Person, or any conveyance, transfer or lease by the Company of its properties and assets substantially as an entirety to any Person in accordance with Section 8.1 and the execution and delivery to the Trustee of the supplemental indenture described in Section 8.1(a), the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and in the event of any such conveyance or transfer, following the execution and delivery of such supplemental indenture, the Company shall be discharged from all obligations and covenants under the Indenture and the Securities.

(b) Such successor Person may cause to be executed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities that such successor Person thereafter shall cause to be executed and delivered to the Trustee on its behalf. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture.

(c) In case of any such consolidation, merger, sale, conveyance or lease, such changes in phraseology and form may be made in the Securities thereafter to be issued as may be appropriate to reflect such occurrence.

ARTICLE IX

SUPPLEMENTAL INDENTURES

SECTION 9.1. *Supplemental Indentures without Consent of Holders.*

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form reasonably satisfactory to the Trustee, for any of the following purposes:

(a) Intentionally omitted;

(b) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make or amend any other provisions with respect to matters or questions arising under this Indenture, which shall not be inconsistent with the other provisions of this Indenture, *provided*, that such action pursuant to this clause (b) shall not adversely affect in any material respect the interests of any Holders; or

(c) to comply with the rules and regulations of any securities exchange or automated quotation system on which any of the Securities may be listed, traded or quoted; or

(d) to add to the covenants, restrictions or obligations of the Company or to add to the Events of Default, *provided*, that such action pursuant to this clause (c) shall not adversely affect in any material respect the interests of any Holders; or

(e) to modify, eliminate or add to any provisions of the Indenture or the Securities to such extent as shall be necessary to ensure that the Securities are treated as indebtedness of the Company for United States Federal income tax purposes, *provided*, that such action pursuant to this clause (e) shall not adversely affect in any material respect the interests of any Holders.

SECTION 9.2. *Supplemental Indentures with Consent of Holders.*

(a) With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities under this Indenture; *provided*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security,

(i) change the Stated Maturity of the principal or any premium of any Security or change the date of payment of any installment of interest (including any Additional Interest) on any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof or change the place of payment where, or the coin or currency in which, any Security or interest thereon is payable, or restrict or impair the right to institute suit for the enforcement of any such payment on or after such date, or

(ii) reduce the percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with any provision of this Indenture or of defaults hereunder and their consequences provided for in this Indenture, or

(iii) modify any of the provisions of this Section 9.2, Section 5.13 or Section 10.7, except to increase any percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any reason, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security.

(b) It shall not be necessary for any Act of Holders under this Section 9.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 9.3. *Execution of Supplemental Indentures.*

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article IX or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in conclusively relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent herein provided for relating to such action have been complied with. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, indemnities or immunities under this Indenture or otherwise. Copies of the final form of each supplemental indenture shall be delivered by the Trustee at the expense of the Company to each Holder, promptly after the execution thereof.

SECTION 9.4. *Effect of Supplemental Indentures.*

Upon the execution of any supplemental indenture under this Article IX, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

SECTION 9.5. *Reference in Securities to Supplemental Indentures.*

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article IX may, and shall if required by the Company, bear a notation in form approved by the Company as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

ARTICLE X

COVENANTS

SECTION 10.1. *Payment of Principal, Premium, if any, and Interest.*

The Company covenants and agrees for the benefit of the Holders of the Securities that it will duly and punctually pay the principal of and any premium and interest (including any Additional Interest) on the Securities in accordance with the terms of the Securities and this Indenture.

SECTION 10.2. *Money for Security Payments to be Held in Trust.*

(a) Intentionally Omitted.

(b) Whenever the Company shall have one or more Paying Agents, it will, prior to 10:00 a.m., New York City time, on each due date of the principal of or any premium or interest (including any Additional Interest) on any Securities, deposit with such Paying Agent a sum sufficient to pay such amount, such sum to be held as provided in the Trust Indenture Act and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its failure so to act.

(c) The Company will cause each Paying Agent for the Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 10.2, that such Paying Agent will (i) comply with the provisions of this Indenture and the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities) in the making of any payment in respect of the Securities, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities.

(d) The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

(e) Any money deposited with the Trustee or any Paying Agent for the payment of the principal of and any premium or interest (including any Additional Interest) on any Security and remaining unclaimed for two years after such principal and any premium or interest has become due and payable shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be paid on Company Request to the Company, or (if then held by the Company) shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 10.3. *Statement as to Compliance.*

The Company shall deliver to the Trustee, with a copy to Taberna, within one hundred and twenty (120) days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate covering the preceding calendar year, stating whether or not to the knowledge of the signers thereof the Company is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder), and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge. The delivery requirements of this Section 10.3 may be satisfied by compliance with Section 8.16(a) of the Trust Agreement.

SECTION 10.4. *Calculation Agent.*

(a) The parties hereby agrees that for so long as any of the Securities remain Outstanding, there will at all times be an agent appointed to calculate LIBOR in respect of each Interest Payment Date in accordance with the terms of Schedule A (the "*Calculation Agent*"). The Holders have initially appointed Trustee as Calculation Agent for purposes of determining LIBOR for each Interest Payment Date. The Calculation Agent may be removed by the Holders of a majority in aggregate principal amount of the Securities.

(b) The Calculation Agent shall be required to agree that, as soon as possible after 11:00 a.m. (London time) on each LIBOR Determination Date (as defined in Schedule A), but in no event later than 11:00 a.m. (London time) on the Business Day immediately following each LIBOR Determination Date, the Calculation Agent will calculate the interest rate (the Interest Payment shall be rounded to the nearest cent, with half a cent being rounded upwards) for the related Interest Payment Date, and will communicate such rate and amount to the Company, the Holders, the Trustee, and the Paying Agent. The Calculation Agent will also specify to the Company and the Holders the quotations upon which the foregoing rates and amounts are based and, in any event, the Calculation Agent shall notify the Company and the Holders before 5:00 p.m. (London time) on each LIBOR Determination Date that either: (i) it has determined or is in the process of determining the foregoing rates and amounts or (ii) it has not determined and is not in the process of determining the foregoing rates and amounts, together with its reasons therefor. The Calculation Agent's determination of the foregoing rates and amounts for any Interest Payment Date will (in the absence of manifest error) be final and binding upon all parties. For the sole purpose of calculating the interest rate for the Securities, "Business Day" shall be defined as any day on which dealings in deposits in Dollars are transacted in the London interbank market.

SECTION 10.5. *Inspection of Books and Records; Management and Board Observation Rights.*

(a) Upon written notice from the Holders of a majority in aggregate principal amount of the Outstanding Securities at least five (5) Business Days in advance, the Company shall permit the Holders of a majority in aggregate principal amount of the Outstanding Securities to examine the books and records of account of the Company and its subsidiaries (and to make copies thereof and extracts therefrom) and to discuss the affairs, finances and accounts of such Persons with, and to be advised as to the same by such management representatives of the Company and its subsidiaries as the Holders of a majority in aggregate principal amount of the Outstanding Securities may reasonably request, either in person at the Company's offices or telephonically, all at such reasonable times and intervals during normal business hours as the Holders of a majority in aggregate principal amount of the Outstanding Securities may reasonably request, at the expense of the Company.

(b) The Holders and their Affiliates will keep confidential any non-public information of the Company made available to the Holders of a majority in aggregate principal amount of the Outstanding Securities or their Affiliates; provided, such confidential information shall not include any information that (1) is or becomes generally available to the public (other than through breach of this paragraph by the Holders of a majority in aggregate principal amount of the Outstanding Securities or their Affiliates), (2) was within the possession of the Holders of a majority in aggregate principal amount of the Outstanding Securities prior to its being furnished to the Holders of a majority in aggregate principal amount of the Outstanding Securities by or on behalf of the Company, provided that the source of such information was not known by the Holders of a majority in aggregate principal amount of the Outstanding Securities to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the Company with respect to such information or (3) becomes available to the Holders of a majority in aggregate principal amount of the Outstanding Securities on a non-confidential basis from a source other than the Company or any of its representatives, provided

that such source is not known by the Holders of a majority in aggregate principal amount of the Outstanding Securities to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the Company with respect to such information; and provided further, that such confidential information may be disclosed if the Holders of a majority in aggregate principal amount of the Outstanding Securities or their Affiliates are required to disclose such information pursuant to law, judicial or administrative process, or regulatory demand or request of any body having jurisdiction over the Holders. In the event that the Holders of a majority in aggregate principal amount of the Outstanding Securities or any of their Affiliates are requested or are required by law to disclose any such confidential information, the Holders of a majority in aggregate principal amount of the Outstanding Securities shall provide the Company with prompt written notice of any such request or requirement.

SECTION 10.6. *Additional Covenants.*

(a) For the period commencing on the date of this Agreement and continuing through March 30, 2010, or in any event if an Event of Default has occurred and is continuing, the Company covenants and agrees with each Holder of Securities that it shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of the Company's capital stock (for the avoidance of doubt, the term "capital stock" includes both common stock and preferred stock of the Company), (ii) vote in favor of or permit or otherwise allow any of its subsidiaries to declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to or otherwise retire, any shares of such subsidiaries preferred stock (for the avoidance of doubt, whether such preferred stock is perpetual or otherwise) except for dividends or distributions (x) to the Company or its subsidiaries and (y) by subsidiaries of the Company in which there are third party investors to the Company and such third party investors, or (iii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank pari passu in all respects with or junior in interest to the Securities (other than (A) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase plan or in connection with the issuance of stockholder stock of the Company (or securities convertible into or exercisable for such units of stockholder stock) as consideration in an acquisition transaction entered into prior to the date of this Agreement or, if later than March 30, 2010, prior to an Event of Default, (B) as a result of an exchange or conversion of any class or series of the Company's capital stock (or any capital stock of a Subsidiary of the Company) for any class or series of the Company's capital stock or of any class or series of the Company's indebtedness for any class or series of the Company's capital stock, (C) the purchase of fractional interests in the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, (D) any declaration of a dividend in connection with any Rights Plan or the redemption or repurchase of rights pursuant thereto, or (E) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks pari passu with or junior to such stock).

(b) Notwithstanding the foregoing, the restrictions set forth in Section 10.6(a) shall not apply to (i) payments of interest only (including deferred interest payments of approximately $525,800 accruing through June 30, 2009) on, and any repayments, repurchases or redemptions of those certain Fixed/Floating Rate Junior Subordinated Debt Securities due 2035, issued pursuant to that certain Junior Subordinated Indenture between Impac Mortgage Holdings, Inc., as issuer, and Wilmington Trust Company, as trustee, dated as of October 15, 2005 and the related securities issued pursuant to the Amended

and Restated Declaration of Trust of Impact Capital Trust #4 dated as of October 15, 2005, (ii) a redemption of the Company's 9.375% Series B Cumulative Redeemable Preferred Stock, $0.01 par value per share (the *"Series B Preferred Stock"*)and its 9.125% Series C Cumulative Redeemable Preferred Stock, $0.01 par value per share (the *"Series C Preferred Stock")*, or the repurchase of all of such Series B Preferred Stock or Series C Preferred Stock (for an aggregate purchase price of up to $1,861,000) pursuant to the terms of a cash tender offer for all such outstanding stock (which tender offer may include the payment of accumulated but unpaid dividends upon such Series B Preferred Stock and Series C Preferred Stock in an aggregate amount of up to $7,444,000).

(c) Intentionally Omitted.

SECTION 10.7. *Waiver of Covenants.*

The Company may omit in any particular instance to comply with any covenant or condition contained in Sections 10.5 or 10.6 if, before or after the time for such compliance, the Holders of at least a majority in aggregate principal amount of the Outstanding Securities shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company in respect of any such covenant or condition shall remain in full force and effect.

SECTION 10.8. *Treatment of Securities.*

The Company will treat the Securities as indebtedness, and the amounts, other than payments of principal, payable in respect of the principal amount of such Securities as interest, for all U.S. federal income tax purposes. All payments in respect of the Securities will be made free and clear of U.S. withholding tax to any beneficial owner thereof that has provided an Internal Revenue Service Form W-9 or W-8BEN (or any substitute or successor form) establishing its U.S. or non-U.S. status for U.S. federal income tax purposes, or any other applicable form establishing a complete exemption from U.S. withholding tax.

SECTION 10.9. *Fees Costs and Expenses.*

The Company shall pay on demand all costs and fees, including all reasonable attorneys' fees and disbursements, of the Holders of the Securities and Taberna Capital Management, LLC, as provided in the Exchange Agreement. The Company shall also pay the fees and expenses of the Trustee as provided in that separate fee agreement between the Company and the Trustee and as otherwise required pursuant to Section 6.6. hereof.

ARTICLE XI

REDEMPTION OF SECURITIES

SECTION 11.1. *Optional Redemption.*

The Company may, at its option, on any Interest Payment Date, on or after March 30, 2010, redeem the Securities in whole at any time or in part from time to time, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof (or of the redeemed portion thereof, as applicable), together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date (the "*Optional Redemption Price*").

SECTION 11.2. *Special Event Redemption.*

Prior to March 30, 2010, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, redeem the Securities, in whole but not in part, at a Redemption Price equal to one hundred seven and one half percent (107.5%) of the principal amount thereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date (the "*Special Redemption Price*").

SECTION 11.3. *Election to Redeem; Notice to Trustee.*

The election of the Company to redeem any Securities, in whole or in part, shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company, the Company shall, not less than forty-five (45) days and not more than seventy-five (75) days prior to the Redemption Date (unless a shorter notice period shall be satisfactory to the Trustee), notify the Trustee in writing of such date and of the principal amount of the Securities to be redeemed and provide the additional information required to be included in the notice or notices contemplated by Section 11.5. In the case of any redemption of Securities, in whole or in part, (a) prior to the expiration of any restriction on such redemption provided in this Indenture or the Securities or (b) pursuant to an election of the Company which is subject to a condition specified in this Indenture or the Securities, the Company shall furnish the Trustee with an Officers' Certificate and an Opinion of Counsel evidencing compliance with such restriction or condition.

SECTION 11.4. *Selection of Securities to be Redeemed.*

(a) If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected and redeemed on a pro rata basis not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, *provided*, that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

(b) The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all

provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security that has been or is to be redeemed.

(c) The provisions of paragraphs (a) and (b) of this Section 11.4 shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

SECTION 11.5. *Notice of Redemption.*

(a) Notice of redemption shall be given not later than the thirtieth (30th) day, and not earlier than the sixtieth (60^{th}) day, prior to the Redemption Date to each Holder of Securities to be redeemed, in whole or in part, (unless a shorter notice shall be satisfactory to the Holders of the Securities and the Trustee).

(b) With respect to Securities to be redeemed, in whole or in part, each notice of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price or, if the Redemption Price cannot be calculated prior to the time the notice is required to be sent, the estimate of the Redemption Price, as calculated by the Company, together with a statement that it is an estimate and that the actual Redemption Price will be calculated on the fifth Business Day prior to the Redemption Date (and if an estimate is provided, a further notice shall be sent of the actual Redemption Price on the date that such Redemption Price is calculated);

(iii) if less than all Outstanding Securities are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the amount of and particular Securities to be redeemed;

(iv) that on the Redemption Date, the Redemption Price will become due and payable upon each such Security or portion thereof, and that any interest (including any Additional Interest) on such Security or such portion, as the case may be, shall cease to accrue on and after said date; and

(v) the place or places where such Securities are to be surrendered for payment of the Redemption Price.

(c) Notice of redemption of Securities to be redeemed, in whole or in part, at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and shall be irrevocable. The notice if mailed in the manner provided above shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail or any defect in the notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

SECTION 11.6. *Deposit of Redemption Price.*

Prior to 10:00 a.m., New York City time, on the Redemption Date specified in the notice of redemption given as provided in Section 11.5, the Company will deposit with the Trustee or with one or more Paying Agents an amount of money sufficient to pay the Redemption Price of, and any accrued interest (including any Additional Interest) on, all the Securities (or portions thereof) that are to be redeemed on that date.

SECTION 11.7. *Payment of Securities Called for Redemption.*

(a) If any notice of redemption has been given as provided in Section 11.5, the Securities or portion of Securities with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date. On presentation and surrender of such Securities at a Place of Payment specified in such notice, the Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date.

(b) Upon presentation of any Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the Security so presented and having the same Original Issue Date, Stated Maturity and terms.

(c) If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal of and any premium on such Security shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

ARTICLE XII

SUBORDINATION OF SECURITIES

SECTION 12.1. *Securities Subordinate to Senior Debt.*

The Company covenants and agrees, and each Holder of a Security, by its acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article XII, the payment of the principal of and any premium and interest (including any Additional Interest) on each and all of the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Debt.

SECTION 12.2. *No Payment When Senior Debt in Default; Payment Over of Proceeds Upon Dissolution, Etc.*

(a) In the event and during the continuation of any default by the Company in the payment of any principal of or any premium or interest on any Senior Debt (following any grace period, if applicable) when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration of acceleration or otherwise, then, upon written notice of such default to the Company by the holders of such Senior Debt or any trustee therefor, unless and until such default shall have been cured or waived or shall have ceased to exist, no direct or indirect payment (in cash, property, securities, by set-off or otherwise) shall be made or agreed to be made on account of the principal of or any premium or interest (including any Additional Interest) on any of the Securities, or in respect of any redemption, repayment, retirement, purchase or other acquisition of any of the Securities.

(b) In the event of a bankruptcy, insolvency or other proceeding described in clause (d) or (e) of the definition of Event of Default (each such event, if any, herein sometimes referred to as a "*Proceeding*"), all Senior Debt (including any interest thereon accruing after the commencement of any such proceedings) shall first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to any Holder of any of the Securities on account thereof. Any payment or distribution, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment), which would otherwise (but for these subordination provisions) be payable or deliverable in respect of the Securities shall be paid or delivered directly to the holders of Senior Debt in accordance with the priorities then existing among such holders until all Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) shall have been paid in full.

(c) In the event of any Proceeding, after payment in full of all sums owing with respect to Senior Debt, the Holders of the Securities, together with the holders of any obligations of the Company ranking on a parity with the Securities, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid principal of and any premium and interest (including any Additional Interest) on the Securities and such other obligations before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any Equity Interests or any obligations of the Company ranking junior to the Securities and such other obligations. If, notwithstanding the foregoing, any payment or distribution of any character on any security, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment) shall be received by the Trustee or any Holder in contravention of any of the terms hereof and before all Senior Debt shall have been paid in full, such payment or distribution or security shall be received in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior

Debt at the time outstanding in accordance with the priorities then existing among such holders for application to the payment of all Senior Debt remaining unpaid, to the extent necessary to pay all such Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) in full. In the event of the failure of the Trustee or any Holder to endorse or assign any such payment, distribution or security, each holder of Senior Debt is hereby irrevocably authorized to endorse or assign the same.

(d) The Trustee and the Holders, at the expense of the Company, shall take such reasonable action (including the delivery of this Indenture to an agent for any holders of Senior Debt or consent to the filing of a financing statement with respect hereto) as may, in the opinion of counsel designated by the holders of a majority in aggregate principal amount of the Senior Debt at the time outstanding, be necessary or appropriate to assure the effectiveness of the subordination effected by these provisions.

(e) The provisions of this Section 12.2 shall not impair any rights, interests, remedies or powers of any secured creditor of the Company in respect of any security interest the creation of which is not prohibited by the provisions of this Indenture.

(f) The securing of any obligations of the Company, otherwise ranking on a parity with the Securities or ranking junior to the Securities, shall not be deemed to prevent such obligations from constituting, respectively, obligations ranking on a parity with the Securities or ranking junior to the Securities.

SECTION 12.3. *Payment Permitted If No Default.*

Nothing contained in this Article XII or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company, at any time, except during the pendency of the conditions described in paragraph (a) of Section 12.2 or of any Proceeding referred to in Section 12.2, from making payments at any time of principal of and any premium or interest (including any Additional Interest) on the Securities or (b) the application by the Trustee of any moneys deposited with it hereunder to the payment of or on account of the principal of and any premium or interest (including any Additional Interest) on the Securities or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge (in accordance with Section 12.8) that such payment would have been prohibited by the provisions of this Article XII, except as provided in Section 12.8.

SECTION 12.4. *Subrogation to Rights of Holders of Senior Debt.*

Subject to the payment in full of all amounts due or to become due on all Senior Debt, or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Debt, the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this Article XII (equally and ratably with the holders of all indebtedness of the Company that by its express terms is subordinated to Senior Debt of the Company to substantially the same extent as the Securities are subordinated to the Senior Debt and is entitled to like rights of subrogation by reason of any payments or distributions made to holders of such Senior Debt) to the rights of the holders of such Senior Debt to receive payments and distributions of cash,

property and securities applicable to the Senior Debt until the principal of and any premium and interest (including any Additional Interest) on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to

which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article XII, and no payments made pursuant to the provisions of this Article XII to the holders of Senior Debt by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Debt, and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Debt.

SECTION 12.5. *Provisions Solely to Define Relative Rights.*

The provisions of this Article XII are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Senior Debt on the other hand. Nothing contained in this Article XII or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as between the Company and the Holders of the Securities, the obligations of the Company, which are absolute and unconditional, to pay to the Holders of the Securities the principal of and any premium and interest (including any Additional Interest) on the Securities as and when the same shall become due and payable in accordance with their terms, (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than their rights in relation to the holders of Senior Debt or (c) prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, including filing and voting claims in any Proceeding, subject to the rights, if any, under this Article XII of the holders of Senior Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

SECTION 12.6. *Trustee to Effectuate Subordination.*

Each Holder of a Security by his or her acceptance thereof authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination provided in this Article XII and appoints the Trustee his or her attorney-in-fact for any and all such purposes.

SECTION 12.7. *No Waiver of Subordination Provisions.*

(a) No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or be otherwise charged with.

(b) Without in any way limiting the generality of paragraph (a) of this Section 12.7, the holders of Senior Debt may, at any time and from to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to such Holders of the Securities and without impairing or releasing the subordination provided in this Article XII or

the obligations hereunder of such Holders of the Securities to the holders of Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Debt, or otherwise amend or supplement in any manner Senior Debt or any instrument evidencing the same or any agreement under which Senior Debt is outstanding, (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Debt, (iii) release any Person liable in any manner for the payment of Senior Debt and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

SECTION 12.8. *Notice to Trustee.*

(a) The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article XII or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder of Senior Debt or from any trustee, agent or representative therefor; *provided*, that if the Trustee shall not have received the notice provided for in this Section 12.8 at least two Business Days prior to the date upon which by the terms hereof any monies may become payable for any purpose (including, the payment of the principal of and any premium on or interest (including any Additional Interest) on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

(b) The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself or herself to be a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact therefor) to establish that such notice has been given by a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article XII, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XII, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 12.9. *Reliance on Judicial Order or Certificate of Liquidating Agent.*

Upon any payment or distribution of assets of the Company referred to in this Article XII, the Trustee and the Holders of the Securities shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such Proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the

Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XII.

SECTION 12.10. *Trustee Not Fiduciary for Holders of Senior Debt.*

The Trustee, in its capacity as trustee under this Indenture, shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article XII or otherwise.

SECTION 12.11. *Rights of Trustee as Holder of Senior Debt; Preservation of Trustee's Rights.*

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XII with respect to any Senior Debt that may at any time be held by it, to the same extent as any other holder of Senior Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

SECTION 12.12. *Article Applicable to Paying Agents.*

If at any time any Paying Agent other than the Trustee shall have been appointed and shall be then acting hereunder, the term "Trustee" as used in this Article XII shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article XII in addition to or in place of the Trustee. For avoidance of doubt, neither the Company nor any affiliate of the Company shall be permitted to serve as a Paying Agent hereunder.

* * * *

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

IMPAC MORTGAGE HOLDINGS, INC.

By: /s/ Todd R. Taylor
Name: Todd R. Taylor
Title: CFO

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

By: /s/ Bill Marshall
Name: Bill Marshall
Title: Vice President

Schedule A

DETERMINATION OF LIBOR

With respect to the Securities, the London interbank offered rate ("*LIBOR*") shall be determined by the Calculation Agent in accordance with the following provisions (in each case rounded to the nearest ..000001%):

(1) On the second LIBOR Business Day (as defined below) prior to an Interest Payment Date (each such day, a "*LIBOR Determination Date*"), LIBOR for any given security shall for the following Interest Period equal the rate, as obtained by the Calculation Agent from Bloomberg Financial Markets Commodities News, for three-month Eurodollar deposits that appears on Dow Jones Telerate Page 3750 (as defined in the International Swaps and Derivatives Association, Inc. 1991 Interest Rate and Currency Exchange Definitions), or such other page as may replace such Page 3750, as of 11:00 a.m. (London time) on such LIBOR Determination Date.

(2) If, on any LIBOR Determination Date, such rate does not appear on Dow Jones Telerate Page 3750 or such other page as may replace such Page 3750, the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks (as defined below) to leading banks in the London interbank market for three-month Eurodollar deposits in an amount determined by the Calculation Agent by reference to requests for quotations as of approximately 11:00 a.m. (London time) on the LIBOR Determination Date made by the Calculation Agent to the Reference Banks. If, on any LIBOR Determination Date, at least two of the Reference Banks provide such quotations, LIBOR shall equal such arithmetic mean of such quotations. If, on any LIBOR Determination Date, only one or none of the Reference Banks provide such quotations, LIBOR shall be deemed to be the arithmetic mean of the offered quotations that leading banks in the City of New York selected by the Calculation Agent are quoting on the relevant LIBOR Determination Date for three-month Eurodollar deposits in an amount determined by the Calculation Agent by reference to the principal London offices of leading banks in the London interbank market; *provided* that, if the Calculation Agent is required but is unable to determine a rate in accordance with at least one of the procedures provided above, LIBOR shall be LIBOR as determined on the previous LIBOR Determination Date.

(3) As used herein: "*Reference Banks*" means four major banks in the London interbank market selected by the Calculation Agent; and "*LIBOR Business Day*" means a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London.

Exhibit A

Form of Officer's Financial Certificate

The undersigned, the **[**Chairman/Vice Chairman/Chief Executive Officer/President/ Vice President/Chief Financial Officer/Treasurer/Assistant Treasurer**]**, hereby certifies, pursuant to Section 7.3(b) of the Junior Subordinated Indenture, dated as of May 8, 2009, among Impac Mortgage Holdings, Inc. (the "Company") and The Bank of New York Mellon Trust Company, National Association, as trustee, that, as of **[**date**]**, **[**20 **]**, the Company, if applicable, and its subsidiaries had the following ratios and balances:

As of **[**Quarterly/Annual Financial Date**]**, 20

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

* A table describing the quarterly report calculation procedures is provided on page

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

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

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

There has been no monetary default with respect to any indebtedness owed by the Company and/or its subsidiaries (other than those defaults cured within 30 days of the occurrence of the same) **[**, except as set forth below:**]**.

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

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

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

Page attached hereto sets forth the financial data and computations evidencing the Company's compliance with the Financial Covenants, all of which data and computations are true, complete and correct.**]**

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

[COMPANY**]**

By: _____

Name: _____

[Company]
[Address]
[Address]
[Telephone Number]

Exhibit (d)(7)

JUNIOR SUBORDINATED INDENTURE

between

IMPAC MORTGAGE HOLDINGS, INC.

and

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

as Trustee

Dated as of May 8, 2009

TABLE OF CONTENTS

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

RECITALS OF THE COMPANY

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

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

NOW, THEREFORE, this Indenture Witnesseth:

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

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.1. *Definitions.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"*Calculation Agent*" has the meaning specified in Section 10.4.

"*Commission*" has the meaning specified in Section 7.3.

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

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

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

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

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

"*Defaulted Interest*" has the meaning specified in Section 3.1.

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

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

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

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

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

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

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

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

"*Expiration Date*" has the meaning specified in Section 1.4.

"*Fixed Rate Period"* shall mean the period commencing on May 8, 2009 and ending on March 29, 2018.

"*Fixed Rate"* means a fixed rate equal to (a) for the Interest Period ending on June 29, 2009, and for each Interest Period thereafter through and including the Interest Period ending on March 29, 2014, two percent (2.00%) per annum, (b) for the Interest Period commencing on March 30 2014 and for

each Interest Period thereafter through and including the Interest Period ending on March 29, 2015, three percent (3.00%) per annum, (c) from the Interest Period commencing on March 30, 2015 and for each Interest Period thereafter through and including the Interest Period ending on March 29, 2016, four percent (4.00%) per annum, (d) from the Interest Period commencing on March 30, 2016 and for each Interest Period thereafter through and including the Interest Period ending on March 29, 2017, five percent (5.00%) per annum, (e) from the Interest Period commencing on March 30, 2017 and for each Interest Period commencing on March 30, 2018 thereafter through and including the Interest Period ending on April 29, 2018, six percent (6.00%) per annum.

"*Floating Rate*" means for each Interest Period from and after March 30, 2018, through and including the Stated Maturity Date, a rate equal to LIBOR for the applicable Interest Period plus three and three quarters of one percent (3.75%) per annum.

"*GAAP*" means United States generally accepted accounting principles, consistently applied, from time to time in effect.

"*Global Security*" means a Security that evidences all or part of the Securities, the ownership and transfers of which shall be made through book entries by a Depositary.

"*Government Obligation*" means (a) any security that is (i) a direct obligation of the United States of America of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (b) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any Government Obligation that is specified in clause (a) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any

specific payment of principal of or interest on any Government Obligation that is so specified and held, provided, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

"*Holder*" or "*Holders*" means a Person or collectively all Persons in whose name a Security is registered in the Securities Register.

"*Indenture*" means this instrument as originally executed or as it may from time to time be amended or supplemented by one or more amendments or indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

"*Interest Payment Date*" means July 30, October 30, January 30 and April 30 of each year, commencing on July 30, 2009, during the term of this Indenture.

"*Interest Period*" means the period commencing on, and including, an Interest Payment Date and continuing through and including the day prior to the next succeeding Interest Payment Date.

"*Interest Rate*" means with respect to any Interest Period, either the Fixed Rate or Floating Rate in effect during such Interest Rate.

"*Investment Company Act*" means the Investment Company Act of 1940 or any successor statute thereto, in each case as amended from time to time.

"*Investment Company Event*" means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of the occurrence of a change in law or regulation (including any announced prospective change) or a written change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is more than an insubstantial risk that the Company is or, within ninety (90) days of the date of such opinion will be, considered an "investment company" that is required to be registered under the Investment Company Act, which change or prospective change becomes effective or would become effective, as the case may be, on or after the date of the issuance of the Securities.

"*LIBOR*" has the meaning specified in Schedule A.

"*LIBOR Business Day*" has the meaning specified in Schedule A.

"*LIBOR Determination Date*" has the meaning specified in Schedule A.

"*Maturity*," when used with respect to any Security, means the date on which the principal of such Security or any installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"*Notice of Default*" means a written notice of the kind specified in Section 5.1(c).

"*Officers' Certificate*" means a certificate signed by the Chairman of the Board, a Vice Chairman of the Board, the Chief Executive Officer, the President or a Vice President, and by the Chief Financial Officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company and delivered to the Trustee.

"*Opinion of Counsel*" means a written opinion of counsel, who may be counsel for or an employee of the Company or any Affiliate of the Company.

"*Optional Redemption Price*" has the meaning set forth in Section 11.1.

"*Original Issue Date*" means the date of original issuance of each Security.

"*Other Taxes*" has the meaning set forth in Section 3.11(c).

"*Outstanding*" means, when used in reference to any Securities, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent in trust for the Holders of such Securities; provided, that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities that have been paid or in substitution for or in lieu of which other Securities have been authenticated and delivered pursuant to the provisions of this Indenture, unless proof satisfactory to the Trustee is presented that any such Securities are held by Holders in whose hands such Securities are valid, binding and legal obligations of the Company;

provided, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company, if any, or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding unless the Company shall hold all Outstanding Securities, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

"*Paying Agent*" means the Trustee or any Person authorized by the Trustee (other than the Company or any Affiliate of the Company) to pay the principal of or any premium or interest on, or other amounts in respect of, any Securities on behalf of the Company.

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

"*Place of Payment*" means, with respect to the Securities, the Corporate Trust Office of the Trustee.

"*Predecessor Security*" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security. For the purposes of this definition, any security authenticated and delivered under Section 3.6 in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"*Proceeding*" has the meaning specified in Section 12.2 (b).

"*Redemption Date*" means, when used with respect to any Security to be redeemed, the date fixed for such redemption by or pursuant to this Indenture.

"*Redemption Price*" means, when used with respect to any Security to be redeemed, in whole or in part, the Special Redemption Price or the Optional Redemption Price, as applicable, at which such Security or portion thereof is to be redeemed as fixed by or pursuant to this Indenture.

"*Reference Banks*" has the meaning specified in Schedule A.

"*Regular Record Date*" for the interest payable on any Interest Payment Date with respect to the Securities means the date that is fifteen (15) days preceding such Interest Payment Date (whether or not a Business Day).

"*Responsible Officer*" means, when used with respect to the Trustee, the officer in the Global Corporate Trust department of the Trustee having direct responsibility for the administration of this Indenture.

"*Rights Plan*" means a plan of the Company providing for the issuance by the Company to all holders of its Equity Interests of rights entitling the holders thereof to subscribe for or purchase Equity Interests any class or series of Equity Interests in the Company which rights (i) are deemed to be transferred with such Equity Interests and (ii) are also issued in respect of future issuances of such Equity Interests, in each case until the occurrence of a specified event or events.

"*Securities*" or "*Security"* means any debt securities or debt security, as the case may be, authenticated and delivered under this Indenture.

"*Securities Act*" means the Securities Act of 1933 or any successor statute thereto, in each case as amended from time to time.

"*Securities Register*" and "*Securities Registrar*" have the respective meanings specified in Section 3.5.

"*Senior Debt*" means the principal of and any premium and interest on (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company, whether or not such claim for post-petition interest is allowed in such proceeding) all Debt of the Company, whether incurred on or prior to the date of this Indenture or thereafter incurred, unless it is provided in the instrument creating or evidencing the same or pursuant to which the same is outstanding, that such obligations are not superior in right of payment to the Securities issued under this Indenture provided, that Senior Debt shall not be deemed to include any (i) debt or (ii) other debt securities (and guarantees, if any, in respect of such debt securities) issued to any trust (or a trustee of any such trust), partnership or other entity affiliated with the Company that is a financing vehicle of the Company (a "financing entity") in connection with the issuance by such financing entity of equity securities or other securities, in each case of (i) or (ii) pursuant to an instrument that ranks pari passu with or junior in right of payment to this Indenture.

"*Series B Preferred Stock*" has the meaning set forth in Section 10.6(b).

"*Series C Preferred Stock*" has the meaning set forth in Section 10.6(b).

"*Special Event*" means the occurrence of an Investment Company Event or a Tax Event pursuant to Section 3.1.

"*Special Record Date*" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.1.

"*Special Redemption Price*" has the meaning set forth in Section 11.2.

"*Stated Maturity*" means March 30, 2034.

"*Subordinated Debt*" means any Debt that is subordinated in right of payment and security to the Securities.

"*Subsidiary*" of a Person means (a) any corporation more than fifty percent (50%) of the outstanding voting stock or other voting interest of which shall at the time be owned, directly or indirectly, by such Person and/or by one or more of its Subsidiaries or (b) any partnership, limited liability company, association, joint venture or similar business organization more than 50% of the ownership interests having ordinary voting power of which shall at the time be owned or Controlled, directly or indirectly, by such Person and/or by one or more of its Subsidiaries. For purposes of this definition, "voting stock" means stock that ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a Subsidiary of the Company.

"*Taberna*" means, initially, Taberna Capital Management, LLC, having and address at 450 Park Avenue, New York, New York 10022, Attn: Rafael Licht (or such other address and notice party so designated by Taberna Capital Management, LLC, and, after written notice from

the Holders delivered to the Trustee and the Company by Holders owning a majority in aggregate principal amount of Outstanding Securities, such successor representative of the Holders so designated in such notice; provided, there shall only be one such Holder's representative at any one time).

"*Tax Event*" means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of (a) any amendment to or change (including any announced prospective change) in the laws or any regulations thereunder of the United States or any political subdivision or taxing authority thereof or therein or (b) any judicial decision or any official administrative pronouncement (including any private letter ruling, technical advice memorandum or field service advice) or regulatory procedure, including any notice or announcement of intent to adopt any such pronouncement or procedure (an "*Administrative Action*"), regardless of whether such judicial decision or Administrative Action is issued to or in connection with a proceeding involving the Company and whether or not subject to review or appeal, which amendment, change, judicial decision or Administrative Action is enacted, promulgated or announced, in each case, on or after the date of issuance of the Securities, there is more than an insubstantial risk that interest payable by the Company on the Securities is not, or within ninety (90) days of the date of such opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes.

"*Trustee*" means the Person named as the "*Trustee*" in the first paragraph of this instrument, solely in its capacity as such and not in its individual capacity, until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and, thereafter, "*Trustee*" shall mean or include each Person who is then a Trustee hereunder.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939, as amended and as in effect on the date as of this Indenture.

SECTION 1.2. *Compliance Certificate and Opinions*.

(a) Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officers' Certificate stating that all conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, have been complied with.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificate provided pursuant to Section 10.3) shall include:

(i) a statement by each individual signing such certificate or opinion that such individual has read such covenant or condition and the definitions herein relating thereto;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions of such individual contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether, in the opinion of such individual, such condition or covenant has been complied with.

SECTION 1.3. *Forms of Documents Delivered to Trustee*.

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to matters upon which his or her certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to such matters are erroneous.

(c) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

(d) Whenever, subsequent to the receipt by the Trustee of any Board Resolution, Officers' Certificate, Opinion of Counsel or other document or instrument, a clerical, typographical or other inadvertent or unintentional error or omission shall be discovered therein, a new document or instrument may be substituted therefor in corrected form with the same force and effect as if originally received in the corrected form and, irrespective of the date or dates of the actual execution and/or delivery thereof, such substitute document or instrument shall be deemed to have been executed and/or delivered as of the date or dates required with respect to the document or instrument for which it is substituted. Without limiting the generality of the foregoing, any Securities issued under the authority of such defective document or instrument shall nevertheless be the valid obligations of the Company entitled to the benefits of this Indenture equally and ratably with all other Outstanding Securities.

SECTION 1.4. *Acts of Holders*.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given to or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent thereof duly appointed in writing; and, except as herein otherwise

expressly provided, such action shall become effective when such instrument or instruments (including any appointment of an agent) is or are delivered to the Trustee, and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.4.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him or her the execution thereof. Where such execution is by a Person acting in other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority. The fact and date of the execution by any Person of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine.

(c) The ownership of the Securities shall be proved by the Securities Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

(f) Except as set forth in paragraph (g) of this Section 1.4, the Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of the Securities. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; provided, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date (as defined in Section 1.4(h)) by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities in the manner set forth in Section 1.6.

(g) The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration or rescission or annulment thereof referred to in Section 5.2, (iii) any request to institute proceedings referred to in Section 5.7(b) or (iv) any direction referred to in Section 5.12. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether

or not such Holders remain Holders after such record date; provided, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of the Securities in the manner set forth in Section 1.6.

(h) With respect to any record date set pursuant to paragraph (f) or (g) of this Section 1.4, the party hereto that sets such record date may designate any day as the "*Expiration Date*" and from time to time may change the Expiration Date to any earlier or later day; provided, that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of the Securities in the manner set forth in Section 1.6, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section 1.4, the party hereto that set such record date shall be deemed to have initially designated the ninetieth (90th) day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the one hundred eightieth (180th) day after the applicable record date.

SECTION 1.5. *Notices, Etc. to Trustee and Company*.

(a) Any request, demand, authorization, direction, notice, consent, waiver, Act of Holders, or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(i) the Trustee by any Holder, or the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with and received by the Trustee at its Corporate Trust Office, or

(ii) the Company by the Trustee, or any Holder shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, to the Company addressed to it at 19500 Jamboree Road, Irvine, CA 92612 or at any other address previously furnished in writing to the Trustee by the Company.

(b) The Trustee may, but is not required to, rely upon and comply with instructions and directions sent by email or facsimile, (or any other reasonable means of communication) by persons believed by the Trustee in good faith to be authorized to provide such instructions or direction; provided, however, that the Trustee may require such additional evidence, confirmation or certification from any such party or parties as the Trustee, in its reasonable discretion, deems necessary or advisable before acting or refraining from acting upon any such instruction or direction.

(c) The Trustee agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured email, facsimile transmission or other similar unsecured electronic methods; *provided*, however, that any Person providing such instructions or directions shall provide to the Trustee an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If such Person elects to give the Trustee email or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. Each Person providing instructions or directions to the Trustee hereunder agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting, in good faith, on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 1.6. *Notice to Holders; Waiver*.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first class, postage prepaid, to each Holder affected by such event to the address of such Holder as it appears in the Securities Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. If, by reason of the suspension of or irregularities in regular mail service or for any other reason, it shall be impossible or impracticable to mail notice of any event to Holders when said notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 1.7. *Effect of Headings and Table of Contents*.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction of this Indenture.

SECTION 1.8. *Successors and Assigns*.

This Indenture shall be binding upon and shall inure to the benefit of any successor to the Company and the Trustee, including any successor by operation of law. Except in connection with a transaction involving the Company that is permitted under Article VIII and pursuant to which the assignee agrees in writing to perform the Company's obligations hereunder, the Company shall not assign its obligations hereunder.

SECTION 1.9. *Separability Clause*.

If any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and there shall be deemed substituted for the provision at issue a valid, legal and

enforceable provision as similar as possible to the provision at issue.

SECTION 1.10. *Benefits of Indenture*.

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors and assigns, the holders of Senior Debt and the Holders of the Securities and any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 1.11. *Governing Law*.

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

SECTION 1.12. *Submission to Jurisdiction*.

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

SECTION 1.13. *Non-Business Days*.

If any Interest Payment Date, Redemption Date or Stated Maturity of any Security shall not be a Business Day, then (notwithstanding any other provision of this Indenture or the Securities) payment of interest, premium, if any, or principal or other amounts in respect of such Security shall not be made on such date, but shall be made on the next succeeding Business Day

(and no interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, until such next succeeding Business Day) except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the Interest Payment Date or Redemption Date or at the Stated Maturity.

ARTICLE II
SECURITY FORMS

SECTION 2.1. *Form of Security*.

Any Security issued hereunder shall be in substantially the following form:

IMPAC MORTGAGE HOLDINGS, INC.

Junior Subordinated Note due 2034

No.

$30,244,000

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

During the Fixed Rate Period, the amount of interest shall be computed on the basis of a 360-day year of twelve 30-day months and the amount payable for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any Interest Period will be computed on the basis of a 360 day year and the actual number of days elapsed in the relevant Interest Period. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular

Record Date for such interest installment. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities not less than ten (10) days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

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

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

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

[FORM OF REVERSE OF SECURITY]

This Security is one of a duly authorized issue of securities of the Company (the "*Securities*") issued under the Junior Subordinated Indenture, dated as of May 8, 2009 (the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IMPAC MORTGAGE HOLDINGS, INC.

By: _____
Name:
Title:

SECTION 2.2. *Restricted Legend.*

(a) Any Security issued hereunder shall bear a legend in substantially the following form:

"**[IF THIS SECURITY IS A GLOBAL SECURITY INSERT:** THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY ("DTC") OR A NOMINEE OF DTC. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

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

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

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

HOLDER OF SUCH SECURITIES FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PRINCIPAL OF OR INTEREST ON SUCH SECURITIES, OR ANY INTEREST THEREIN, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH SECURITIES.

THE HOLDER OF THIS SECURITY, OR ANY INTEREST THEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF ALSO AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH A "PLAN"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS SECURITY OR ANY INTEREST THEREIN. ANY PURCHASER OR HOLDER OF THE SECURITIES OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF SECTION 3(3) OF ERISA, OR A PLAN TO WHICH SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF AN EMPLOYEE BENEFIT PLAN OR PLAN, OR ANY OTHER PERSON OR ENTITY USING THE ASSETS OF ANY EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE."

(b) The above legends shall not be removed from any Security unless there is delivered to the Company satisfactory evidence, which may include an Opinion of Counsel, as may be reasonably required to ensure that any future transfers thereof may be made without restriction under or violation of the provisions of the Securities Act and other applicable law.

Upon provision of such satisfactory evidence, the Company shall execute and deliver to the Trustee, and the Trustee shall deliver, upon receipt of a Company Order directing it to do so, a Security that does not bear the legend.

SECTION 2.3. *Form of Trustee's Certificate of Authentication.*

The Trustee's certificate of authentication shall be in substantially the following form:

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

Dated:

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

By: _____
Authorized signatory

SECTION 2.4. *Temporary Securities.*

(a) Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

(b) If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for the definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for that purpose without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of any authorized denominations having the same Original Issue Date and Stated Maturity and having the same terms as such temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

SECTION 2.5. *Definitive Securities.*

The Securities issued on the Original Issue Date shall be in definitive form. The definitive Securities shall be printed, lithographed or engraved, or produced by any combination of these methods, if required by any securities exchange on which the Securities may be listed, on a steel engraved border or steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

ARTICLE III

THE SECURITIES

SECTION 3.1. *Payment of Principal and Interest.*

(a) The unpaid principal amount of the Securities shall bear interest at the applicable Fixed Rate through the Interest Payment Date in March, 2018 and thereafter at the applicable Floating Rate until paid or duly provided for, such interest to accrue from May 8, 2009 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, and any overdue principal, premium, if any, and any overdue installment of interest shall

bear Additional Interest at the Fixed Rate through the Fixed Rate Period, and thereafter at the Floating Rate, compounded quarterly from the dates such amounts are due until they are paid or funds for the payment thereof are made available for payment.

(b) Interest and Additional Interest on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, except that interest and any Additional Interest payable on the Stated Maturity (or any date of principal repayment upon early maturity) of the principal of a Security or on a Redemption Date shall be paid to the Person to whom principal is paid. The initial payment of interest on any Security that is issued between a Regular Record Date and the related Interest Payment Date shall be payable as provided in such Security.

(c) Any interest on any Security that is due and payable, but is not timely paid or duly provided for, on any Interest Payment Date for the Securities (herein called "*Defaulted Interest*") shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in paragraph (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on a special record date for the payment of such Defaulted Interest (a "*Special Record Date*"), which shall be fixed in the following manner. At least thirty (30) days prior to the date of the proposed payment, the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest, which shall be not more than fifteen (15) days and not less than ten (10) days prior to the date of the proposed payment and not less

than ten (10) days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class, postage prepaid, to each Holder of a Security at the address of such Holder as it appears in the Securities Register not less than ten (10) days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered on such Special Record Date; or

(ii) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Securities may be listed, traded or quoted, and, upon such notice as may be required by such exchange or automated quotation system (or by the Trustee if the Securities are not listed), if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such payment shall be deemed practicable by the Trustee.

(d) Payments of interest on the Securities shall include interest accrued to but excluding the respective Interest Payment Dates. During the Fixed Rate Period, the amount of interest payable for any Interest Period for the Securities shall be computed and paid on the basis of a 360-day year of twelve 30-day months and the amount payable for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any Interest Period will be computed on the basis of a 360 day year and the actual number of days elapsed in the relevant Interest Period.

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

(f) Subject to the foregoing provisions of this Section 3.1, each Security delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Security.

SECTION 3.2. *Denominations.*

The Securities shall be in registered form without coupons and shall be issuable in minimum denominations of $100,000 and any integral multiple of $1,000 in excess thereof.

SECTION 3.3. *Execution, Authentication, Delivery and Dating.*

(a) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver the Securities in an aggregate principal amount (including all then Outstanding Securities) not in excess of Thirty Million Two Hundred Forty-Four Thousand Dollars ($30,244,000) executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and shall be fully protected in relying upon:

(i) a copy of any Board Resolution relating thereto; and

(ii) an Opinion of Counsel stating that: (1) such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute, and the Indenture constitutes, valid and legally binding obligations of the Company, each enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles; (2) the Securities have been duly authorized and executed by the Company and have been delivered to the Trustee for authentication in accordance with this Indenture; (3) the Securities are not required to be registered under the Securities Act; and (4) the Indenture is not required to be qualified under the Trust Indenture Act.

(b) The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its President or one of its Vice Presidents. The signature of any of these officers on the Securities may be manual or facsimile. Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

(c) No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by the manual signature of one of its authorized signatories, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 3.8, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

(d) Each Security shall be dated the date of its authentication.

SECTION 3.4. *Global Securities.*

(a) Upon the election of the Holder after the Original Issue Date, which election need not be in writing, the Securities owned by such Holder shall be issued in the form of one or more Global Securities registered in the name of the Depositary or its nominee. Each Global Security issued under this Indenture shall be registered in the name of the Depositary designated by the Company for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for registered Securities, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (i) such Depositary advises the Trustee and the Company in writing that such Depositary is no longer willing or able to properly discharge its responsibilities as Depositary with respect to such Global Security, and no qualified successor is appointed by the Company within ninety (90) days of receipt by the Company of such notice, (ii) such Depositary ceases to be a clearing agency registered under the Exchange Act and no successor is appointed by the Company within ninety (90) days after obtaining knowledge of such event, (iii) the Company executes and delivers to the Trustee a Company Order stating that the Company elects to terminate the book-entry system through the Depositary or (iv) an Event of Default shall have occurred and be continuing. Upon the occurrence of any event specified in clause (i), (ii), (iii) or (iv) above, the Trustee shall notify the Depositary and instruct the Depositary to notify all owners of beneficial interests in such Global Security of the occurrence of such event and of the availability of Securities to such owners of beneficial interests requesting the same. The Trustee may conclusively rely, and be protected in relying, upon the written identification of the owners of beneficial interests furnished by the Depositary, and shall not be liable for any delay resulting from a delay by the Depositary. Upon the issuance of such Securities and the registration in the Securities Register of such Securities in the names of the Holders of the beneficial interests therein, the Trustees shall recognize such holders of beneficial interests as Holders.

(c) If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, then either (i) such Global Security shall be so surrendered for exchange or cancellation as provided in this Article III or (ii) the principal amount thereof shall be reduced or increased by an amount equal to (x) the portion thereof to be so exchanged or canceled, or (y) the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Securities Registrar, whereupon the Trustee, in accordance with the Applicable Depositary Procedures, shall instruct the Depositary or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security by the Depositary,

accompanied by registration instructions, the Company shall execute and the Trustee shall authenticate and deliver any Securities issuable in exchange for such Global Security (or any portion thereof) in accordance with the instructions of the Depositary. The Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

(d) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depositary for such Global Security or a nominee thereof.

(e) The Depositary or its nominee, as the registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under this Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Depositary Procedures. Accordingly, any such owner's beneficial interest in a Global Security shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Depositary Participants. The Securities Registrar and the Trustee shall be entitled to deal with the Depositary for all purposes of this Indenture relating to a Global Security (including the payment of principal and interest thereon and the giving of instructions or directions by owners of beneficial interests therein and the giving of notices) as the sole Holder of the Security and shall have no obligations to the owners of beneficial interests therein. Neither the Trustee nor the Securities Registrar shall have any liability in respect of any transfers effected by the Depositary.

(f) The rights of owners of beneficial interests in a Global Security shall be exercised only through the Depositary and shall be limited to those established by law and agreements between such owners and the Depositary and/or its Depositary Participants.

(g) No holder of any beneficial interest in any Global Security held on its behalf by a Depositary shall have any rights under this Indenture with respect to such Global Security, and such Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. None of the Company, the Trustee nor any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or maintaining, supervising or reviewing any records relating to such beneficial ownership interests. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by a Depositary or impair, as between a Depositary and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depositary (or its nominee) as Holder of any Security.

SECTION 3.5. *Registration, Transfer and Exchange Generally.*

(a) The Trustee shall cause to be kept at the Corporate Trust Office a register (the "*Securities Register*") in which the registrar and transfer agent with respect to the Securities (the "*Securities Registrar*"), subject to such reasonable regulations as it may prescribe, shall provide

for the registration of Securities and of transfers and exchanges of Securities. The Trustee shall at all times also be the Securities Registrar. The provisions of Article VI shall apply to the Trustee in its role as Securities Registrar.

(b) Subject to compliance with Section 2.2(b), upon surrender for registration of transfer of any Security at the offices or agencies of the Company designated for that purpose the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations of like tenor and aggregate principal amount.

(c) At the option of the Holder, Securities may be exchanged for other Securities of any authorized denominations, of like tenor and aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

(d) All Securities issued upon any transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such transfer or exchange.

(e) Every Security presented or surrendered for transfer or exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar, duly executed by the Holder thereof or such Holder's attorney duly authorized in writing.

(f) No service charge shall be made to a Holder for any transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities.

(g) Neither the Company nor the Trustee shall be required pursuant to the provisions of this Section 3.5 (g): (i) to issue, register the transfer of or exchange any Security during a period beginning at the opening of business fifteen (15) days before the day of selection for redemption of Securities pursuant to Article XI and ending at the close of business on the day of mailing of the notice of redemption or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except, in the case of any such Security to be redeemed in part, any portion thereof not to be redeemed.

(h) The Company shall designate an office or offices or agency or agencies where Securities may be surrendered for registration or transfer or exchange. The Company initially designates the Corporate Trust Office as its office and agency for such purposes. The Company shall give prompt written notice to the Trustee and to the Holders of any change in the location of any such office or agency.

(i) The Securities may only be transferred to the Company or a "Qualified Purchaser" as such term is defined in Section 2(a)(51) of the Investment Company Act.

(j) Neither the Trustee nor the Securities Registrar shall be responsible for ascertaining whether any transfer hereunder complies with the registration provisions of or any exemptions from the Securities Act, applicable state securities laws or the applicable laws of any other jurisdiction, ERISA, the United States Internal Revenue Code of 1986, as amended, or the Investment Company Act; provided, that if a certificate is specifically required by the express terms of this Section 3.5 to be delivered to the Trustee or the Securities Registrar by a Holder or transferee of a Security, the Trustee and the Securities Registrar shall be under a duty to receive and examine the same to determine whether or not the certificate substantially conforms on its face to the requirements of this Indenture and shall promptly notify the party delivering the same if such certificate does not comply with such terms.

SECTION 3.6. *Mutilated, Destroyed, Lost and Stolen Securities.*

(a) If any mutilated Security is surrendered to the Trustee together with such security or indemnity as may be required by the Trustee to save the Company and the Trustee harmless, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and aggregate principal amount and bearing a number not contemporaneously outstanding.

(b) If there shall be delivered to the Trustee (i) evidence to its satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by it to save each of the Company and the Trustee harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a *bona fide* purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in

lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and aggregate principal amount as such destroyed, lost or stolen Security, and bearing a number not contemporaneously outstanding.

(c) If any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

(d) Upon the issuance of any new Security under this Section 3.6, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(e) Every new Security issued pursuant to this Section 3.6 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

(f) The provisions of this Section 3.6 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 3.7. *Persons Deemed Owners.*

The Company, the Trustee and any agent of the Company or the Trustee shall treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any interest on such Security and for all other purposes whatsoever, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 3.8. *Cancellation.*

All Securities surrendered for payment, redemption, transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Securities surrendered directly to the Trustee for any such purpose shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section 3.8, except as expressly permitted by this Indenture. All canceled Securities shall be retained or disposed of by the Trustee in accordance with its customary practices and the Trustee shall deliver to the Company a certificate of such disposition.

SECTION 3.9. *Reserved.*

SECTION 3.10. *Reserved.*

SECTION 3.11. *Agreed Tax Treatment.*

(a) Each Security issued hereunder shall provide that the Company and, by its acceptance or acquisition of a Security or a beneficial interest therein, the Holder of, and any Person that acquires a direct or indirect beneficial interest in, such Security, intend and agree to treat such Security as indebtedness of the Company for United States Federal, state and local tax purposes. The provisions of this Indenture shall be interpreted to further this intention and agreement of the parties.

(b) Any and all payments by or for the account of the Holders, or in respect of the Securities, shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding net income taxes and franchise taxes imposed on (or measured by) net income imposed on any Holder, or any other recipient of any payment to be made by or on account of any obligation of the Company hereunder as a result of a present or former connection between such Person and the jurisdiction imposing such tax levy, impost or withholding or any political subdivision or taxing authority thereof or therein, other than any such connection arising solely from such Holder having executed, delivered or performed its obligations or received a payment under, or enforced, the Securities (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities in respect of payments hereunder or under the Securities being hereinafter referred to as "*Taxes*"). If any Holder shall be required by law to deduct or withhold any Taxes from or in respect of any sum payable hereunder or under any Security, (i) the sum payable by the Company shall be increased as may be necessary so that after the

Company and such Holder, as the case may be, have made all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 3.11) such Holder receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the Company shall make all such deductions or withholdings, and (iii) the Company shall pay the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with applicable law.

(c) In addition, the Company shall pay to the relevant taxing authority in accordance with applicable law, and indemnify and hold the Holders harmless from, any present or future stamp, documentary, excise, property or similar taxes, charges or levies that arise from any payment made hereunder or under the Securities or from the execution, delivery or registration of, performance under, or otherwise with respect to, this Indenture or the Securities (hereinafter referred to as "*Other Taxes*").

(d) The Company shall indemnify each Holder for and hold each Holder harmless against the full amount of Taxes and Other Taxes, and for the full amount of Taxes and Other Taxes of any kind imposed by any jurisdiction on amounts payable under this Section 3.11, imposed on or paid by any such Holder and any liability (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto. This indemnification shall be made within thirty (30) days from the date any such Holder makes written demand therefor.

(e) Within thirty (30) days after the date of any payment of Taxes, the Company shall furnish to any such Holder the original or a certified copy of a receipt evidencing such payment.

SECTION 3.12. *CUSIP Numbers.*

The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption and other similar or related materials as a convenience to Holders; *provided*, that any such notice or other materials may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption or other materials and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers.

SECTION 3.13 *Shareholders Communications Act*

(a) With respect to securities under and as defined in the Shareholders Communications Act of 1985 (the "SCA") issued in the United States, the SCA requires the Trustee to disclose to the issuers, upon their request, the name, address and securities position of its customers who are (i) the "beneficial owners" (as defined in the SCA) of the issuer's securities, if the beneficial owner does not object to such disclosure, or (ii) acting as a "respondent bank" (as defined in the SCA) with respect to the securities. (Under the SCA, "respondent banks" do not have the option of objecting to such disclosure upon the issuers' request.) The SCA defines a "beneficial owner" as any person who has, or shares, the power to vote a security (pursuant to an agreement or otherwise), or who directs the voting of a security.

The SCA defines a "respondent bank" as any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with a bank, such as Trustee. Under the SCA, each Holder is either the "beneficial owner" or a "respondent bank."

(b) For Purposes of this Indenture, until Trustee receives a contrary written instruction from a Holder, Trustee shall assume that such Holder is the beneficial owner of the Securities.

(c) For purposes of this Indenture, until Trustee receives a contrary instruction from a Holder, Trustee shall release the name, address and securities position to the Issuer, if the Issuer requests such information pursuant to the SCA for the specific purpose of direct communications between such Issuer and such Holder. With respect to securities issued outside of the United States, if applicable, information shall be released to issuers only if required by law or regulation of the particular country in which the securities are located.

ARTICLE IV

SATISFACTION AND DISCHARGE

SECTION 4.1. *Satisfaction and Discharge of Indenture.*

This Indenture shall, upon Company Request, cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for and as otherwise provided in this Section 4.1) and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) either

(i) all Securities theretofore authenticated and delivered (other than (A) Securities that have been mutilated, destroyed, lost or stolen and that have been replaced or paid as provided in Section 3.6 and (B) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided in Section 10.2) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee for cancellation

(A) have become due and payable, or

(B) will become due and payable at their Stated Maturity within one year of the date of deposit, or

(C) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of subclause (ii)(A), (B) or (C) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose (x) an amount in the currency or currencies in which the Securities are payable, (y) Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount or (z) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest (including any Additional Interest) to the date of such deposit (in the case of Securities that have become due and payable) or to the Stated Maturity (or any date of principal repayment upon early maturity) or Redemption Date, as the case may be;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.6, the obligations of the Company to any Authenticating Agent under Section 6.11 and, if money shall have been deposited with the Trustee pursuant to subclause (a)(ii) of this Section 4.1, the obligations of the Trustee under Section 4.2 and Section 10.2(e) shall survive.

SECTION 4.2. *Application of Trust Money.*

Subject to the provisions of Section 10.2(d), all money deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by the Trustee, in accordance with the provisions of the Securities and this Indenture, to the payment in accordance with Section 3.1, either directly or through any Paying Agent as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest (including any Additional Interest) for the payment of which such money or obligations have been deposited with or received by the Trustee. Moneys held by the Trustee under this Section 4.2 shall not be subject to the claims of holders of Senior Debt under Article XII.

ARTICLE V

REMEDIES

SECTION 5.1. *Events of Default.*

"*Event of Default*" means, wherever used herein with respect to the Securities, any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any interest upon any Security, including any Additional Interest in respect thereof, when it becomes due and payable, and continuance of such default for a period of thirty (30) days;

(b) default in the payment of the principal of or any premium on any Security at its Maturity;

(c) except as otherwise set forth in this Section 5.1, default in the performance, or breach, of any representation, covenant or warranty of the Company in this Indenture or the Exchange Agreement and continuance of such default or breach for a period of thirty (30) days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least twenty five percent (25%) in aggregate principal amount of the Outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(d) the entry by a court having jurisdiction in the premises of a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of sixty (60) consecutive days;

(e) the institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by the Company to the institution of bankruptcy or insolvency proceedings against it, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt or insolvent, or the taking of corporate action by the Company in furtherance of any such action;

(f) default in the performance or breach of any covenant or warranty of the Company set forth in Sections 10.5 and 10.6 and continuance of such default or breach for a period of fifteen (15) days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least twenty five percent (25%) in aggregate principal amount of the Outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(g) default under that certain Junior Subordinated Indenture ("*Indenture II*") and other agreements related thereto, dated concurrently herewith, by and among the Company and the Trustee, whereby the Company has agreed to issue a Junior Subordinated Note due 2034 in the original principal amount of Thirty-One Million Seven Hundred Fifty-Six Thousand Dollars ($31,756,000) under the terms and conditions set forth in Indenture II.

SECTION 5.2. *Acceleration of Maturity; Rescission and Annulment.*

(a) If an Event of Default occurs and is continuing, then and in every such case the Trustee or the Holders of not less than twenty five percent (25%) in aggregate principal amount of the Outstanding Securities may declare the principal amount of all the Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration the principal amount of and the accrued interest (including any Additional Interest) on all the Securities shall become immediately due and payable.

(b) At any time after such a declaration of acceleration with respect to Securities has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in this Article V, the Holders of a majority in aggregate principal amount of the Outstanding Securities, by written notice to the Trustee, may rescind and annul such declaration and its consequences if:

(i) the Company has paid or deposited with the Trustee a sum sufficient to pay:

(A) all overdue installments of interest on all Securities,

(B) any accrued Additional Interest on all Securities,

(C) the principal of and any premium on any Securities that have become due otherwise than by such declaration of acceleration and interest (including any Additional Interest) thereon at the rate borne by the Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(ii) all Events of Default with respect to Securities, other than the non-payment of the principal of Securities that has become due solely by such acceleration, have been cured or waived as provided in Section 5.13;

No such rescission shall affect any subsequent default or impair any right consequent thereon.

SECTION 5.3. *Collection of Indebtedness and Suits for Enforcement by Trustee.*

(a) The Company covenants that if:

(i) default is made in the payment of any installment of interest (including any Additional Interest) on any Security when such interest becomes due and payable and such default continues for a period of thirty (30) days, or

(ii) default is made in the payment of the principal of and any premium on any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium and interest (including any Additional Interest) and, in addition thereto, all amounts owing the Trustee under Section 6.6.

(b) If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

(c) If an Event of Default with respect to Securities occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 5.4. *Trustee May File Proofs of Claim.*

In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or similar judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized hereunder in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to first pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6.

SECTION 5.5. *Trustee May Enforce Claim Without Possession of Securities.*

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, subject to Article XII and after provision for the payment of all the amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

SECTION 5.6. *Application of Money Collected.*

Any money or property collected or to be applied by the Trustee with respect to the Securities pursuant to this Article V shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money or property on account of principal or any premium or interest (including any Additional Interest), upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee, any predecessor Trustee and other Persons under Section 6.6;

SECOND: To the payment of all Senior Debt of the Company if and to the extent required by Article XII;

THIRD: Subject to Article XII, to the payment of the amounts then due and unpaid upon the Securities for principal and any premium and interest (including any Additional Interest) in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and any premium and interest (including any Additional Interest), respectively; and

FOURTH: The balance, if any, to the Person or Persons entitled thereto.

SECTION 5.7. *Limitation on Suits.*

Subject to Section 5.8, no Holder of any Securities shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a custodian, receiver, assignee, trustee, liquidator, sequestrator (or other similar official) or for any other remedy hereunder, unless:

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities;

(b) the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding for sixty (60) days; and

(e) no direction inconsistent with such written request has been given to the Trustee during such sixty (60)-day period by the Holders of a majority in aggregate principal amount of the Outstanding Securities;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Securities, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

SECTION 5.8. *Unconditional Right of Holders to Receive Principal, Premium, if any, and Interest.*

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium on such Security at its Maturity and payment of interest (including any Additional Interest) on such Security when due and payable and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

SECTION 5.9. *Restoration of Rights and Remedies.*

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or such Holder then and in every such case the Company, the Trustee and such Holders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and such Holder shall continue as though no such proceeding had been instituted.

SECTION 5.10. *Rights and Remedies Cumulative.*

Except as otherwise provided in Section 3.6(f), no right or remedy herein conferred upon or reserved to the Trustee or the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 5.11. *Delay or Omission Not Waiver.*

No delay or omission of the Trustee or any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or

constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article V or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or the Holders as the case may be.

SECTION 5.12. *Control by Holders.*

The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; *provided*, that:

(a) such direction shall not be in conflict with any rule of law or with this Indenture,

(b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction, and

(c) subject to the provisions of Section 6.2, the Trustee shall have the right to decline to follow such direction if a Responsible Officer or Officers of the Trustee shall, in good faith, reasonably determine that the proceeding so directed would be unjustly prejudicial to the Holders not joining in any such direction or would involve the Trustee in personal liability.

SECTION 5.13. *Waiver of Past Defaults.*

(a) The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities may waive any past Event of Default hereunder and its consequences except an Event of Default:

(i) in the payment of the principal of or any premium or interest (including any Additional Interest) on any Outstanding Security (unless such Event of Default has been cured and the Company has paid to or deposited with the Trustee a sum sufficient to pay all installments of interest (including any Additional Interest) due and past due and all principal of and any premium on all Securities due otherwise than by acceleration), or

(ii) in respect of a covenant or provision hereof that under Article IX cannot be modified or amended without the consent of each Holder of any Outstanding Security.

(b) Any such waiver shall be deemed to be on behalf of the Holders of all the Outstanding Securities.

(c) Upon any such waiver, such Event of Default shall cease to exist and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

SECTION 5.14. *Undertaking for Costs.*

All parties to this Indenture agree, and each Holder of any Security by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.14 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than ten percent (10%) in aggregate principal amount of the Outstanding Securities, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or any premium on the Security after the Stated Maturity or any interest (including any Additional Interest) on any Security after it is due and payable.

SECTION 5.15. *Waiver of Usury, Stay or Extension Laws.*

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VI

THE TRUSTEE

SECTION 6.1. *Corporate Trustee Required.*

There shall at all times be a Trustee hereunder with respect to the Securities. The Trustee shall be a corporation or national banking association organized and doing business under the laws of the United States or of any state thereof, authorized to exercise corporate trust powers, having a combined capital and surplus of at least $50,000,000, subject to supervision or examination by Federal or state authority and having an office within the United States. If such entity publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then, for the purposes of this Section 6.1, the combined capital and surplus of such entity shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.1, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VI.

SECTION 6.2. *Certain Duties and Responsibilities.*

Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; *provided*,

that in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they substantially conform on their face to the requirements of this Indenture.

(b) If an Event of Default known to the Trustee has occurred and is continuing, the Trustee shall, prior to the receipt of directions, if any, from the Holders of at least a majority in aggregate principal amount of the Outstanding Securities, exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.2. To the extent that, at law or in equity, the Trustee has duties and liabilities relating to the Holders, the Trustee shall not be liable to any Holder for the Trustee's good faith reliance on the provisions of this Indenture. The provisions of this Indenture, to the extent that they restrict the duties and liabilities of the Trustee otherwise existing at law or in equity, are agreed by the Company and the Holders to replace such other duties and liabilities of the Trustee.

(d) No provisions of this Indenture shall be construed to relieve the Trustee from liability with respect to matters that are within the authority of the Trustee under this Indenture for its own negligent action, negligent failure to act or willful misconduct, except that:

(i) the Trustee shall not be liable for any error or judgment made in good faith by an authorized officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of at least a majority in aggregate principal amount of the Outstanding Securities; and

(iii) the Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company and money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law.

SECTION 6.3. *Notice of Defaults.*

Within ninety (90) days after the occurrence of any default actually known to the Trustee, the Trustee shall give the Holders notice of such default unless such default shall have been cured or waived; *provided*, that except in the case of a default in the payment of the principal of or any premium or interest on any Securities, the Trustee shall be fully protected in withholding the notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that withholding the notice is in the interest of holders of Securities; and *provided*, *further*, that in the case of any default of the character specified in Section 5.1(c), no such notice to Holders shall be given until at least thirty (30) days after the occurrence thereof. For the purpose of this Section 6.3, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

SECTION 6.4. *Certain Rights of Trustee.*

Subject to the provisions of Section 6.2:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting in good faith and in accordance with the terms hereof upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) if (i) in performing its duties under this Indenture the Trustee is required to decide between alternative courses of action, (ii) in construing any of the provisions of this Indenture the Trustee finds ambiguous or inconsistent with any other provisions contained herein or (iii) the Trustee is unsure of the application of any provision of this Indenture, then, except as to any matter as to which the Holders are entitled to decide under the terms of this Indenture, the Trustee shall deliver a notice to the Company requesting the Company's written instruction as to the course of action to be taken and the Trustee shall take such action, or refrain from taking such action, as the Trustee shall be instructed in writing to take, or to refrain from taking, by the Company; *provided*, that if the Trustee does not receive such instructions from the Company within ten (10) Business Days after it has delivered such notice or such reasonably shorter period of time set forth in such notice the Trustee may, but shall be under no duty to, take such action, or refrain from taking such action, as the Trustee shall deem advisable and in the best interests of the Holders, in which event the Trustee shall have no liability except for its own negligence, bad faith or willful misconduct;

(c) any request or direction of the Company shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(d) the Trustee may consult with counsel (which counsel may be counsel to the Trustee, the Company or any of its Affiliates, and may include any of its employees) and the

advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against

the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction, including reasonable advances as may be requested by the Trustee;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, indenture, note or other paper or document, but the Trustee in its discretion may make such inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent, attorney, custodian or nominee appointed with due care by it hereunder;

(h) whenever in the administration of this Indenture the Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action with respect to enforcing any remedy or right hereunder, the Trustee (i) may request instructions from the Holders (which instructions may only be given by the Holders of the same aggregate principal amount of Outstanding Securities as would be entitled to direct the Trustee under this Indenture in respect of such remedy, right or action), (ii) may refrain from enforcing such remedy or right or taking such action until such instructions are received and (iii) shall be protected in acting in accordance with such instructions;

(i) except as otherwise expressly provided by this Indenture, the Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Indenture;

(j) without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with any bankruptcy, insolvency or other proceeding referred to in clauses (d) or (e) of the definition of Event of Default, such expenses (including legal fees and expenses of its agents and counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy laws or law relating to creditors rights generally;

(k) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate addressing such matter, which, upon receipt of such request, shall be promptly delivered by the Company;

(l) the Trustee shall not be charged with knowledge of any Event of Default unless either (i) a Responsible Officer of the Trustee shall have actual knowledge or (ii) the Trustee shall have received written notice thereof from the Company or a Holder; and

(m) in the event that the Trustee is also acting as Paying Agent, Authenticating Agent or Securities Registrar hereunder, the rights and protections afforded to the Trustee pursuant to this Article VI shall also be afforded such Paying Agent, Authenticating Agent, or Securities Registrar.

SECTION 6.5. *May Hold Securities.*

The Trustee, any Authenticating Agent, any Paying Agent, any Securities Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Securities Registrar or such other agent.

SECTION 6.6. *Compensation; Reimbursement; Indemnity*

(a) The Company agrees:

(i) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder in such amounts as the Company and the Trustee shall agree from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, bad faith or willful misconduct; and

(iii) to the fullest extent permitted by applicable law, to indemnify the Trustee and its Affiliates, and their officers, directors, shareholders, agents, representatives and employees for, and to hold them harmless against, any loss, damage, liability, tax (other than income, franchise or other taxes imposed on amounts paid pursuant to (i) or (ii) hereof), penalty, expense or claim of any kind or nature whatsoever incurred without negligence, bad faith or willful misconduct on its part arising out of or in connection with the acceptance or administration of this trust or the performance of the Trustee's duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

(b) To secure the Company's payment obligations in this Section 6.6, the Company hereby grants and pledges to the Trustee and the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, other than money or property held in trust to pay principal and interest on particular Securities. Such lien shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee.

(c) The obligations of the Company under this Section 6.6 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal of the Trustee.

(d) In no event shall the Trustee be liable for any indirect, special, punitive or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(e) In no event shall the Trustee be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Indenture.

SECTION 6.7. *Resignation and Removal; Appointment of Successor.*

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article VI shall become effective until the acceptance of appointment by the successor Trustee under Section 6.8.

(b) The Trustee may resign at any time by giving written notice thereof to the Company.

(c) The Trustee may be removed by the Act of the Holders of at least a majority in aggregate principal amount of the Outstanding Securities, delivered to the Trustee and the Company.

(d) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any reason, the Holders of the Outstanding Securities shall promptly appoint a successor Trustee, and such successor Trustee and the retiring Trustee shall comply with the applicable requirements of Section 6.8. If no successor Trustee shall have been so appointed by the Holders and accepted appointment within sixty (60) days after the giving of a notice of resignation by the Trustee or the removal of the Trustee in the manner required by Section 6.8, any Holder who has been a bona fide Holder of a Security for at least six months (or, if the Securities have been Outstanding for less than six (6) months, the entire period of such lesser time) may, on behalf of such Holder and all others similarly situated, and any resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee.

SECTION 6.8. *Acceptance of Appointment by Successor.*

(a) In case of the appointment hereunder of a successor Trustee, each successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of

the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all rights, powers and trusts referred to in paragraph (a) of this Section 6.8.

(c) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article VI.

SECTION 6.9. *Merger, Conversion, Consolidation or Succession to Business.*

Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided*, that such Person shall be otherwise qualified and eligible under this Article VI. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation or as otherwise provided above in this Section 6.9 to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated, and in case any Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor Trustee or in the name of such successor Trustee, and in all cases the certificate of authentication shall have the full force which it is provided anywhere in the Securities or in this Indenture that the certificate of the Trustee shall have.

SECTION 6.10. *Not Responsible for Recitals or Issuance of Securities.*

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Securities or the proceeds thereof.

SECTION 6.11. *Appointment of Authenticating Agent.*

(a) The Trustee may appoint an Authenticating Agent or Agents with respect to the Securities, which shall be authorized to act on behalf of the Trustee to authenticate Securities issued upon original issue and upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.6, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating

Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, or of any State or Territory thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by Federal or state authority. If such Authenticating Agent publishes reports of condition at least annually pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 6.11 the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.11, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 6.11.

(b) Any Person into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of an Authenticating Agent shall be the successor Authenticating Agent hereunder, provided such Person shall be otherwise eligible under this Section 6.11, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

(c) An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.11, the Trustee may appoint a successor Authenticating Agent eligible under the provisions of this Section 6.11, which shall be acceptable to the Company, and shall give notice of such appointment to all Holders. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent.

(d) The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.11 in such amounts as the Company and the Authenticating Agent shall agree from time to time.

(e) If an appointment of an Authenticating Agent is made pursuant to this Section 6.11, the Securities may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

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

Dated:

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

By: _____
Authenticating Agent

By: _____
Authorized Signatory

ARTICLE VII

HOLDER'S LISTS AND REPORTS BY COMPANY

SECTION 7.1. *Company to Furnish Trustee Names and Addresses of Holders.*

The Company will furnish or cause to be furnished to the Trustee:

(a) Upon any change in Holder, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a date not more than fifteen (15) days prior to the delivery thereof, and

(b) at such other times as the Trustee may request in writing, within thirty (30) days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than fifteen (15) days prior to the time such list is furnished,

in each case to the extent such information is in the possession or control of the Company and has not otherwise been received by the Trustee in its capacity as Securities Registrar.

SECTION 7.2. *Preservation of Information, Communications to Holders.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Securities Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, shall be as provided in the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of information as to the names and addresses of the Holders made pursuant to the Trust Indenture Act.

SECTION 7.3. *Reports by Company.*

(a) The Company shall furnish to the Holders and to prospective purchasers of Securities, upon their request, the information required to be furnished pursuant to Rule 144A(d)(4) under the Securities Act. The delivery requirement set forth in the preceding sentence may be satisfied by compliance with Section 7.3(b) hereof.

(b) The Company shall furnish to each of (i) the Trustee, (ii) the Holders and to subsequent holders of Securities, (iii) Taberna Capital Management, LLC, 450 Park Avenue, New York, New York 10022, Attn: Raphael Licht (or such other address as designated by Taberna Capital Management, LLC) and (iv) any beneficial owner of the Securities reasonably identified to the Company (which identification may be made either by such beneficial owner or by Taberna Capital Management, LLC), a duly completed and executed certificate substantially and substantively in the form attached hereto as Exhibit A, including the financial statements referenced in such Exhibit, which certificate and financial statements shall be so furnished by the Company not later than forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company and not later than ninety (90) days after the end of each fiscal year of the Company.

(c) If the Company intends to file its annual and quarterly information with the Securities and Exchange Commission (the "*Commission*") in electronic form pursuant to Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval ("*EDGAR*") system, the Company shall notify the Trustee in the manner prescribed herein of each such annual and quarterly filing. The Trustee is hereby authorized and directed to access the EDGAR system for purposes of retrieving the financial information so filed. Compliance with the foregoing shall constitute delivery by the Company of its financial statements to the Trustee in compliance with the provisions of Section 314(a) of the Trust Indenture Act, if applicable. The Trustee shall have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of reports, information and documents to the Trustee pursuant to this Section 7.3(c) shall be solely for purposes of compliance with this Section 7.3(c) and, if applicable, with Section 314(a) of the Trust Indenture Act. The Trustee's receipt of such reports, information and documents shall not constitute notice to it of the content thereof or any matter determinable from the content thereof, including the Company's compliance with any of its covenants hereunder, as to which the Trustee is entitled to rely upon Officers' Certificates.

ARTICLE VIII

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 8.1. *Company May Consolidate, Etc., Only on Certain Terms.*

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and no Person shall consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(a) if the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the entity formed by such consolidation or into which the Company is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of the Company substantially as an entirety shall be an entity organized and existing under the laws of the United States of America or any State or Territory thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest (including any Additional Interest) on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event of Default, and no event that, after notice or lapse of time, or both, would constitute an Event of Default, shall have happened and be continuing; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, any such supplemental indenture comply with this Article VIII and that all conditions precedent herein provided for relating to such transaction have been complied with; and the Trustee may rely upon such Officers' Certificate and Opinion of Counsel as conclusive evidence that such transaction complies with this Section 8.1.

SECTION 8.2. *Successor Company Substituted.*

(a) Upon any consolidation or merger by the Company with or into any other Person, or any conveyance, transfer or lease by the Company of its properties and assets substantially as an entirety to any Person in accordance with Section 8.1 and the execution and delivery to the Trustee of the supplemental indenture described in Section 8.1(a), the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and in the event of any such conveyance or transfer, following the execution and delivery of such supplemental indenture, the Company shall be discharged from all obligations and covenants under the Indenture and the Securities.

(b) Such successor Person may cause to be executed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall

deliver any Securities that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities that such successor Person thereafter shall cause to be executed and delivered to the Trustee on its behalf. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture.

(c) In case of any such consolidation, merger, sale, conveyance or lease, such changes in phraseology and form may be made in the Securities thereafter to be issued as may be appropriate to reflect such occurrence.

ARTICLE IX

SUPPLEMENTAL INDENTURES

SECTION 9.1. *Supplemental Indentures without Consent of Holders.*

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form reasonably satisfactory to the Trustee, for any of the following purposes:

(a) Intentionally omitted;

(b) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make or amend any other provisions with respect to matters or questions arising under this Indenture, which shall not be inconsistent with the other provisions of this Indenture, *provided*, that such action pursuant to this clause (b) shall not adversely affect in any material respect the interests of any Holders; or

(c) to comply with the rules and regulations of any securities exchange or automated quotation system on which any of the Securities may be listed, traded or quoted; or

(d) to add to the covenants, restrictions or obligations of the Company or to add to the Events of Default, *provided*, that such action pursuant to this clause (c) shall not adversely affect in any material respect the interests of any Holders; or

(e) to modify, eliminate or add to any provisions of the Indenture or the Securities to such extent as shall be necessary to ensure that the Securities are treated as indebtedness of the Company for United States Federal income tax purposes, *provided*, that such action pursuant to this clause (e) shall not adversely affect in any material respect the interests of any Holders.

SECTION 9.2. *Supplemental Indentures with Consent of Holders.*

(a) With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities under this Indenture; *provided*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security,

(i) change the Stated Maturity of the principal or any premium of any Security or change the date of payment of any installment of interest (including any Additional Interest) on any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof or change the place of payment where, or the coin or currency in which, any Security or interest thereon is payable, or restrict or impair the right to institute suit for the enforcement of any such payment on or after such date, or

(ii) reduce the percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with any provision of this Indenture or of defaults hereunder and their consequences provided for in this Indenture, or

(iii) modify any of the provisions of this Section 9.2, Section 5.13 or Section 10.7, except to increase any percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any reason, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security.

(b) It shall not be necessary for any Act of Holders under this Section 9.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 9.3. *Execution of Supplemental Indentures.*

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article IX or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in conclusively relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent herein provided for relating to such action have been complied with. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, indemnities or immunities under this Indenture or otherwise. Copies of the final form of each supplemental indenture shall be delivered by the Trustee at the expense of the Company to each Holder, promptly after the execution thereof.

SECTION 9.4. *Effect of Supplemental Indentures.*

Upon the execution of any supplemental indenture under this Article IX, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

SECTION 9.5. *Reference in Securities to Supplemental Indentures.*

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article IX may, and shall if required by the Company, bear a notation in form approved by the Company as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

ARTICLE X

COVENANTS

SECTION 10.1. *Payment of Principal, Premium, if any, and Interest.*

The Company covenants and agrees for the benefit of the Holders of the Securities that it will duly and punctually pay the principal of and any premium and interest (including any Additional Interest) on the Securities in accordance with the terms of the Securities and this Indenture.

SECTION 10.2. *Money for Security Payments to be Held in Trust.*

(a) Intentionally Omitted.

(b) Whenever the Company shall have one or more Paying Agents, it will, prior to 10:00 a.m., New York City time, on each due date of the principal of or any premium or interest (including any Additional Interest) on any Securities, deposit with such Paying Agent a sum sufficient to pay such amount, such sum to be held as provided in the Trust Indenture Act and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its failure so to act.

(c) The Company will cause each Paying Agent for the Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 10.2, that such Paying Agent will (i) comply with the provisions of this Indenture and the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities) in the making of any payment in respect of the Securities, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities.

(d) The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

(e) Any money deposited with the Trustee or any Paying Agent for the payment of the principal of and any premium or interest (including any Additional Interest) on any Security and remaining unclaimed for two years after such principal and any premium or interest has become due and payable shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be paid on Company Request to the Company, or (if then held by the Company) shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 10.3. *Statement as to Compliance.*

The Company shall deliver to the Trustee, with a copy to Taberna, within one hundred and twenty (120) days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate covering the preceding calendar year, stating whether or not to the knowledge of the signers thereof the Company is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder), and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge. The delivery requirements of this Section 10.3 may be satisfied by compliance with Section 8.16(a) of the Trust Agreement.

SECTION 10.4. *Calculation Agent.*

(a) The parties hereby agrees that for so long as any of the Securities remain Outstanding, there will at all times be an agent appointed to calculate LIBOR in respect of each Interest Payment Date in accordance with the terms of Schedule A (the "*Calculation Agent*"). The Holders have initially appointed Trustee as Calculation Agent for purposes of determining LIBOR for each Interest Payment Date. The Calculation Agent may be removed by the Holders of a majority in aggregate principal amount of the Securities.

(b) The Calculation Agent shall be required to agree that, as soon as possible after 11:00 a.m. (London time) on each LIBOR Determination Date (as defined in Schedule A), but in no event later than 11:00 a.m. (London time) on the Business Day immediately following each LIBOR Determination

Date, the Calculation Agent will calculate the interest rate (the Interest Payment shall be rounded to the nearest cent, with half a cent being rounded upwards) for the related Interest Payment Date, and will communicate such rate and amount to the Company, the Holders, the Trustee, and the Paying Agent. The Calculation Agent will also specify to the Company and the Holders the quotations upon which the foregoing rates and amounts are based and, in any event, the Calculation Agent shall notify the Company and the Holders before 5:00 p.m. (London time) on each LIBOR Determination Date that either: (i) it has determined or is in the process of determining the foregoing rates and amounts or (ii) it has not determined and is not in the process of determining the foregoing rates and amounts, together with its reasons therefor. The Calculation Agent's determination of the foregoing rates and amounts for any Interest Payment Date will (in the absence of manifest error) be final and binding upon all parties. For the sole purpose of calculating the interest rate for the Securities, "Business Day" shall be defined as any day on which dealings in deposits in Dollars are transacted in the London interbank market.

SECTION 10.5. *Inspection of Books and Records; Management and Board Observation Rights.*

(a) Upon written notice from the Holders of a majority in aggregate principal amount of the Outstanding Securities at least five (5) Business Days in advance, the Company shall permit the Holders of a majority in aggregate principal amount of the Outstanding Securities to examine the books and records of account of the Company and its subsidiaries (and to make copies thereof and extracts therefrom) and to discuss the affairs, finances and accounts of such Persons with, and to be advised as to the same by such management representatives of the Company and its subsidiaries as the Holders of a majority in aggregate principal amount of the Outstanding Securities may reasonably request, either in person at the Company's offices or telephonically, all at such reasonable times and intervals during normal business hours as the Holders of a majority in aggregate principal amount of the Outstanding Securities may reasonably request, at the expense of the Company.

(b) The Holders and their Affiliates will keep confidential any non-public information of the Company made available to the Holders of a majority in aggregate principal amount of the Outstanding Securities or their Affiliates; provided, such confidential information shall not include any information that (1) is or becomes generally available to the public (other than through breach of this paragraph by the Holders of a majority in aggregate principal amount of the Outstanding Securities or their Affiliates), (2) was within the possession of the Holders of a majority in aggregate principal amount of the Outstanding Securities prior to its being furnished to the Holders of a majority in aggregate principal amount of the Outstanding Securities by or on behalf of the Company, provided that the source of such information was not known by the Holders of a majority in aggregate principal amount of the Outstanding Securities to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the Company with respect to such information or (3) becomes available to the Holders of a majority in aggregate principal amount of the Outstanding Securities on a non-confidential basis from a source other than the Company or any of its representatives, provided

that such source is not known by the Holders of a majority in aggregate principal amount of the Outstanding Securities to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the Company with respect to such information; and provided further, that such confidential information may be disclosed if the Holders of a majority in aggregate principal amount of the Outstanding Securities or their Affiliates are required to disclose such information pursuant to law, judicial or administrative process, or regulatory demand or request of any body having jurisdiction over the Holders. In the event that the Holders of a majority in aggregate principal amount of the Outstanding Securities or any of their Affiliates are requested or are required by law to disclose any such confidential information, the Holders of a majority in aggregate principal amount of the Outstanding Securities shall provide the Company with prompt written notice of any such request or requirement.

SECTION 10.6. *Additional Covenants.*

(a) For the period commencing on the date of this Agreement and continuing through March 30, 2010, or in any event if an Event of Default has occurred and is continuing, the Company covenants and agrees with each Holder of Securities that it shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of the Company's capital stock (for the avoidance of doubt, the term "capital stock" includes both common stock and preferred stock of the Company), (ii) vote in favor of or permit or otherwise allow any of its subsidiaries to declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to or otherwise retire, any shares of such subsidiaries preferred stock (for the avoidance of doubt, whether such preferred stock is perpetual or otherwise) except for dividends or distributions (x) to the Company or its subsidiaries and (y) by subsidiaries of the Company in which there are third party investors to the Company and such third party investors, or (iii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank pari passu in all respects with or junior in interest to the Securities (other than (A) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase plan or in connection with the issuance of stockholder stock of the Company (or securities convertible into or exercisable for such units of stockholder stock) as consideration in an acquisition transaction entered into prior to the date of this Agreement or, if later than March 30, 2010, prior to an Event of Default, (B) as a result of an exchange or conversion of any class or series of the Company's capital stock (or any capital stock of a Subsidiary of the Company) for any class or series of the Company's capital stock or of any class or series of the Company's indebtedness for any class or series of the Company's capital stock, (C) the purchase of fractional interests in the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, (D) any declaration of a dividend in connection with any Rights Plan or the redemption or repurchase of rights pursuant thereto, or (E) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks pari passu with or junior to such stock).

(b) Notwithstanding the foregoing, the restrictions set forth in Section 10.6(a) shall not apply to (i) payments of interest only (including deferred interest payments of approximately $525,800 accruing through June 30, 2009) on, and any repayments, repurchases or redemptions of those certain Fixed/Floating Rate Junior Subordinated Debt Securities due 2035, issued pursuant to that certain Junior Subordinated Indenture between Impac Mortgage Holdings, Inc., as issuer, and Wilmington Trust Company, as trustee, dated as of October 15, 2005 and the related securities issued pursuant to the Amended and Restated Declaration of Trust of Impact Capital Trust #4 dated as of October 15, 2005, (ii) a redemption of the Company's 9.375% Series B Cumulative Redeemable Preferred Stock, $0.01 par value per share (the *"Series B Preferred Stock"*)and its 9.125% Series C Cumulative Redeemable Preferred Stock, $0.01 par value per share (the *"Series C Preferred Stock")*, or the repurchase of all of such Series B Preferred Stock or Series C Preferred Stock (for an aggregate purchase price of up to $1,861,000) pursuant to the terms of a cash tender offer for all such outstanding stock (which tender offer may include the payment of accumulated but unpaid dividends upon such Series B Preferred Stock and Series C Preferred Stock in an aggregate amount of up to $7,444,000).

(c) Intentionally Omitted.

SECTION 10.7. *Waiver of Covenants.*

The Company may omit in any particular instance to comply with any covenant or condition contained in Sections 10.5 or 10.6 if, before or after the time for such compliance, the Holders of at least a majority in aggregate principal amount of the Outstanding Securities shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company in respect of any such covenant or condition shall remain in full force and effect.

SECTION 10.8. *Treatment of Securities.*

The Company will treat the Securities as indebtedness, and the amounts, other than payments of principal, payable in respect of the principal amount of such Securities as interest, for all U.S. federal income tax purposes. All payments in respect of the Securities will be made free and clear of U.S. withholding tax to any beneficial owner thereof that has provided an Internal Revenue Service Form W-9 or W-8BEN (or any substitute or successor form) establishing its U.S. or non-U.S. status for U.S. federal income tax purposes, or any other applicable form establishing a complete exemption from U.S. withholding tax.

SECTION 10.9. *Fees Costs and Expenses.*

The Company shall pay on demand all costs and fees, including all reasonable attorneys' fees and disbursements, of the Holders of the Securities and Taberna Capital Management, LLC, as provided in the Exchange Agreement. The Company shall also pay the fees and expenses of the Trustee as provided in that separate fee agreement between the Company and the Trustee and as otherwise required pursuant to Section 6.6. hereof.

ARTICLE XI

REDEMPTION OF SECURITIES

SECTION 11.1. *Optional Redemption.*

The Company may, at its option, on any Interest Payment Date, on or after March 30, 2010, redeem the Securities in whole at any time or in part from time to time, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof (or of the redeemed portion thereof, as applicable), together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date (the "*Optional Redemption Price*").

SECTION 11.2. *Special Event Redemption.*

Prior to March 30, 2010, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, redeem the Securities, in whole but not in part, at a Redemption Price equal to one hundred seven and one half percent (107.5%) of the principal amount thereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date (the "*Special Redemption Price*").

SECTION 11.3. *Election to Redeem; Notice to Trustee.*

The election of the Company to redeem any Securities, in whole or in part, shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company, the Company shall, not less than forty-five (45) days and not more than seventy-five (75) days prior to the Redemption Date (unless a shorter notice period shall be satisfactory to the Trustee), notify the Trustee in writing of such date and of the principal amount of the Securities to be redeemed and provide the additional information required to be included in the notice or notices contemplated by Section 11.5. In the case of any redemption of Securities, in whole or in part, (a) prior to the expiration of any restriction on such redemption provided in this Indenture or the Securities or (b) pursuant to an election of the Company which is subject to a condition specified in this Indenture or the Securities, the Company shall furnish the Trustee with an Officers' Certificate and an Opinion of Counsel evidencing compliance with such restriction or condition.

SECTION 11.4. *Selection of Securities to be Redeemed.*

(a) If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected and redeemed on a pro rata basis not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, *provided*, that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

(b) The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security that has been or is to be redeemed.

(c) The provisions of paragraphs (a) and (b) of this Section 11.4 shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

SECTION 11.5. *Notice of Redemption.*

(a) Notice of redemption shall be given not later than the thirtieth (30th) day, and not earlier than the sixtieth (60^{th}) day, prior to the Redemption Date to each Holder of Securities to be redeemed, in whole or in part, (unless a shorter notice shall be satisfactory to the Holders of the Securities and the Trustee).

(b) With respect to Securities to be redeemed, in whole or in part, each notice of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price or, if the Redemption Price cannot be calculated prior to the time the notice is required to be sent, the estimate of the Redemption Price, as calculated by the Company, together with a statement that it is an estimate and that the actual Redemption Price will be calculated on the fifth Business Day prior to the Redemption Date (and if an estimate is provided, a further notice shall be sent of the actual Redemption Price on the date that such Redemption Price is calculated);

(iii) if less than all Outstanding Securities are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the amount of and particular Securities to be redeemed;

(iv) that on the Redemption Date, the Redemption Price will become due and payable upon each such Security or portion thereof, and that any interest (including any Additional Interest) on such Security or such portion, as the case may be, shall cease to accrue on and after said date; and

(v) the place or places where such Securities are to be surrendered for payment of the Redemption Price.

(c) Notice of redemption of Securities to be redeemed, in whole or in part, at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and shall be irrevocable. The notice if mailed in the manner provided above shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail or any defect in the notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

SECTION 11.6. *Deposit of Redemption Price.*

Prior to 10:00 a.m., New York City time, on the Redemption Date specified in the notice of redemption given as provided in Section 11.5, the Company will deposit with the Trustee or with one or more Paying Agents an amount of money sufficient to pay the Redemption Price of, and any accrued interest (including any Additional Interest) on, all the Securities (or portions thereof) that are to be redeemed on that date.

SECTION 11.7. *Payment of Securities Called for Redemption.*

(a) If any notice of redemption has been given as provided in Section 11.5, the Securities or portion of Securities with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date. On presentation and surrender of such Securities at a Place of Payment specified in such notice, the Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date.

(b) Upon presentation of any Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the Security so presented and having the same Original Issue Date, Stated Maturity and terms.

(c) If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal of and any premium on such Security shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

ARTICLE XII

SUBORDINATION OF SECURITIES

SECTION 12.1. *Securities Subordinate to Senior Debt.*

The Company covenants and agrees, and each Holder of a Security, by its acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article XII, the payment of the principal of and any premium and interest (including any Additional Interest) on each and all of the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Debt.

SECTION 12.2. *No Payment When Senior Debt in Default; Payment Over of Proceeds Upon Dissolution, Etc.*

(a) In the event and during the continuation of any default by the Company in the payment of any principal of or any premium or interest on any Senior Debt (following any grace period, if applicable) when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration of acceleration or otherwise, then, upon written notice of such default to the Company by the holders of such Senior Debt or any trustee therefor, unless and until such default shall have been cured or waived or shall have ceased to exist, no direct or indirect payment (in cash, property, securities,

by set-off or otherwise) shall be made or agreed to be made on account of the principal of or any premium or interest (including any Additional Interest) on any of the Securities, or in respect of any redemption, repayment, retirement, purchase or other acquisition of any of the Securities.

(b) In the event of a bankruptcy, insolvency or other proceeding described in clause (d) or (e) of the definition of Event of Default (each such event, if any, herein sometimes referred to as a "*Proceeding*"), all Senior Debt (including any interest thereon accruing after the commencement of any such proceedings) shall first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to any Holder of any of the Securities on account thereof. Any payment or distribution, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment), which would otherwise (but for these subordination provisions) be payable or deliverable in respect of the Securities shall be paid or delivered directly to the holders of Senior Debt in accordance with the priorities then existing among such holders until all Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) shall have been paid in full.

(c) In the event of any Proceeding, after payment in full of all sums owing with respect to Senior Debt, the Holders of the Securities, together with the holders of any obligations of the Company ranking on a parity with the Securities, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid principal of and any premium and interest (including any Additional Interest) on the Securities and such other obligations before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any Equity Interests or any obligations of the Company ranking junior to the Securities and such other obligations. If, notwithstanding the foregoing, any payment or distribution of any character on any security, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment) shall be received by the Trustee or any Holder in contravention of any of the terms hereof and before all Senior Debt shall have been paid in full, such payment or distribution or security shall be received in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior

Debt at the time outstanding in accordance with the priorities then existing among such holders for application to the payment of all Senior Debt remaining unpaid, to the extent necessary to pay all such Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) in full. In the event of the failure of the Trustee or any Holder to endorse or assign any such payment, distribution or security, each holder of Senior Debt is hereby irrevocably authorized to endorse or assign the same.

(d) The Trustee and the Holders, at the expense of the Company, shall take such reasonable action (including the delivery of this Indenture to an agent for any holders of Senior Debt or consent to the filing of a financing statement with respect hereto) as may, in the opinion of counsel designated by the holders of a majority in aggregate principal amount of the Senior Debt at the time outstanding, be necessary or appropriate to assure the effectiveness of the subordination effected by these provisions.

(e) The provisions of this Section 12.2 shall not impair any rights, interests, remedies or powers of any secured creditor of the Company in respect of any security interest the creation of which is not prohibited by the provisions of this Indenture.

(f) The securing of any obligations of the Company, otherwise ranking on a parity with the Securities or ranking junior to the Securities, shall not be deemed to prevent such obligations from constituting, respectively, obligations ranking on a parity with the Securities or ranking junior to the Securities.

SECTION 12.3. *Payment Permitted If No Default.*

Nothing contained in this Article XII or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company, at any time, except during the pendency of the conditions described in paragraph (a) of Section 12.2 or of any Proceeding referred to in Section 12.2, from making payments at any time of principal of and any premium or interest (including any Additional Interest) on the Securities or (b) the application by the Trustee of any moneys deposited with it hereunder to the payment of or on account of the principal of and any premium or interest (including any Additional Interest) on the Securities or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge (in accordance with Section 12.8) that such payment would have been prohibited by the provisions of this Article XII, except as provided in Section 12.8.

SECTION 12.4. *Subrogation to Rights of Holders of Senior Debt.*

Subject to the payment in full of all amounts due or to become due on all Senior Debt, or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Debt, the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this Article XII (equally and ratably with the holders of all indebtedness of the Company that by its express terms is subordinated to Senior Debt of the Company to substantially the same extent as the Securities are subordinated to the Senior Debt and is entitled to like rights of subrogation by reason of any payments or distributions made to holders of such Senior Debt) to the rights of the holders of such Senior Debt to receive payments and distributions of cash,

property and securities applicable to the Senior Debt until the principal of and any premium and interest (including any Additional Interest) on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article XII, and no payments made pursuant to the provisions of this Article XII to the holders of Senior Debt by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Debt, and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Debt.

SECTION 12.5. *Provisions Solely to Define Relative Rights.*

The provisions of this Article XII are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Senior Debt on the other hand. Nothing contained in this Article XII or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as between the Company and the Holders of the Securities, the obligations of the Company, which are absolute and unconditional, to pay to the Holders of the Securities the principal of and any premium and interest (including any Additional Interest) on the Securities as and when the same shall become due and payable in accordance with their terms, (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than their rights in relation to the holders of Senior Debt or (c) prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, including filing and voting claims in any Proceeding, subject to the rights, if any, under this Article XII of the holders of Senior Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

SECTION 12.6. *Trustee to Effectuate Subordination.*

Each Holder of a Security by his or her acceptance thereof authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination provided in this Article XII and appoints the Trustee his or her attorney-in-fact for any and all such purposes.

SECTION 12.7. *No Waiver of Subordination Provisions.*

(a) No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or be otherwise charged with.

(b) Without in any way limiting the generality of paragraph (a) of this Section 12.7, the holders of Senior Debt may, at any time and from to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to such Holders of the Securities and without impairing or releasing the subordination provided in this Article XII or

the obligations hereunder of such Holders of the Securities to the holders of Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Debt, or otherwise amend or supplement in any manner Senior Debt or any instrument evidencing the same or any agreement under which Senior Debt is outstanding, (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Debt, (iii) release any Person liable in any manner for the payment of Senior Debt and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

SECTION 12.8. *Notice to Trustee.*

(a) The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article XII or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder of Senior Debt or from any trustee, agent or representative therefor; *provided*, that if the Trustee shall not have received the notice provided for in this Section 12.8 at least two Business Days prior to the date upon which by the terms hereof any monies may become payable for any purpose (including, the payment of the principal of and any premium on or interest (including any Additional Interest) on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

(b) The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself or herself to be a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact therefor) to establish that such notice has been given by a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article XII, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XII, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 12.9. *Reliance on Judicial Order or Certificate of Liquidating Agent.*

Upon any payment or distribution of assets of the Company referred to in this Article XII, the Trustee and the Holders of the Securities shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such Proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the

Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XII.

SECTION 12.10. *Trustee Not Fiduciary for Holders of Senior Debt.*

The Trustee, in its capacity as trustee under this Indenture, shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other Person cash,

property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article XII or otherwise.

SECTION 12.11. *Rights of Trustee as Holder of Senior Debt; Preservation of Trustee's Rights.*

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XII with respect to any Senior Debt that may at any time be held by it, to the same extent as any other holder of Senior Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

SECTION 12.12. *Article Applicable to Paying Agents.*

If at any time any Paying Agent other than the Trustee shall have been appointed and shall be then acting hereunder, the term "Trustee" as used in this Article XII shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article XII in addition to or in place of the Trustee. For avoidance of doubt, neither the Company nor any affiliate of the Company shall be permitted to serve as a Paying Agent hereunder.

* * * *

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

IMPAC MORTGAGE HOLDINGS, INC.

By: /s/ Todd R. Taylor
Name: Todd R. Taylor
Title: CFO

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

By: /s/ Bill Marshall
Name: Bill Marshall
Title: Vice President

Schedule A

DETERMINATION OF LIBOR

With respect to the Securities, the London interbank offered rate ("*LIBOR*") shall be determined by the Calculation Agent in accordance with the following provisions (in each case rounded to the nearest ..000001%):

(1) On the second LIBOR Business Day (as defined below) prior to an Interest Payment Date (each such day, a "*LIBOR Determination Date*"), LIBOR for any given security shall for the following Interest Period equal the rate, as obtained by the Calculation Agent from Bloomberg Financial Markets Commodities News, for three-month Eurodollar deposits that appears on Dow Jones Telerate Page 3750 (as defined in the International Swaps and Derivatives Association, Inc. 1991 Interest Rate and Currency Exchange Definitions), or such other page as may replace such Page 3750, as of 11:00 a.m. (London time) on such LIBOR Determination Date.

(2) If, on any LIBOR Determination Date, such rate does not appear on Dow Jones Telerate Page 3750 or such other page as may replace such Page 3750, the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks (as defined below) to leading banks in the London interbank market for three-month Eurodollar deposits in an amount determined by the Calculation Agent by reference to requests for quotations as of approximately 11:00 a.m. (London time) on the LIBOR Determination Date made by the Calculation Agent to the Reference Banks. If, on any LIBOR Determination Date, at least two of the Reference Banks provide such quotations, LIBOR shall equal such arithmetic mean of such quotations. If, on any LIBOR Determination Date, only one or none of the Reference Banks provide such quotations, LIBOR shall be deemed to be the arithmetic mean of the offered quotations that leading banks in the City of New York selected by the Calculation Agent are quoting on the relevant LIBOR Determination Date for three-month Eurodollar deposits in an amount determined by the Calculation Agent by reference to the principal London offices of leading banks in the London interbank market; *provided* that, if the Calculation Agent is required but is unable to determine a rate in accordance with at least one of the procedures provided above, LIBOR shall be LIBOR as determined on the previous LIBOR Determination Date.

(3) As used herein: "*Reference Banks*" means four major banks in the London interbank market selected by the Calculation Agent; and "*LIBOR Business Day*" means a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London.

Exhibit A

Form of Officer's Financial Certificate

The undersigned, the **[**Chairman/Vice Chairman/Chief Executive Officer/President/ Vice President/Chief Financial Officer/Treasurer/Assistant Treasurer**]**, hereby certifies, pursuant to Section 7.3(b) of the Junior Subordinated Indenture, dated as of May 8, 2009, among Impac Mortgage Holdings, Inc. (the "Company") and The Bank of New York Mellon Trust Company, National Association, as trustee, that, as of **[**date**]**, **[**20 **]**, the Company, if applicable, and its subsidiaries had the following ratios and balances:

As of **[**Quarterly/Annual Financial Date**]**, 20

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

* A table describing the quarterly report calculation procedures is provided on page

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

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

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

There has been no monetary default with respect to any indebtedness owed by the Company and/or its subsidiaries (other than those defaults cured within 30 days of the occurrence of the same) **[**, except as set forth below:**]**.

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

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

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

Page attached hereto sets forth the financial data and computations evidencing the Company's compliance with the Financial Covenants, all of which data and computations are true, complete and correct.**]**

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

[COMPANY**]**

By: _____
Name: _____

[Company**]**

[Address**]**
[Address**]**
[Telephone Number**]**