

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

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

For the quarterly period ended September 30, 2011

or

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

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

Commission File Number: 1-14100

**IMPAC MORTGAGE HOLDINGS, INC.**

(Exact name of registrant as specified in its charter)

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

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

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

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

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

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

There were 7,814,946 shares of common stock outstanding as of November 10, 2011.

**IMPAC MORTGAGE HOLDINGS, INC.**

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**PART I. FINANCIAL INFORMATION**

**ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS**

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

	September 30, 2011 (Unaudited)	December 31, 2010
<b>ASSETS</b>		
Cash and cash equivalents	\$ 8,716	\$ 11,507
Restricted cash	4,915	1,495
Trust assets		
Investment securities available-for-sale	444	645
Securitized mortgage collateral	5,441,590	6,011,675
Derivative assets	37	40
Real estate owned (REO)	61,255	92,708
Total trust assets	5,503,326	6,105,068
Mortgage loans held-for-sale	50,093	4,283
Assets of discontinued operations	105	373
Other assets	29,690	31,213
Total assets	<u>\$ 5,596,845</u>	<u>\$ 6,153,939</u>
<b>LIABILITIES</b>		
Trust liabilities		
Securitized mortgage borrowings	\$ 5,446,030	\$ 6,012,745
Derivative liabilities	31,062	65,916
Total trust liabilities	5,477,092	6,078,661

Warehouse borrowings	46,948	4,057
Long-term debt	11,333	11,728
Notes payable	6,575	6,874
Liabilities of discontinued operations	10,197	13,053
Other liabilities	14,481	11,869
<b>Total liabilities</b>	<b>5,566,626</b>	<b>6,126,242</b>

Commitments and contingencies

**STOCKHOLDERS' EQUITY**

Series A junior participating preferred stock, \$0.01 par value; 2,500,000 shares authorized; none issued or outstanding	—	—
Series B 9.375% redeemable preferred stock, \$0.01 par value; liquidation value \$16,904; 2,000,000 shares authorized, 665,592 noncumulative shares issued and outstanding as of September 30, 2011 and December 31, 2010, respectively	7	7
Series C 9.125% redeemable preferred stock, \$0.01 par value; liquidation value \$35,389; 5,500,000 shares authorized; 1,405,086 noncumulative shares issued and outstanding as of September 30, 2011 and December 31, 2010, respectively	14	14
Common stock, \$0.01 par value; 200,000,000 shares authorized; 7,814,946 and 7,787,546 shares issued and outstanding as of September 30, 2011 and December 31, 2010, respectively	78	78
Additional paid-in capital	1,076,611	1,076,375
Net accumulated deficit:		
Cumulative dividends declared	(822,520)	(822,520)
Retained deficit	(225,082)	(227,558)
Net accumulated deficit	(1,047,602)	(1,050,078)
<b>Total Impac Mortgage Holdings, Inc. stockholders' equity</b>	<b>29,108</b>	<b>26,396</b>
Noncontrolling interests	1,111	1,301
<b>Total equity</b>	<b>30,219</b>	<b>27,697</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 5,596,845</b>	<b>\$ 6,153,939</b>

See accompanying notes to consolidated financial statements.

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

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2011	2010	2011	2010
<b>INTEREST INCOME</b>	\$ 172,657	\$ 230,927	\$ 593,122	\$ 759,016
<b>INTEREST EXPENSE</b>	172,497	229,256	590,117	755,020
Net interest income	160	1,671	3,005	3,996
<b>NON-INTEREST INCOME:</b>				
Change in fair value of net trust assets, excluding REO	10,297	9,573	17,596	12,701
Losses from REO	(6,867)	(10,147)	(11,855)	(6,290)
Non-interest income — net trust assets	3,430	(574)	5,741	6,411
Mortgage and real estate services fees	17,857	15,547	44,558	42,168
Gain on sale of Experience 1, Inc.	1,780	—	1,780	—
Other income	1,270	1,189	1,299	876
Total non-interest income	24,337	16,162	53,378	49,455
<b>NON-INTEREST EXPENSE:</b>				
Personnel expense	13,599	10,683	36,659	31,132
General and administrative	5,505	4,869	15,089	14,278
Total non-interest expense	19,104	15,552	51,748	45,410
Earnings from continuing operations before income taxes	5,393	2,281	4,635	8,041
Income tax expense from continuing operations	957	14	978	143
Earnings from continuing operations	4,436	2,267	3,657	7,898
(Loss) earnings from discontinued operations, net of tax	(1,490)	(1,285)	(1,832)	1,905
Net earnings	2,946	982	1,825	9,803
Net loss (earnings) attributable to noncontrolling interests	156	(8)	651	375
Net earnings attributable to IMH	\$ 3,102	\$ 974	\$ 2,476	\$ 10,178
Earnings (loss) per common share - basic:				
Earnings from continuing operations attributable to IMH	\$ 0.59	\$ 0.29	\$ 0.55	\$ 1.07
(Loss) earnings from discontinued operations	(0.19)	(0.16)	(0.23)	0.25

Net earnings per share available to common stockholders	\$ 0.40	\$ 0.13	\$ 0.32	\$ 1.32
Earnings (loss) per common share - diluted:				
Earnings from continuing operations attributable to IMH	\$ 0.55	\$ 0.27	\$ 0.52	\$ 0.99
(Loss) earnings from discontinued operations	(0.18)	(0.15)	(0.22)	0.23
Net earnings per share available to common stockholders	\$ 0.37	\$ 0.12	\$ 0.30	\$ 1.22

See accompanying notes to consolidated financial statements

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

	For the Nine Months Ended September 30,	
	2011	2010
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net earnings	\$ 1,825	\$ 9,803
Losses from REO	11,855	6,290
Change in fair value of mortgage servicing rights	(106)	—
Extinguishment of debt	338	—
Gain on sale of loans	(6,312)	—
Origination of mortgage loans held-for-sale	(525,106)	—
Sale and principal reduction on mortgage loans held-for-sale	486,235	—
Change in fair value of net trust assets, excluding REO	(61,693)	(101,706)
Change in fair value of long-term debt	(2,102)	(952)
Accretion of interest income and expense	251,040	307,710
Change in REO impairment reserve	(22,248)	(12,462)
Stock-based compensation	222	472
Impairment of deferred charge	949	—
Gain on sale of Experience 1, Inc.	(1,780)	—
Net change in restricted cash	(3,420)	250
Amortization of discount on note payable	985	—
Net change in other assets and liabilities	2,517	(3,213)
Net cash used in operating activities of discontinued operations	(2,685)	(3,226)
Net cash provided by operating activities	130,514	202,966
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Net change in securitized mortgage collateral	530,949	563,708
Net change in mortgages held-for-investment	(61)	148
Sale of Experience 1, Inc.	512	—
Maturity of short-term investments	—	5,000
Purchase of premises and equipment	(612)	(1,274)
Net principal change in investment securities available-for-sale	161	117
Proceeds from the sale of real estate owned	117,265	175,707
Net cash provided by investing activities of discontinued operations	—	1,907
Net cash provided by investing activities	648,214	745,313
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Repayment of warehouse borrowings	(474,848)	(580)
Borrowings under warehouse agreements	517,739	2,024
Repayment of line of credit	(1,850)	—
Borrowings under line of credit	3,850	—
Repayment of securitized mortgage borrowings	(825,447)	(941,985)
Issuance of note payable	8,815	—
Principal payments on notes payable	(9,688)	(22,935)
Principal payments on capital lease	(201)	—
Proceeds from exercise of stock options	14	20
Net cash used in financing activities	(781,616)	(963,456)
Net change in cash and cash equivalents	(2,888)	(15,177)
Cash and cash equivalents at beginning of period	11,620	25,850
Cash and cash equivalents at end of period - Continuing Operations	8,716	10,601
Cash and cash equivalents at end of period - Discontinued Operations	16	72
Total cash and cash equivalents at end of period	\$ 8,732	\$ 10,673
<b>NON-CASH TRANSACTIONS (Continuing and Discontinued Operations):</b>		
Transfer of securitized mortgage collateral to real estate owned	\$ 75,419	\$ 129,907
Acquisition of equipment purchased through capital leases	587	—

Notes received upon sale of Experience 1, Inc.	200	—
Common stock issued per marketing service agreement	—	129
Net effect of consolidation of net trust assets from adoption of accounting principle	—	119,631
Net effect of consolidation of net trust liabilities from adoption of accounting principle	—	(119,631)

See accompanying notes to consolidated financial statements.

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

**Note 1.—Summary of Business, Market Conditions, and Financial Statement Presentation**

***Business Summary***

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

The Company's continuing operations include the long-term mortgage portfolio (residual interests in securitizations determined as total trust assets minus total trust liabilities in the consolidated balance sheets) and the mortgage and real estate fee-based business activities conducted by IRES. In addition, in 2011 the Company, through IRES, continued its expansion into mortgage lending. The discontinued operations include the former non-conforming mortgage and retail operations conducted by IFC and subsidiaries, and warehouse lending operations conducted by IWLG.

In September and October 2011, the Company sold its interest in Experience 1, Inc., the parent of the title insurance company, for \$3.7 million, recording a total gain of approximately \$1.9 million ceasing the Company's involvement in title and escrow activities. Refer to Note 9.—Sale of Experience 1, Inc. for additional information regarding the transaction.

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

***Market Update and Liquidity***

During the first nine months of 2011, we continue to see home price declines in many markets as housing prices remained under pressure due to elevated foreclosure levels. In addition, foreclosure delays among other market conditions may result in continued downward pressure on home prices for the foreseeable future.

Mortgage lending and credit market conditions remained weak through the first nine months of 2011 due primarily to the continued economic uncertainty and slower than expected recovery. Existing uncertainties surrounding the housing market, economy and regulatory environment will continue to present challenges for the Company. The ongoing economic stress or further deterioration of general economic conditions could prolong or increase borrower defaults leading to deteriorating performance of our long-term mortgage portfolio and hinder the growth and profitability of our mortgage lending operations.

A number of factors make it difficult to predict when a sustained recovery in the housing and credit markets will occur. Concerns about the future of the global economy, including the pace and magnitude of recovery from the recent economic recession, consumer confidence, volatility in energy prices, global credit market volatility and trends in corporate earnings will continue to influence the U.S. economic recovery and the capital markets. In the third quarter of 2011, the global financial markets experienced continued volatility and uncertainty as concerns about the Eurozone debt crisis and global economic conditions persisted. Combined with various proposed regulatory reform measures and global downgrades, there was a flight to treasuries from risk-averse investors as overall asset valuations declined. In addition, we believe continued improvement in unemployment rates and a sustained recovery of the housing markets remain critical components of a broader U.S. economic recovery. U.S. unemployment rates, which have been a major factor in the deterioration of credit quality in the U.S., remained high at 9.1 percent in September 2011. While the reported unemployment rate marginally improved from a rate of 9.4 percent at December 2010, it actually increased 30 basis points since the first quarter. Also, a significant number of unemployed U.S. residents are no longer looking for work and, therefore, are not reflected in the reported U.S. unemployment rates based on reports from financial institutions. Reported unemployment rates in 18 states are at or above the U.S. national average. Reported unemployment rates in seven states are at or above 10.0 percent, including California and Florida. California and Florida represent the states with the highest concentration in our long-term mortgage portfolio.

The Company's ability to meet its long-term liquidity requirements is subject to several factors, such as generating fees from the mortgage and real estate business activities and realizing cash flows from the long-term mortgage portfolio. The Company's future financial performance and success are dependent in large part upon the ability to grow the mortgage and real estate business activities, including providing services to third parties and expanding the mortgage lending operations. The Company believes that current cash balances, cash flows from mortgage and real estate services fees generated from the

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long-term mortgage portfolio, and residual interest cash flows from the long-term mortgage portfolio are adequate for the current operating needs. However, the mortgage and real estate services market is volatile, highly competitive and subject to increased regulation. The Company's ability to successfully compete in the mortgage and real estate services industry is challenging as its business activities have been established in the last few years and many competitors have recently entered or have established businesses delivering similar services. Additionally, the mortgage lending environment is extremely competitive and highly regulated. The future success of the mortgage lending operations will depend on a number of factors, including the ability to procure adequate financing to fund loan production, maintaining associated financial covenants of lenders, the profitability and growth of our origination channels, housing market conditions, economic recovery and financial regulatory reform. Also, the Company's ability to manage short-term liquidity needs including

servicing advances may be dependent on successfully securing short-term borrowing facilities. If the Company is unsuccessful, the Company may be unable to satisfy the future operating costs and liabilities, including repayment of the note payable and long-term debt. To be successful in expanding the business and providing adequate returns to the shareholders, the Company may seek financing in the form of debt or equity capital.

### **Financial Statement Presentation**

The accompanying unaudited consolidated financial statements of IMH and its subsidiaries (as defined above) have been prepared in accordance with Accounting Principles Generally Accepted in the United States of America (GAAP) for interim financial information and with the instructions to Form 10-Q and Rule 8-03 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments, consisting of normal recurring adjustments considered necessary for a fair presentation, have been included. Operating results for the three and nine months ended September 30, 2011 are not necessarily indicative of the results that may be expected for the year ending December 31, 2011. These interim period condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements, which are included in the Company's Annual Report on Form 10-K for the year ended December 31, 2010, filed with the United States Securities and Exchange Commission (SEC).

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

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

### **Recently Adopted Accounting Pronouncements**

In January 2010, the FASB issued Accounting Standards Update (ASU) No. 2010-6 "Improving Disclosures About Fair Value Measurements" (ASU 2010-6). The ASU amends Codification Topic 820 "Fair Value Measurements and Disclosures" to add new disclosure requirements for transfers into and out of Levels 1 and 2 fair value measurements, as well as separate disclosures about purchases, sales, issuances, and settlements relating to Level 3 fair value measurements. ASU 2010-6 also clarifies existing fair value disclosures regarding the level of disaggregation and inputs and valuation techniques used to measure fair value. ASU 2010-6 is effective for the first reporting period (including interim periods) beginning after December 15, 2009, except for the requirement to provide the Level 3 activity of purchases, sales, issuances, and settlements on a gross basis, which will be effective for fiscal years beginning after December 15, 2010, and for interim periods within those fiscal years. ASU 2010-6 only adds new disclosure requirements and as a result, its adoption did not have an impact on the Company's consolidated financial statements.

### **Legal Proceedings**

On May 26, 2011, a matter was filed in the United States district Court, Central district of California as Case No. CV11-4514 DSF entitled Citigroup Global Markets, Inc. v. Impac Secured Assets Corp., Impac Funding Corporation and Impac Mortgage Holdings, Inc. The action alleges a violation of Section 18 and Section 20 of the Securities Act of 1933 and negligent misrepresentation, all involved in the issuance and sale of bonds from a securitization trust. The plaintiff alleges they relied on certain documents filed with the SEC that were subsequently the subject of an amended filing. The matter seeks unspecified damages, interest, legal fees and litigation expenses.

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In October of this year, the Company received notices of claims for indemnification relating to mortgage backed securities bonds issued, originated, or sold by Impac Secured Assets Corp., Impac Funding Corporation, IMH Assets Corp. and Impac Mortgage Holdings, Inc. from Countrywide Securities Corporation (Countrywide) and Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch). The claims seek indemnification from claims asserted against Countrywide and Merrill Lynch in specified legal actions entitled American International Group Inc. v. Bank of America Corp., et al Case No. 1:11-cv-06212 in the United States District Court for the Southern District of New York and Federal Home Loan Bank of Boston v. Ally Financial, Inc., et al Case No. 11-cv-10952 in the Superior Court Department of the Commonwealth of Massachusetts. The notices each seek indemnification for all losses, liabilities, damages and legal fees and costs incurred in those actions.

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

The Company believes that it has meritorious defenses to the above claims and intends to defend these claims vigorously. Nevertheless, litigation is uncertain and the Company may not prevail in the lawsuits and can express no opinion as to their ultimate resolution. An adverse judgment in any of these matters could have a material adverse effect on the Company's financial position and results of operations.

Please refer to IMH's report on Form 10-K for the year ended December 31, 2010 and Forms 10-Q for the quarters ended June 30, 2011 and March, 31, 2011 for a description of litigation and claims.

### **Note 2.—Fair Value of Financial Instruments**

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

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



	Carrying Amount	Estimated Fair Value	Carrying Amount	Estimated Fair Value
<b>Assets</b>				
Cash and cash equivalents	\$ 8,716	\$ 8,716	\$ 11,507	\$ 11,507
Restricted cash	4,915	4,915	1,495	1,495
Investment securities available-for-sale	444	444	645	645
Securitized mortgage collateral	5,441,590	5,441,590	6,011,675	6,011,675
Derivative assets - securitized trusts	37	37	40	40
Derivative assets - lending	1,358	1,358	—	—
Mortgage servicing rights	2,190	2,190	1,439	1,439
Mortgage loans held-for-sale	50,093	50,093	4,283	4,283
Call option	252	252	706	706
<b>Liabilities</b>				
Securitized mortgage borrowings	5,446,030	5,446,030	6,012,745	6,012,745
Derivative liabilities - securitized trusts	31,062	31,062	65,916	65,916
Derivative liabilities - lending	927	927	—	—
Long-term debt	11,333	11,333	11,728	11,728
Warehouse borrowings	46,948	46,948	4,057	4,057
Notes payable	6,575	7,429	6,874	6,818
Put option	15	15	61	61

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

For securitized mortgage collateral and securitized mortgage borrowings, the underlying Alt-A residential and commercial loans and mortgage-backed securities market have experienced significant declines in market activity, along with a lack of orderly transactions. The Company's methodology to estimate fair value of these assets and liabilities include the use of internal pricing techniques such as the net present value of future expected cash flows (with observable market participant assumptions, where available) discounted at a rate of return based on the Company's estimates of market participant requirements. The significant assumptions utilized in these internal pricing techniques, which are based on the characteristics of the underlying collateral, include estimated credit losses, estimated prepayment speeds and appropriate discount rates.

The mortgage lending operations enters into interest rate lock commitments (IRLCs) and utilizes forward sold Fannie Mae and Ginnie Mae mortgage backed securities (Hedging Instruments) to hedge the fair value changes associated with changes in interest rates relating to its conforming mortgage loan origination operations. The fair value of IRLCs and Hedging Instruments are represented as derivative assets and liabilities — lending in the table above.

Refer to *Recurring Fair Value Measurements* below for a description of the valuation methods used to determine the fair value of investment securities available for sale, securitized mortgage collateral and borrowings, derivative assets and liabilities — securitized trusts, derivative assets and liabilities - lending, long-term debt, mortgage servicing rights, loans held-for-sale, and call and put options.

The carrying amount of cash and cash equivalents and restricted cash approximates fair value.

Warehouse borrowings fair value approximates carrying amounts due to the short-term nature of the liabilities at market rates and do not present unanticipated interest rate or credit concerns.

Notes payable includes notes with maturities ranging from less than a year to three years. Notes payable is recorded at amortized cost, net of any discounts. The estimated fair value is determined using a discounted cash flow model using estimated market rates.

## **Fair Value Hierarchy**

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

FASB ASC 820-10-35 specifies a hierarchy of valuation techniques based on whether the inputs to those techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company's market assumptions. These two types of inputs create the following fair value hierarchy:

- Level 1—Quoted prices (unadjusted) in active markets for identical instruments or liabilities that an entity has the ability to assess at measurement date.
- Level 2—Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; inputs other than quoted prices that are observable for an asset or liability, including interest rates and yield curves observable at commonly quoted intervals, prepayment speeds, loss severities, credit risks and default rates; and market-corroborated inputs.
- Level 3—Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

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

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As a result of the lack of observable market data resulting from inactive markets, the Company has classified its investment securities available-for-sale, securitized mortgage collateral and borrowings, net derivative liabilities — securitized trusts, long-term debt, mortgage servicing rights, and call and put options as Level 3 fair value measurements. Level 3 assets and liabilities were 99% and 100%, respectively, of total assets and total liabilities measured at estimated fair value at September 30, 2011 and December 31, 2010.

### Recurring Fair Value Measurements

We assess our financial instruments on a quarterly basis to determine the appropriate classification within the fair value hierarchy, as defined by ASC Topic 810. Transfers between fair value classifications occur when there are changes in pricing observability levels. Transfers of financial instruments among the levels occur at the beginning of the reporting period. There were no material transfers between our Level 1 and Level 2 classified instruments during the three and nine months ended September 30, 2011.

The following tables present the Company's assets and liabilities that are measured at estimated fair value on a recurring basis, including financial instruments for which the Company has elected the fair value option at September 30, 2011 and December 31, 2010, based on the fair value hierarchy:

	Recurring Fair Value Measurements					
	September 30, 2011			December 31, 2010		
	Level 1	Level 2	Level 3	Level 1	Level 2	Level 3
<b>Assets</b>						
Investment securities available-for-sale	\$ —	\$ —	\$ 444	\$ —	\$ —	\$ 645
Mortgage loans held-for-sale	—	50,093	—	—	4,283	—
Derivative assets, net - lending (1)	—	431	—	—	—	—
Mortgage servicing rights (2)	—	—	2,190	—	—	1,439
Call option (2)	—	—	252	—	—	706
Securitized mortgage collateral	—	—	5,441,590	—	—	6,011,675
Total assets at fair value	\$ —	\$ 50,524	\$ 5,444,476	\$ —	\$ 4,283	\$ 6,014,465
<b>Liabilities</b>						
Securitized mortgage borrowings	\$ —	\$ —	\$ 5,446,030	\$ —	\$ —	\$ 6,012,745
Derivative liabilities, net - securitized trusts (3)	—	—	31,025	—	—	65,876
Long-term debt	—	—	11,333	—	—	11,728
Put option (4)	—	—	15	—	—	61
Total liabilities at fair value	\$ —	\$ —	\$ 5,488,403	\$ —	\$ —	\$ 6,090,410

- (1) At September 30, 2011, derivative assets, net — lending, included \$1.4 million in IRLCs and \$927 thousand in Hedging Instruments, respectively, associated with the Company's mortgage lending operations, and is included in other assets and other liabilities in the accompanying consolidated balance sheets.
- (2) Included in other assets in the accompanying consolidated balance sheets.
- (3) At September 30, 2011, derivative liabilities, net — securitized trusts, included \$37 thousand in derivative assets and \$31.1 million in derivative liabilities, included within trust assets and trust liabilities, respectively. At December 31, 2010, derivative liabilities, net — securitized trusts, included \$40 thousand in derivative assets and \$65.9 million in derivative liabilities, included within trust assets and trust liabilities, respectively.
- (4) Included in other liabilities in the accompanying consolidated balance sheets.

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The following tables present a reconciliation for all assets and liabilities measured at estimated fair value on a recurring basis using significant unobservable inputs (Level 3) for the three and nine months ended September 30, 2011 and 2010:

	Level 3 Recurring Fair Value Measurements							
	For the three months ended September 30, 2011							
	Investment securities available-for-sale	Securitized mortgage collateral	Securitized mortgage borrowings	Derivative liabilities, net	Mortgage servicing rights	Call option	Put option	Long-term debt
Fair value, June 30, 2011	\$ 447	\$ 5,641,957	\$ (5,651,842)	\$ (38,104)	\$ 1,405	\$ 454	\$ (23)	\$ (12,148)
Total gains (losses) included in earnings:								
Interest income (1)	30	73,164	—	—	—	—	—	—
Interest expense (1)	—	—	(152,229)	—	—	—	—	(644)
Change in fair value	17	(92,459)	106,771	(4,032)	140	(202)	8	1,459
Total gains (losses) included in earnings	47	(19,295)	(45,458)	(4,032)	140	(202)	8	815
Transfers in and/or out of Level 3	—	—	—	—	—	—	—	—
Purchases, issuances and settlements								
Purchases	—	—	—	—	—	—	—	—
Issuances	—	—	—	—	645	—	—	—
Settlements	(50)	(181,072)	251,270	11,111	—	—	—	—
Fair value, September 30, 2011	\$ 444	\$ 5,441,590	\$ (5,446,030)	\$ (31,025)	\$ 2,190	\$ 252	\$ (15)	\$ (11,333)
Unrealized gains (losses) still held (2)	\$ 279	\$ (4,333,232)	\$ 6,294,503	\$ (30,665)	\$ —	\$ —	\$ —	\$ 59,430

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities. The total net interest income, including cash received and paid, was \$160 thousand for the three months ended September 30, 2011, as reflected in the accompanying consolidated statement of operations. The difference between accretion of interest income and expense and the amounts of interest income and expense recognized in the consolidated statements of operations is primarily from contractual interest on the securitized mortgage collateral and borrowings.
- (2) Represents the amount of unrealized gains (losses) relating to assets and liabilities classified as Level 3 that are still held and reflected in the fair values at September 30, 2011.



	For the three months ended September 30, 2010				
	Investment securities available-for-sale	Securitized mortgage collateral	Securitized mortgage borrowings	Derivative liabilities, net	Long-term debt
Fair value, June 30, 2010	\$ 1,269	\$ 6,215,213	\$ (6,200,592)	\$ (100,723)	\$ (11,357)
Total gains (losses) included in earnings:					
Interest income (1)	90	120,487	—	—	—
Interest expense (1)	—	—	(203,594)	—	(633)
Change in fair value	(66)	(44,287)	66,194	(12,268)	1,168
Total gains (losses) included in earnings	24	76,200	(137,400)	(12,268)	535
Transfers in and/or out of Level 3	—	—	—	—	—
Purchases, issuances and settlements					
Purchases	—	—	—	—	—
Issuances	—	—	—	—	—
Settlements	(39)	(220,836)	276,992	24,002	—
Fair value, September 30, 2010	\$ 1,254	\$ 6,070,577	\$ (6,061,000)	\$ (88,989)	\$ (10,822)
Unrealized gains (losses) still held (2)	\$ 971	\$ (4,949,059)	\$ 6,772,511	\$ (89,889)	\$ 59,941

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities. The total net interest income, including cash received and paid, was \$1.7 million for the three months ended September 30, 2010, as reflected in the accompanying consolidated statement of operations. The difference between accretion of interest income and expense and the amounts of interest income and expense recognized in the consolidated statements of operations is primarily from contractual interest on the securitized mortgage collateral and borrowings.
- (2) Represents the amount of unrealized gains (losses) relating to assets and liabilities classified as Level 3 that are still held and reflected in the fair values at September 30, 2010.

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	Level 3 Recurring Fair Value Measurements							
	For the nine months ended September 30, 2011							
	Investment securities available-for-sale	Securitized mortgage collateral	Securitized mortgage borrowings	Derivative liabilities, net	Mortgage servicing rights	Call option	Put option	Long-term debt
Fair value, December 31, 2010	\$ 645	\$ 6,011,675	\$ (6,012,745)	\$ (65,876)	\$ 1,439	\$ 706	\$ (61)	\$ (11,728)
Total gains (losses) included in earnings:								
Interest income (1)	88	276,009	—	—	—	—	—	—
Interest expense (1)	—	—	(525,430)	—	—	—	—	(1,707)
Change in fair value of net trust assets, excluding REO	(128)	(239,727)	265,754	(8,303)	106	(454)	46	2,102
Total (losses) gains included in earnings	(40)	36,282	(259,676)	(8,303)	106	(454)	46	395
Transfers in and/or out of Level 3	—	—	—	—	—	—	—	—
Purchases, issuances and settlements								
Purchases	—	—	—	—	—	—	—	—
Issuances	—	—	—	—	645	—	—	—
Settlements	(161)	(606,367)	826,391	43,154	—	—	—	—
Fair value, September 30, 2011	\$ 444	\$ 5,441,590	\$ (5,446,030)	\$ (31,025)	\$ 2,190	\$ 252	\$ (15)	\$ (11,333)
Unrealized gains (losses) still held (2)	\$ 279	\$ (4,333,232)	\$ 6,294,503	\$ (30,665)	\$ —	\$ —	\$ —	\$ 59,430

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities. The total net interest income, including cash received and paid, was \$3.0 million for the nine months ended September 30, 2011, as reflected in the accompanying consolidated statement of operations. The difference between accretion of interest income and expense and the amounts of interest income and expense recognized in the consolidated statements of operations is primarily from contractual interest on the securitized mortgage collateral and borrowings.

	Level 3 Recurring Fair Value Measurements				
	For the nine months ended September 30, 2010				
	Investment securities available-for-sale	Securitized mortgage collateral	Securitized mortgage borrowings	Derivative liabilities, net	Long-term debt
Fair value, December 31, 2009	\$ 813	\$ 5,666,122	\$ (5,659,865)	\$ (126,457)	\$ (9,773)
Total gains (losses) included in earnings:					
Interest income (1)	203	374,686	—	—	—
Interest expense (1)	—	—	(680,598)	—	(2,001)
Change in fair value of net trust assets, excluding REO	653	606,477	(552,853)	(41,576)	952
Total (losses) gains included in earnings	856	981,163	(1,233,451)	(41,576)	(1,049)
Adoption of ASU 2009-17 (2)	(298)	116,907	(110,618)	(9,013)	—
Transfers in and/or out of Level 3	—	—	—	—	—
Purchases, issuances and settlements					
Purchases	—	—	—	—	—
Issuances	—	—	—	—	—
Settlements	(117)	(693,615)	942,934	88,057	—
Fair value, September 30, 2010	\$ 1,254	\$ 6,070,577	\$ (6,061,000)	\$ (88,989)	\$ (10,822)

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities. The total net interest income, including cash received and paid, was \$4.0 million for the nine months ended September 30, 2010, as reflected in the accompanying consolidated statement of operations. The difference between accretion of interest income and expense and the amounts of interest income and expense recognized in the consolidated statements of operations is primarily from contractual interest on the securitized mortgage collateral and borrowings.
- (2) Amounts represent the consolidation and deconsolidation of trust assets and liabilities as a result of the adoption of ASU 2009-17 on January 1, 2010. See Note 1 — Summary of Market Conditions and Liquidity, Business and Financial Statement Presentation including Significant Accounting Policies in our Annual Report on Form 10-K for the year ended December 31, 2010 for the impact of the adoption of ASU 2009-17 on our consolidated financial statements.

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The following tables present the changes in recurring fair value measurements included in net earnings (loss) for the three and nine months ended September 30, 2011 and 2010:

	Recurring Fair Value Measurements						
	Changes in Fair Value Included in Net Earnings						
	For the three months ended September 30, 2011						
	Interest Income (1)	Interest Expense (1)	Change in Fair Value of		Other Non-interest Income	Mortgage and real estate services fees	Total
			Net Trust Assets	Long-term Debt			
Investment securities available-for-sale	\$ 30	\$ —	\$ 17	\$ —	\$ —	\$ —	\$ 47
Securitized mortgage collateral	73,164	—	(92,459)	—	—	—	(19,295)
Securitized mortgage borrowings	—	(152,229)	106,771	—	—	—	(45,458)
Mortgage servicing rights	—	—	—	—	140	—	140
Call option	—	—	—	—	(202)	—	(202)
Put option	—	—	—	—	8	—	8

Derivative liabilities, net	—	—	(4,032) (2)	—	—	—	(4,032)
Long-term debt	—	(644)	—	1,459	—	—	815
Mortgage loans held-for-sale	—	—	—	—	—	457	457
Derivative assets - IRLCs	—	—	—	—	—	1,064	1,064
Derivative liabilities - Hedging Instruments	—	—	—	—	—	(796)	(796)
<b>Total</b>	<b>\$ 73,194</b>	<b>\$ (152,873)</b>	<b>\$ 10,297</b>	<b>\$ 1,459</b>	<b>\$ (54)</b>	<b>\$ 725</b>	<b>\$ (67,252)</b>

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities.  
(2) Included in this amount is \$7.4 million in changes in the fair value of derivative instruments, offset by \$11.4 million in cash payments from the securitization trusts for the three months ended September 30, 2011.

	Recurring Fair Value Measurements					
	Changes in Fair Value Included in Net Loss					
	For the three months ended September 30, 2010					
	Interest Income (1)	Interest Expense (1)	Change in Fair Value of			Total
			Net Trust Assets	Long-term Debt		
Investment securities available-for-sale	\$ 90	\$ —	\$ (66)	\$ —	\$ —	\$ 24
Securitized mortgage collateral	120,487	—	(44,287)	—	—	76,200
Securitized mortgage borrowings	—	(203,594)	66,194	—	—	(137,400)
Derivative liabilities, net	—	—	(12,268) (2)	—	—	(12,268)
Long-term debt	—	(633)	—	1,168	—	535
<b>Total</b>	<b>\$ 120,577</b>	<b>\$ (204,227)</b>	<b>\$ 9,573</b>	<b>\$ 1,168</b>	<b>\$ —</b>	<b>\$ (72,909)</b>

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities.  
(2) Included in this amount is \$12.0 million in changes in the fair value of derivative instruments, offset by \$24.3 million in cash payments from the securitization trusts for the three months ended September 30, 2010.

	Recurring Fair Value Measurements						
	Changes in Fair Value Included in Net Earnings						
	For the nine months ended September 30, 2011						
	Interest Income (1)	Interest Expense (1)	Change in Fair Value of		Other Non-interest Income	Mortgage and real estate services fees	Total
			Net Trust Assets	Long-term Debt			
Investment securities available-for-sale	\$ 88	\$ —	\$ (128)	\$ —	\$ —	\$ —	\$ (40)
Securitized mortgage collateral	276,009	—	(239,727)	—	—	—	36,282
Securitized mortgage borrowings	—	(525,430)	265,754	—	—	—	(259,676)
Mortgage servicing rights	—	—	—	—	106	—	106
Call option	—	—	—	—	(454)	—	(454)
Put option	—	—	—	—	46	—	46
Derivative liabilities, net	—	—	(8,303) (2)	—	—	—	(8,303)
Long-term debt	—	(1,707)	—	2,102	—	—	395
Mortgage loans held-for-sale	—	—	—	—	—	1,272	1,272
Derivative assets - IRLCs	—	—	—	—	—	1,358	1,358
Derivative liabilities - Hedging Instruments	—	—	—	—	—	(923)	(923)
<b>Total</b>	<b>\$ 276,097</b>	<b>\$ (527,137)</b>	<b>\$ 17,596(3)</b>	<b>\$ 2,102</b>	<b>\$ (302)</b>	<b>\$ 1,707</b>	<b>\$ (229,937)</b>

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities.  
(2) Included in this amount is \$35.8 million in changes in the fair value of derivative instruments, offset by \$44.1 million in cash payments from the securitization trusts for the nine months ended September 30, 2011.  
(3) For the nine months ended September 30, 2011, change in the fair value of trust assets, excluding REO was \$17.6 million. Excluded from the \$61.7 million change in fair value of net trust assets, excluding REO, in the accompanying consolidated statement of cash flows is \$44.1 million in cash payments from the securitization trusts related to the Company's net derivative liabilities.

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	Recurring Fair Value Measurements					
	Changes in Fair Value Included in Net Loss					
	For the nine months ended September 30, 2010					
	Interest Income (1)	Interest Expense (1)	Change in Fair Value of			Total
			Net Trust Assets	Long-term Debt		
Investment securities available-for-sale	\$ 203	\$ —	\$ 653	\$ —	\$ —	\$ 856
Securitized mortgage collateral	374,686	—	606,477	—	—	981,163
Securitized mortgage borrowings	—	(680,598)	(552,853)	—	—	(1,233,451)
Derivative liabilities, net	—	—	(41,576) (2)	—	—	(41,576)
Long-term debt	—	(2,001)	—	952	—	(1,049)
<b>Total</b>	<b>\$ 374,889</b>	<b>\$ (682,599)</b>	<b>\$ 12,701(3)</b>	<b>\$ 952</b>	<b>\$ —</b>	<b>\$ (294,057)</b>

- (1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities.  
(2) Included in this amount is \$47.4 million in changes in the fair value of derivative instruments, offset by \$89.0 million in cash payments from the securitization trusts for the nine months ended September 30, 2010.  
(3) For the nine months ended September 30, 2010, change in the fair value of net trust assets, excluding REO was \$12.7 million. Excluded from the \$101.7 million change in fair value of net trust assets, excluding REO, in the accompanying consolidated statement of cash flows is \$89.0 million in cash payments from the securitization trusts related to the Company's net derivative liabilities.

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

**Investment securities available-for-sale**—The Company elected to carry all of its investment securities available-for-sale at fair value. The investment securities consist primarily of non-investment grade mortgage-backed securities. The fair value of the investment securities is measured based upon the Company's expectation of inputs that other market participants would use. Such assumptions include judgments about the underlying collateral, prepayment speeds, future credit losses, forward interest rates and certain other factors. Given the market disruption and lack of observable market data as of September 30, 2011 and December 31, 2010, the estimated fair value of the investment securities available-for-sale was measured using significant internal expectations of market participants' assumptions. Investment securities available-for-sale are considered a Level 3 measurement at September 30, 2011.

**Mortgage servicing rights**—The Company elected to carry all of its mortgage servicing rights at fair value. The fair value of mortgage servicing rights is based upon an internal discounted cash flow model. The valuation model incorporates assumptions that market participants would use in estimating the fair value of servicing. These assumptions include estimates of prepayment speeds, discount rate, cost to service, escrow account earnings, contractual servicing fee income, prepayment and late fees, among other considerations. Mortgage servicing rights are considered a Level 3 measurement at September 30, 2011.

**Mortgage loans held-for-sale**—The Company elected to carry its mortgage loans held-for-sale originated from its residential mortgage lending platform at fair value. Fair value is based on quoted market prices, where available, prices for other traded mortgage loans with similar characteristics, and purchase commitments and bid information received from market participants. Given the meaningful level of secondary market activity for conforming

mortgage loans, active pricing is available for similar assets and accordingly, the Company classifies its mortgage loans held-for-sale as a Level 2 measurement at September 30, 2011.

*Call option*—As part of the acquisition of AmeriHome Mortgage Corporation (AmeriHome) as more fully discussed in Note 18.—*Business Combinations* of our Annual Report on Form 10-K for the year ended December 31, 2010, the purchase agreement included a call option to purchase an additional 39% of AmeriHome. The estimated fair value is based on a multinomial model incorporating various assumptions including expected future book value of AmeriHome, the probability of the option being exercised, volatility, expected term and certain other factors. The call option is considered a Level 3 measurement at September 30, 2011.

*Put option*—As part of the acquisition of AmeriHome, a put option which allows the noncontrolling interest holder to sell his remaining 49% of AmeriHome to the Company in the event the Company does not exercise the call option discussed above. The estimated fair value is based on a multinomial model incorporating various assumptions including expected future book value of AmeriHome, the probability of the option being exercised, volatility, expected term and certain other factors. The put option is considered a Level 3 measurement at September 30, 2011.

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*Securitized mortgage collateral*—The Company elected to carry all of its securitized mortgage collateral at fair value. These assets consist primarily of non-conforming mortgage loans securitized between 2002 and 2007. Fair value measurements are based on the Company’s internal models used to compute the net present value of future expected cash flows with observable market participant assumptions where available. The Company’s assumptions include its expectations of inputs that other market participants would use in pricing these assets. These assumptions include judgments about the underlying collateral, prepayment speeds, estimated future credit losses, forward interest rates, investor yield requirements and certain other factors. As of September 30, 2011, securitized mortgage collateral had an unpaid principal balance of \$9.8 billion, compared to an estimated fair value of \$5.4 billion. The aggregate unpaid principal balance exceeds the fair value by \$4.4 billion at September 30, 2011. As of September 30, 2011, the unpaid principal balance of loans 90 days or more past due was \$1.6 billion compared to an estimated fair value of \$0.5 billion. The aggregate unpaid principal balances of loans 90 days or more past due exceed the fair value by \$1.1 billion at September 30, 2011. Securitized mortgage collateral is considered a Level 3 measurement at September 30, 2011.

*Securitized mortgage borrowings*—The Company elected to carry all of its securitized mortgage borrowings at fair value. These borrowings consist of individual tranches of bonds issued by securitization trusts and are primarily backed by non-conforming mortgage loans. Fair value measurements include the Company’s judgments about the underlying collateral and assumptions such as prepayment speeds, estimated future credit losses, forward interest rates, investor yield requirements and certain other factors. As of September 30, 2011, securitized mortgage borrowings had an outstanding principal balance of \$9.9 billion compared to an estimated fair value of \$5.4 billion. The aggregate outstanding principal balance exceeds the fair value by \$4.5 billion at September 30, 2011. Securitized mortgage borrowings is considered a Level 3 measurement at September 30, 2011.

*Long-term debt*—The Company elected to carry all of its long-term debt (consisting of trust preferred securities and junior subordinated notes) at fair value. These securities are measured based upon an analysis prepared by management, which considered the Company’s own credit risk, including settlements with trust preferred debt holders and discounted cash flow analysis. As of September 30, 2011, long-term debt had an unpaid principal balance of \$70.5 million compared to an estimated fair value of \$11.3 million. The aggregate unpaid principal balance exceeds the fair value by \$59.2 million at September 30, 2011. The long-term debt is considered a Level 3 measurement at September 30, 2011.

*Derivative assets and liabilities — Securitized trusts*—For non-exchange traded contracts, fair value is based on the amounts that would be required to settle the positions with the related counterparties as of the valuation date. Valuations of derivative assets and liabilities are based on observable market inputs, if available. To the extent observable market inputs are not available, fair values measurements include the Company’s judgments about future cash flows, forward interest rates and certain other factors, including counterparty risk. Additionally, these values also take into account the Company’s own credit standing, to the extent applicable; thus, the valuation of the derivative instrument includes the estimated value of the net credit differential between the counterparties to the derivative contract. As of September 30, 2011, the notional balance of derivative assets and liabilities — securitized trusts was \$2.3 billion. These derivatives are included in the consolidated securitization trusts, which are nonrecourse to the Company, and thus the economic risk from these derivatives is limited to the Company’s residual interests in the securitization trusts.

*Derivative assets and liabilities - Lending* — The Company’s derivative assets and liabilities are carried at fair value as required by GAAP and are accounted for as free standing derivatives. The derivative assets are IRLCs with prospective residential mortgage borrowers whereby the interest rate on the loan is determined prior to funding and the borrowers have locked in that interest rate. These commitments are determined to be derivative instruments. The derivative liabilities are Hedging Instruments used to hedge the fair value changes associated with changes in interest rates relating to its conforming mortgage loan origination operations. The Company hedges the period from the interest rate lock (assuming a fall-out factor) to the date of the loan sale. The estimated fair value is based on current market prices for similar instruments. Given the meaningful level of secondary market activity for derivative contracts, active pricing is available for similar assets and accordingly, the Company classifies its derivative assets and liabilities as a Level 2 measurement at September 30, 2011.

The following table includes information for the derivative assets and liabilities — lending for the periods presented:

	Notional Balance September 30, 2011	Total Gains (Losses) (1)	
		For the Three Months Ended September 30, 2011	For the Nine Months Ended September 30, 2011
Derivative assets - IRLC’s	\$ 122,390	\$ 1,064	\$ 1,358
Derivative liabilities - Hedging Instruments	107,000	(3,460)	(5,505)

(1) Amounts included in mortgage and real estate services fees within the accompanying consolidated statements of operations.

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## Nonrecurring Fair Value Measurements

The Company is required to measure certain assets and liabilities at estimated fair value from time to time. These fair value measurements typically result from the application of specific accounting pronouncements under GAAP. The fair value measurements are considered nonrecurring fair value measurements under FASB ASC 820-10.

The following tables present financial and non-financial assets and liabilities measured using nonrecurring fair value measurements at September 30, 2011 and 2010, respectively:

	Nonrecurring Fair Value Measurements			Total Losses	
	September 30, 2011			For the Three Months Ended	For the Nine Months Ended
	Level 1	Level 2	Level 3	September 30, 2011 (5)	September 30, 2011 (5)
REO (1)	\$ —	\$ 8,993	\$ —	\$ (7,006)	\$ (11,992)
Lease liability (2)	—	—	(2,244)	(223)	(525)
Deferred charge (3)	—	—	12,195	(949)	(949)
Intangible assets (4)	—	—	479	—	—

- (1) Balance represents REO at September 30, 2011 which have been impaired subsequent to foreclosure. Amounts are included in continuing operations. For the three and nine months ended September 30, 2011, the \$7.0 million and \$12.0 million loss, respectively, represent additional impairment write-downs during the period.
- (2) Amounts are included in discontinued operations. For the three and nine months ended September 30, 2011, the Company recorded \$223 thousand and \$525 thousand in losses, respectively, resulting from changes in lease liabilities as a result of changes in our expected minimum future lease payments.
- (3) Amounts are included in continuing operations. For the three and nine months ended September 30, 2011, the Company recorded \$949 thousand in income tax expense resulting from impairment write-downs based on changes in estimated cash flows and lives of the related mortgages retained in the securitized mortgage collateral.
- (4) Amount is included in other assets in the accompanying consolidated balance sheets.
- (5) Total losses reflect losses from all nonrecurring measurements during the period.

	Non-recurring Fair Value Measurements			Total Gains (Losses)	
	September 30, 2010			For the Three Months Ended	For the Nine Months Ended
	Level 1	Level 2	Level 3	September 30, 2010 (6)	September 30, 2010 (6)
Mortgage loans held-for-sale (1)	\$ —	\$ —	\$ —	\$ —	\$ (218)
REO (2)	—	69,488	—	(10,258)	(9,430)
Lease liability (3)	—	—	(2,353)	(44)	357
Deferred charge (4)	—	—	13,144	—	—
Intangible asset (5)	—	—	1,000	—	—

- (1) Relates to Alt-A loans held-for-sale included in assets of discontinued operations.
- (2) Amounts are included in continuing operations. For the three months ended September 30, 2010, the \$10.3 million loss related to additional impairment write-downs during the period is within continuing operations. For the nine months ended September 30, 2010, the \$9.4 million loss during the period included \$9.8 million of additional impairment write-downs and \$355 thousand in recoveries within continuing and discontinued operations, respectively.
- (3) Amounts are included in discontinued operations. For the three and nine months ended September 30, 2010, the Company recorded \$44 thousand in losses and \$357 thousand in recoveries resulting from changes in lease liabilities as a result of changes in our expected minimum future lease payments, respectively.
- (4) Amounts are included in continuing operations. For the three and nine months ended September 30, 2010, the Company recorded zero in income tax expense resulting from impairment write-downs based on changes in estimated cash flows and lives of the related mortgages retained in the securitized mortgage collateral.
- (5) Amount is included in other assets in the accompanying consolidated balance sheets.
- (6) Total gains (losses) reflect gains and losses from all nonrecurring measurements during the period.

*Mortgage loans held-for-sale*—Mortgage loans held-for-sale (included in assets of discontinued operations) for which the fair value option was not elected are carried at the lower of cost or market (LOCOM). When available, such measurements are based upon what secondary markets offer for portfolios with similar characteristics, and are considered Level 2 measurements. If market pricing is not available, such measurements are significantly impacted by the Company's expectations of other market participants' assumptions, and are considered Level 3 measurements. The Company utilizes internal pricing processes to estimate the fair value of these loans, which is based on recent loan sales and estimates of the fair value of the underlying collateral. Loans held-for-sale from the discontinued non-conforming lending division is considered Level 3 fair value measurements at September 30, 2010.

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*Real estate owned*—REO consists of residential real estate acquired in satisfaction of loans. Upon foreclosure, REO is adjusted to the estimated fair value of the residential real estate less estimated selling and holding costs, offset by expected contractual mortgage insurance proceeds to be received, if any. Subsequently, REO is recorded at the lower of carrying value or estimated fair value less costs to sell. Fair values of REO are generally based on observable market inputs, and considered Level 2 measurements at September 30, 2011.

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

based on present value techniques that incorporate the Company's judgments about estimated sublet revenue and discount rates. Therefore, this liability is considered a Level 3 measurement at September 30, 2011.

*Deferred charge*—Deferred charge represents the deferral of income tax expense on inter-company profits that resulted from the sale of mortgages from taxable subsidiaries to IMH in prior years. The deferred charge is amortized as a component of income tax expense over the estimated life of the mortgages retained in the securitized mortgage collateral. The Company evaluates the deferred charge for impairment quarterly using internal estimates of fair value of securitized mortgage collateral. If the deferred charge is determined to be impaired, the balance is reduced with a charge to income tax expense. Deferred charge is considered a Level 3 measurement at September 30, 2011. For the nine months ended September 30, 2011, the Company recorded \$949 thousand in income tax expense resulting from deferred charge impairment write-downs based on changes in estimated fair value of securitized mortgage collateral.

*Intangible assets*—Intangible assets deemed to have an indefinite life are tested annually for impairment, or more frequently if events or changes in circumstances indicate that the asset might be impaired. Impairment losses are recognized if carrying amount of an intangible asset exceeds its estimated fair value. Intangible asset, which is included in other assets of continuing operations, is considered a Level 3 measurement at September 30, 2011.

### Note 3.—Stock Options

There were no options granted during the nine months ended September 30, 2011 or 2010, respectively.

The following table summarizes activity, pricing and other information for the Company's stock options for the nine months ended September 30, 2011:

	Number of Shares	Weighted- Average Exercise Price (\$)
Options outstanding at January 1, 2011	1,476,704	\$ 6.28
Options granted	—	—
Options exercised	(27,400)	0.53
Options forfeited / cancelled	(171,367)	24.66
Options outstanding at September 30, 2011	<u>1,277,937</u>	<u>\$ 3.94</u>
Options exercisable at September 30, 2011	<u>906,477</u>	<u>\$ 4.42</u>

As of September 30, 2011, there was approximately \$696 thousand of total unrecognized compensation cost related to stock option compensation arrangements granted under the plan, net of estimated forfeitures. That cost is expected to be recognized over the remaining weighted average period of 2.13 years.

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The following table summarizes activity, pricing and other information for the Company's restricted stock units (RSU's) for the nine months ended September 30, 2011:

	Number of Shares	Weighted- Average Grant Date Fair Value
RSU's outstanding at January 1, 2011	24,000	\$ 2.73
RSU's granted	—	—
RSU's exercised	—	—
RSU's forfeited / cancelled	—	—
RSU's outstanding at September 30, 2011	<u>24,000</u>	<u>\$ 2.73</u>

As of September 30, 2011, there was approximately \$47 thousand of total unrecognized compensation cost related to the RSU compensation arrangements granted under the plan. That cost is expected to be recognized over a weighted average period of 2.18 years.

### Note 4.—Reconciliation of Earnings Per Share

The following table presents the computation of basic and diluted earnings (loss) per common share, including the dilutive effect of stock options and cumulative redeemable preferred stock outstanding for the periods indicated:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2011	2010	2011	2010
<b>Numerator for basic earnings (loss) per share:</b>				
Earnings from continuing operations	\$ 4,436	\$ 2,267	\$ 3,657	\$ 7,898
Net loss (earnings) attributable to noncontrolling interest	156	(8)	651	375
Earnings from continuing operations attributable to IMH	4,592	2,259	4,308	8,273
(Loss) earnings from discontinued operations	(1,490)	(1,285)	(1,832)	1,905
Earnings per share available to common stockholders	<u>\$ 3,102</u>	<u>\$ 974</u>	<u>\$ 2,476</u>	<u>\$ 10,178</u>
<b>Denominator for basic earnings (loss) per share (1):</b>				
Basic weighted average common shares outstanding during the year	7,812	7,760	7,798	7,727
<b>Denominator for diluted earnings (loss) per share (1):</b>				
Basic weighted average common shares outstanding during the year	7,812	7,760	7,798	7,727

Net effect of dilutive stock options	533	584	557	601
Diluted weighted average common shares	<u>8,345</u>	<u>8,344</u>	<u>8,355</u>	<u>8,328</u>
Earnings (loss) per common share - basic:				
Earnings from continuing operations attributable to IMH	\$ 0.59	\$ 0.29	\$ 0.55	\$ 1.07
(Loss) earnings from discontinued operations	(0.19)	(0.16)	(0.23)	0.25
Net earnings per share available to common stockholders	<u>\$ 0.40</u>	<u>\$ 0.13</u>	<u>\$ 0.32</u>	<u>\$ 1.32</u>
Earnings (loss) per common share - diluted:				
Earnings from continuing operations attributable to IMH	\$ 0.55	\$ 0.27	\$ 0.52	\$ 0.99
(Loss) earnings from discontinued operations	(0.18)	(0.15)	(0.22)	0.23
Net earnings per share available to common stockholders	<u>\$ 0.37</u>	<u>\$ 0.12</u>	<u>\$ 0.30</u>	<u>\$ 1.22</u>

(1) Number of shares presented in thousands.

For the three and nine months ended September 30, 2011, stock options to purchase 552 thousand shares were outstanding but not included in the above weighted average share calculations because they were anti-dilutive.

For the three and nine months ended September 30, 2010, stock options to purchase 338 thousand shares were outstanding but not included in the above weighted average share calculations because they were anti-dilutive.

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**Note 5.—Segment Reporting**

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

	Long-term Portfolio	Mortgage and Real Estate Services	Discontinued Operations	Reclassifications (1)	Consolidated
<b>Balance sheet items as of September 30, 2011:</b>					
Cash and cash equivalents	\$ —	\$ 8,782	\$ 16	\$ (82)	\$ 8,716
Restricted cash	4,255	660	—	—	4,915
Trust assets	5,503,326	—	—	—	5,503,326
Mortgage loans held-for-sale	—	50,093	—	—	50,093
Other assets	18,759	10,931	89	16	29,795
Total assets	5,526,340	70,466	105	(66)	5,596,845
Total liabilities	5,500,696	55,799	10,197	(66)	5,566,626
Total stockholders' equity (deficit)	25,644	14,667	(10,092)	—	30,219

<b>Balance sheet items as of December 31, 2010:</b>					
Cash and cash equivalents	\$ —	\$ 12,259	\$ 113	\$ (865)	\$ 11,507
Restricted cash	—	1,495	91	(91)	1,495
Trust assets	6,105,068	—	—	—	6,105,068
Mortgage loans held-for-sale	—	4,283	—	—	4,283
Other assets	18,526	12,687	169	204	31,586
Total assets	6,123,594	30,724	373	(752)	6,153,939
Total liabilities	6,101,157	12,784	13,053	(752)	6,126,242
Total stockholders' equity (deficit)	22,437	17,940	(12,680)	—	27,697

	Long-term Portfolio	Mortgage and Real Estate Services	Discontinued Operations	Reclassifications (1)	Consolidated
<b>Statement of Operations Items for the three months ended September 30, 2011:</b>					
Net interest income	\$ 228	\$ (68)	\$ —	\$ —	\$ 160
Non-interest income- net trust assets	3,430	—	—	—	3,430
Mortgage and real estate services fees	—	17,857	—	—	17,857
Other income (expense)	1,475	1,575	(989)	989	3,050
Non-interest expense and income taxes	(3,419)	(16,642)	(501)	501	(20,061)
Earnings from continuing operations	<u>\$ 1,714</u>	<u>\$ 2,722</u>	—	—	4,436
Loss from discontinued operations, net of tax	—	—	<u>(1,490)</u>	—	(1,490)
Net earnings	—	—	—	—	<u>\$ 2,946</u>

<b>Statement of Operations Items for the nine months ended September 30, 2011:</b>					
Net interest income	\$ 3,023	\$ (18)	\$ —	\$ —	\$ 3,005
Non-interest income- net trust assets	5,741	—	—	—	5,741
Mortgage and real estate services fees	—	44,558	—	—	44,558
Other income (expense)	1,761	1,318	(774)	774	3,079
Non-interest expense and income taxes	(11,318)	(41,408)	(1,058)	1,058	(52,726)



(Loss) earnings from continuing operations	\$ (793)	\$ 4,450			3,657
Loss from discontinued operations, net of tax			\$ (1,832)		(1,832)
Net earnings					\$ 1,825

	Long-term Portfolio	Mortgage and Real Estate Services	Discontinued Operations	Reclassifications (1)	Consolidated
<b>Statement of Operations Items for the three months ended September 30, 2010:</b>					
Net interest income	\$ 1,666	\$ 5	\$ 4	\$ (4)	\$ 1,671
Non-interest income- net trust assets	(574)	—	—	—	(574)
Mortgage and real estate services fees	—	15,547	—	—	15,547
Other income (expense)	1,189	—	(1,673)	1,673	1,189
Non-interest expense and income taxes	(4,364)	(11,202)	384	(384)	(15,566)
(Loss) earnings from continuing operations	\$ (2,083)	\$ 4,350			2,267
Loss from discontinued operations, net of tax			\$ (1,285)		(1,285)
Net earnings					\$ 982

<b>Statement of Operations Items for the nine months ended September 30, 2010:</b>					
Net interest income (expense)	\$ 3,980	\$ 16	\$ 48	\$ (48)	\$ 3,996
Non-interest income- net trust assets	6,411	—	—	—	6,411
Mortgage and real estate services fees	—	42,168	—	—	42,168
Other income (expense)	876	—	460	(460)	876
Non-interest expense and income taxes	(13,582)	(31,971)	1,397	(1,397)	(45,553)
(Loss) earnings from continuing operations	\$ (2,315)	\$ 10,213			7,898
Earnings from discontinued operations, net of tax			\$ 1,905		1,905
Net earnings					\$ 9,803

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

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**Note 6.—Warehouse Borrowings**

The Company, through IRES and its subsidiaries, enters into Master Repurchase Agreements with lenders providing warehouse facilities. The warehouse facilities are used to fund, and are secured by, residential mortgage loans that are held for sale.

In August 2011, the Company, through IRES and its subsidiaries, entered into a Master Repurchase Agreement with a lender providing a \$25 million warehouse facility (Repurchase Agreement 5). The interest rate relating to this agreement is LIBOR plus 3.25% and expires August 29, 2012. Under the terms of this warehouse facility, IRES and its subsidiaries are required to maintain various financial and other covenants. At September 30, 2011, the Company had warehouse capacity of \$87.5 million as shown below.

In an effort to improve warehouse borrowing terms, repurchase agreement 1 for \$25.0 million was terminated and replaced by repurchase agreement 5 for \$25.0 million which has more favorable terms.

At September 30, 2011, the Company was in compliance with all financial covenants.

The following table presents certain information on warehouse borrowings for the periods indicated:

	Maximum Borrowing Capacity	Balance Outstanding at	
		September 30, 2011	December 31, 2010
<b>Short-term borrowings:</b>			
Repurchase agreement 1 (1)	\$ —	\$ —	\$ 477
Repurchase agreement 2 (2)	—	—	1,800
Repurchase agreement 3	32,500	25,622	1,780
Repurchase agreement 4 (3)	30,000	19,435	—
Repurchase agreement 5	25,000	1,891	—
Total short-term borrowings	\$ 87,500	\$ 46,948	\$ 4,057

(1) In September 2011, the Company elected to terminate the line.

(2) In May 2011, the agreement terminated. The Company elected not to renew the agreement.

(3) In September 2011, the maximum borrowing capacity increased to \$30.0 million.

## **Note 7.—Notes Payable**

### *Note payable—Debt Agreement*

In May 2011, the Company entered into a \$10.3 million structured debt agreement using seven of the Company's residual interests (net trust assets) as collateral with the same note holder as the previous debt agreement. The Company used a portion of the proceeds to pay off the \$4.0 million balance owed on the previous debt agreement. The Company received proceeds of \$4.8 million, net of the aforementioned payoff, \$1.4 million discount and transaction costs of approximately \$50 thousand.

The structured debt agreement is evidenced by an Indenture with Deutsche Bank National Trust Company, as trustee. It bears interest at a fixed rate of 10% per annum with an effective yield of approximately 28% and is amortized in equal principal payments over 18 months with all distributions from the underlying residuals being used to make the monthly payments, and was recorded as a note payable in the accompanying consolidated balance sheets. If the cumulative cash flows received from the collateralized residual interests are not sufficient to pay the required monthly principal and interest the Company would be required to pay the difference to avoid the transfer of the residual interests and the rights to the associated future cash flows to the note holder. Any excess cash flows from the residual interests are included in a reserve account, which is available to cover future shortfalls. During the first nine months of 2011, the Company received \$4.3 million in excess cash flows from the residual interests collateralizing the note payable. The \$4.3 million in excess cash flows is included in restricted cash on the consolidated balance sheets. If the amount of restricted cash becomes sufficient to satisfy the remaining obligation the note payable can be paid off and the residuals listed as security are released. The carrying value of the debt agreement at September 30, 2011 was \$6.6 million, net of an \$800 thousand discount, and was current as to principal and interest payments.

## **Note 8.—Line of Credit Agreement**

In April 2011, the Company, through its subsidiaries, entered into a \$2.0 million working capital line of credit agreement with a national bank with an interest rate of LIBOR plus 3.5%. The agreement expires in April 2012 and under the terms of the agreement the Company and its subsidiaries are required to maintain various financial and other covenants. There was \$2.0 million outstanding on the working capital line of credit as of September 30, 2011, and the Company was in compliance with all financial covenants.

## **Note 9.—Sale of Experience 1, Inc.**

In September 2011, the Company sold 7,000 of its 8,000 shares of common stock of its majority-owned subsidiary Experience 1, Inc., the parent of the title insurance company, for total consideration of \$3.36 million, recording a gain of approximately \$1.78 million. The Company received proceeds in the form of cash and two secured promissory notes in the amount of \$60 thousand each, which bear interest at 4% and have a term of 24 months.

In October 2011, the Company sold its remaining 1,000 shares for \$360 thousand, recording a gain of approximately \$160 thousand. The Company accepted two secured promissory notes in the amount of \$180 thousand each, which bear interest at 4% and have a term of 24 months.

In a separate transaction associated with the sale, the Company agreed to sell fixed assets and intellectual property to Experience 1, Inc. for \$140 thousand. The Company accepted a promissory note of \$140 thousand, which bears interest at 8% and has a term of 12 months.

As part of the sales agreement, the Company will continue to provide operational and administrative services including, accounting, human resources, and information technology at a predetermined price through October 31, 2011, and may continue to do so thereafter at an agreed upon price.

## **Note 10.—Subsequent Events**

Subsequent events have been evaluated through the date of this filing.

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

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

Unless the context otherwise requires, the terms "Company," "we," "us," and "our" refer to Impac Mortgage Holdings, Inc. (the Company or IMH), a Maryland corporation incorporated in August 1995, and its subsidiaries, Integrated Real Estate Service Corporation (IRES), IMH Assets Corp. (IMH Assets), Impac Warehouse Lending Group, Inc. (IWLG) and Impac Funding Corporation (IFC).

### **Forward-Looking Statements**

This report on Form 10-Q contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements, some of which are based on various assumptions and events that are beyond our control, may be identified by reference to a future period or periods or by the use of forward-looking terminology, such as "may," "will," "believe," "expect," "likely," "should," "could," "seem to," "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 manage and grow the Company's mortgage and real estate fee-based business activities; the ability to make interest payments; increases in default rates or loss severities and mortgage related losses; the ability to satisfy conditions (payment and covenants) in the note payable with a major creditor; our ability to obtain additional financing and the terms of any financing that we do obtain; inability to effectively liquidate properties to mitigate losses; increase in loan repurchase requests and ability to adequately settle repurchase obligations; decreases in value of our residual interests that differ from our assumptions; the ability of our common stock to continue trading in an active market; the outcome of litigation or regulatory actions pending against us or other legal contingencies; 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, 2010, and other reports we file under the Securities and Exchange Act of 1934. This document speaks only as of its date and we do not undertake, and specifically disclaim any obligation, to release publicly the results of any revisions that may be made to any forward-looking statements to reflect the occurrence of anticipated or unanticipated events or circumstances after the date of such statements.

## The Mortgage Industry and Discussion of Relevant Fiscal Periods

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

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

## Status of Operations, Liquidity and Capital Resources

### *Mortgage and Real Estate Services*

The mortgage and real estate services have been developed as part of a centralized platform to operate synergistically to maximize revenues and profits. The integrated services platform includes the mortgage lending operations, portfolio loss mitigation and real estate services.

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*Mortgage Lending Operations*—During the third quarter of 2011, the Company continued to expand its mortgage lending activities increasing loan originations and loan sales. During the three and nine months ended September 30, 2011, the Company originated \$256.6 million and \$538.1 million and sold \$250.3 million and \$485.5 million of loans, respectively, as compared to \$22.1 million of loans originated in the first nine months of 2010. Consistent with the Company’s strategy, it also increased its servicing portfolio with an increase in sales of servicing retained loans to FannieMae and increases in GinnieMae issuances. The Company is currently focusing on originating FannieMae, FreddieMac, and government loans as it believes that having the ability to sell loans to FannieMae, FreddieMac, and issue GinnieMae securities makes it more competitive in the overall mortgage origination market.

In March 2011, the Company opened regional production offices in the pacific northwest and gulf coast regions giving the Company origination capabilities throughout the entire west coast and gulf coast regions. Included in the originations balances stated above, during the three and nine months ended September 30, 2011, these new production offices contributed approximately \$139.7 million and \$265.3 million, respectively, in originations of primarily agency and government insured residential mortgage loans.

During the third quarter of 2011, the Company increased its warehouse borrowings capacity to \$87.5 million from \$77.5 million at June 30, 2011. In an effort to improve warehouse borrowing terms, the Company replaced one \$25 million facility with another \$25 million facility, and increased the borrowing capacity of another facility by \$10 million.

*Portfolio Loss Mitigation and Real Estate Services*—The Company provides portfolio loss mitigation and real estate services including REO surveillance and disposition services, default surveillance and loss recovery services, short sale and real estate brokerage services, portfolio monitoring and reporting services.

Although the Company seeks to expand its portfolio loss mitigation and real estate services to more third parties in the marketplace, the revenues from these business activities have historically been generated from the Company’s long-term mortgage portfolio. Furthermore, as the distressed mortgage and real estate markets remain unstable and uncertain due to the number of foreclosure properties that need to be sold, there remains uncertainty about the ongoing need and delivery of these services in the future.

*Title and Escrow*—In September and October 2011, the Company sold its interest in Experience 1, Inc., the parent of the title insurance company, for \$3.7 million, recording a total gain of approximately \$1.9 million.

The title insurance company serviced primarily California and selected national markets providing title insurance, escrow and settlement services to residential mortgage lenders, real estate agents, asset managers REO companies in the residential real estate market. The services were provided through a proprietary integrated technology platform.

During the third quarter 2011, the Company received an unexpected opportunity to sell its interest in the title insurance company. After consideration of the increasing competition and lower margins in the title insurance industry along with a decision to focus the Company’s efforts on expanding the mortgage lending platform, the Company’s Board of Directors determined it was in the Company’s best interest to sell its interest in the title insurance company in September 2011.

For the three and nine months ended September 30, 2011 and 2010, mortgage and real estate services fees were as follows:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2011	2010	2011	2010
Real estate services and recovery fees	5,194	6,155	13,815	16,782
Title and escrow	4,907	4,786	13,906	11,217
Mortgage lending	4,748	178	7,698	411
Loss mitigation fees	1,786	2,582	5,048	9,516
Portfolio service fees	1,222	1,846	4,091	4,242
Total mortgage and real estate services fees	\$ 17,857	\$ 15,547	\$ 44,558	\$ 42,168

As a result of the sale of our interest in Experience 1, Inc., the parent of the title insurance company, during the third quarter of 2011, mortgage and real estate service fees may decline in future periods, with expected reductions in title and escrow fees.

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*Long-Term Mortgage Portfolio*

At September 30, 2011, our residual interest in securitizations (represented by the difference between trust assets and trust liabilities) decreased to \$26.2 million, compared to \$26.4 million at December 31, 2010. The decrease in residual fair value for the nine months ended September 30, 2011 was primarily due to cash received partially offset by reductions in forward LIBOR interest rates.

To estimate fair value of the assets and liabilities within the securitization trusts each reporting period, management uses an industry standard valuation and analytical model that is updated monthly with current collateral, real estate, derivative, bond and cost (servicer, trustee, etc.) information for each securitization trust. The Company employs an internal process to validate the accuracy of the model as well as the data within this model. Forecasted assumptions, sometimes referred to as “curves” for defaults, loss severity, interest rates (LIBOR) and prepayments are input into the valuation model for each securitization trust. The Company hires third party experts to provide forecasted curves for the aforementioned assumptions for each of the securitizations. Before inputting this information into the model, management employs a process to qualitatively and quantitatively review the assumption curves for reasonableness using other information gathered from the mortgage and real estate market (i.e., third party home price indices, published industry reports discussing regional mortgage and commercial loan performance and delinquency) as well as actual default and foreclosure information for each trust from the respective trustees.

The Company uses the valuation model to generate the expected cash flows to be collected from the trust assets and the expected required bondholder distribution (trust liabilities). To the extent that the trusts are overcollateralized and certain performance measures are met, the Company receives the excess interest as the holder of the residual interest. The information above provides us with the future expected cash flows for the securitized mortgage collateral, real estate owned, securitized mortgage borrowings, derivative assets/liabilities, and the residual interests.

To determine the discount rates to apply to these cash flows, the Company gathers information from the bond pricing services and other market participants regarding estimated investor required yields for each bond tranche. Based on that information and the collateral type and vintage, the Company determines an acceptable range of expected yields an investor would require including an appropriate risk premium for each bond tranche. The Company uses the blended yield of the bond tranches together with the residual interests to determine an appropriate yield for the securitized mortgage collateral in each securitization (after taking into consideration any derivatives in the securitization).

The following table presents changes in the Company’s trust assets and trust liabilities for the nine months ended September 30, 2011:

	TRUST ASSETS					TRUST LIABILITIES			Net trust assets and trust liabilities
	Level 3 Recurring Fair Value Measurements			NRV (2)		Level 3 Recurring Fair Value Measurements			
	Investment securities available-for-sale	Securitized mortgage collateral	Derivative assets	Real estate owned	Total trust assets	Securitized mortgage borrowings	Derivative liabilities	Total trust liabilities	
<b>Recorded book value at December 31, 2010</b>	645	6,011,675	40	92,708	6,105,068	(6,012,745)	(65,916)	(6,078,661)	26,407
Total gains/(losses) included in earnings:									
Interest income	88	276,009	—	—	276,097	—	—	—	276,097
Interest expense	—	—	—	—	—	(525,430)	—	(525,430)	(525,430)
Change in FV of net trust assets, excluding REO	(128)	(239,727)	(3)	—	(239,858) (1)	265,754	(8,300)	257,454(1)	17,596
Change in FV of long-term debt	—	—	—	—	—	—	—	—	—
Losses from REO (2)	—	—	—	(11,855)	(11,855) (1)	—	—	—	(11,855)
Total gains (losses) included in earnings	(40)	36,282	(3)	(11,855)	24,384	(259,676)	(8,300)	(267,976)	(243,592)
Purchases issuances and settlements	(161)	(606,367)	—	(19,598)	(626,126)	826,391	43,154	869,545	243,419
<b>Recorded book value at September 30, 2011</b>	<b>\$ 444</b>	<b>\$ 5,441,590</b>	<b>\$ 37</b>	<b>\$ 61,255</b>	<b>\$ 5,503,326</b>	<b>\$ (5,446,030)</b>	<b>\$ (31,062)</b>	<b>\$ (5,477,092)</b>	<b>\$ 26,234</b>

(1) Represents non-interest income-net trust assets on the Company’s consolidated statements of operations for the nine months ended September 30, 2011.  
(2) Accounted for at net realizable value.

The decrease in fair value of securitized mortgage borrowings resulted in gains of \$265.8 million, offset by losses of \$239.7 million resulting from the decrease in the fair value of securitized mortgage collateral for the nine months ended September 30, 2011. For the nine months ended September 30, 2011, the change in the net realizable value (NRV) of REO resulted in a loss of \$11.9 million. Inclusive of losses from REO, trust assets reflect a net loss of \$251.7 million as a result of losses from the decrease in fair value of securitized mortgage collateral of \$239.7 million, losses from REO of \$11.9 million and losses from other trust assets of \$128 thousand. Net gains on trust liabilities were \$257.5 million as a result of \$265.8 million in gains from the decrease in fair value of securitized mortgage borrowings partially offset by losses from derivative liabilities of \$8.3 million. As a result, non-interest income—net trust assets increased by \$5.7 million during the nine months ended September 30, 2011.

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*Liquidity and capital resources*

During the first nine months of 2011, the Company continued to fund its operations primarily from mortgage and real estate services fees which includes mortgage lending activities, portfolio loss mitigation and real estate services fees primarily generated from its long-term mortgage portfolio, and cash flows from our residual interests in securitizations. In addition, the Company funded mortgage loan production using warehouse facilities which are repaid once the loan is sold.

The Company's ability to meet its long-term liquidity requirements is subject to several factors, such as generating fees from our mortgage and real estate fee-based business activities and realizing cash flows from our long-term mortgage portfolio. Our future financial performance and success are dependent in large part upon our ability to grow our mortgage and real estate services, including providing services to third parties and expanding our mortgage lending operations. We believe that current cash balances, cash flows from mortgage and real estate services fees generated from our long-term mortgage portfolio, and residual interest cash flows from our long-term mortgage portfolio are adequate for our current operating needs. However, the mortgage and real estate services market is volatile, highly competitive and subject to increased regulation. The Company's ability to compete successfully in the mortgage and real estate services industry is challenging as many competitors have recently entered or have established businesses delivering similar services. Additionally, the mortgage lending environment is extremely competitive and highly regulated. The future success of the mortgage lending operations will depend on a number of factors, including the profitability and growth of our origination channels, housing market conditions, economic recovery and financial regulatory reform. If we are unsuccessful, we may be unable to satisfy our future operating costs and liabilities, including repayment of the notes payable, line of credit and long-term debt.

At September 30, 2011, the condensed components of stockholders' equity were comprised of the following significant assets and liabilities:

	<b>Condensed Components of Stockholders' Equity</b>	
Cash	\$	8,732
Restricted cash		4,915
Residual interests in securitizations		26,234
Loans held-for-sale		50,093
Warehouse borrowings		(46,948)
Notes payable		(6,575)
Long-term debt (\$71,120 par)		(11,333)
Repurchase reserve (1)		(5,929)
Lease liability (2)		(2,244)
Deferred charge		12,195
Net other assets (liabilities)		1,079
<b>Stockholders' equity (deficit)</b>	<b>\$</b>	<b>30,219</b>

(1) \$5.4 million is within discontinued operations.

(2) Included within discontinued operations and guaranteed by IMH

At September 30, 2011, cash within our continuing operations decreased to \$8.7 million from \$11.5 million at December 31, 2010. The primary sources of cash between periods were \$44.6 million in fees generated from the mortgage and real estate services, \$9.0 million from residual interests in securitizations (net of the restricted excess cash in the reserve account) and \$8.8 million from the issuance of the note payable. Offsetting the sources of cash were operating expenses totaling \$51.7 million, payments on the notes payable of \$9.7 million and settlements of repurchase requests associated with loans sold by the discontinued non-conforming mortgage operations of approximately \$5.0 million.

Since our consolidated and unconsolidated securitization trusts are nonrecourse to us, we have netted trust assets and liabilities to present the Company's interest in these trusts more simply, which are considered our residual interests in securitizations. For unconsolidated securitizations our residual interests represent the fair value of investment securities available-for-sale. For consolidated securitizations, our residual interests are represented by the fair value of securitized mortgage collateral and real estate owned, offset by the fair value of securitized mortgage borrowings and net derivative

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liabilities. We receive cash flows from our residual interests in securitizations to the extent they are available after required distributions to bondholders and maintaining specified overcollateralization levels and other specified parameters (such as maximum delinquency and cumulative default) within the trusts. The estimated fair value of the residual interests, represented by the difference in the fair value of trust assets and trust liabilities, was \$26.2 million at September 30, 2011, compared to \$26.4 million at December 31, 2010.

At September 30, 2011, our notes payable was \$6.6 million. The amount had only decreased slightly from December 31, 2010, as a result of the Company entering into a new structured debt agreement and used a portion of the proceeds to pay off the \$4.0 million balance owed on the previous debt agreement. The Company received proceeds of \$4.8 million, net of the aforementioned payoff, \$1.4 million discount and transaction costs of approximately \$50 thousand. Additionally, during the first nine months of 2011, the Company received \$4.3 million in excess cash flows from the residuals collateralizing the note payable. The \$4.3 million, included in restricted cash on the consolidated balance sheets, is available to cover any future shortfalls of scheduled principal and interest payments due on the note payable. If the amount of restricted cash becomes sufficient to satisfy the remaining obligation the secured interest in the residuals listed as security is released. As of September 30, 2011, the carrying value of the note was \$6.6 million, net of an \$827 thousand discount. The note will mature in October 2012.

At September 30, 2011, the balance of deferred charge was \$12.2 million. For the nine months ended September 30, 2011, the Company recorded \$949 thousand in income tax expense resulting from deferred charge impairment write-downs based on changes in estimated fair value of securitized mortgage collateral. The deferred charge arose as a result of the deferral of income tax expense on inter-company profits that resulted from the sale of mortgages from taxable subsidiaries to IMH in prior years. This balance is recorded as required by GAAP and does not have any realizable cash value.

In previous years when our discontinued operations sold loans to investors, we were required to make normal and customary representations and warranties about the loans we had previously sold to investors. Our whole loan sale agreements generally required us to repurchase loans if we breached a representation or warranty given to the loan purchaser. In addition, we also could be required to repurchase loans as a result of borrower fraud or if a payment default occurs on a mortgage loan shortly after its sale. The repurchase reserve is an estimate of losses from expected repurchases, and is based, in part, on the recent settlement of claims. During the nine months ended September 30, 2011, the Company paid approximately \$5.0 million to settle previous repurchase claims as well as continued to receive repurchase requests from FannieMae resulting in increases in estimated repurchase obligations. At September 30, 2011, the repurchase reserve within discontinued operations was \$5.4 million as compared to \$8.0 million at December 31, 2010.



In connection with the discontinuation of our non-conforming mortgage, warehouse lending and commercial operations, a significant amount of office space that was previously occupied is no longer being used by the Company. The Company has subleased a significant amount of this office space. At September 30, 2011, the Company had a liability of \$2.2 million included within discontinued operations, representing the present value of the minimum lease payments over the remaining life of the lease, offset by the expected proceeds from sublet revenue related to this office space.

## Market Update

During the first nine months of 2011, we continue to see home price declines in many markets as housing prices remained under pressure due to elevated foreclosure levels. In addition, foreclosure delays among other market conditions may result in continued downward pressure on home prices for the foreseeable future.

Mortgage lending and credit market conditions remained weak through the first nine months of 2011 due primarily to the continued economic uncertainty and slower than expected recovery. Existing uncertainties surrounding the housing market, economy and regulatory environment will continue to present challenges for the Company. The ongoing economic stress or further deterioration of general economic conditions could prolong or increase borrower defaults leading to deteriorating performance of our long-term mortgage portfolio and hinder the growth and profitability of our mortgage lending operations.

A number of factors make it difficult to predict when a sustained recovery in the housing and credit markets will occur. Concerns about the future of the global economy, including the pace and magnitude of recovery from the recent economic recession, consumer confidence, volatility in energy prices, global credit market volatility and trends in corporate earnings will continue to influence the U.S. economic recovery and the capital markets. In the third quarter of 2011, the

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global financial markets experienced continued volatility and uncertainty as concerns about the Eurozone debt crisis and global economic conditions persisted. Combined with various proposed regulatory reform measures and global downgrades, there was a flight to treasuries from risk-averse investors as overall asset valuations declined. In addition, we believe continued improvement in unemployment rates and a sustained recovery of the housing markets remain critical components of a broader U.S. economic recovery. U.S. unemployment rates, which have been a major factor in the deterioration of credit quality in the U.S., remained high at 9.1 percent in September 2011. While the reported unemployment rate marginally improved from a rate of 9.4 percent at December 2010, it actually increased 30 basis points since the first quarter. Also, a significant number of unemployed U.S. residents are no longer looking for work and, therefore, are not reflected in the reported U.S. unemployment rates based on reports from financial institutions. Reported unemployment rates in 18 states are at or above the U.S. national average. Reported unemployment rates in seven states are at or above 10.0 percent, including California and Florida. California and Florida represent the states with the highest concentration in our long-term mortgage portfolio.

Further weakening in these components as well as in consumer confidence may result in additional deterioration in consumer payment patterns and credit quality. Weak consumer fundamentals including consumer spending, declines in wage income and wealth, as well as a difficult job market continue to depress consumer confidence. Additionally, there is uncertainty as to the future course of monetary policy and uncertainty as to the impact on the economy and consumer confidence when the remaining actions taken by the government to restore faith in the capital markets and stimulate consumer spending end, including the recent extension of unemployment insurance benefits and the prior presidential administration's tax cuts. These conditions in combination with general economic weakness and the effect of recent regulatory changes will continue to impact our results throughout 2011, the degree of which is largely dependent upon the nature and extent of the economic recovery. In addition, given the recent significant downturn in the financial markets in August and September of 2011, there remains uncertainty as to the effect this may have on the future fair values of the assets and liabilities on the Company's consolidated balance sheet which may have a bearing on the Company's financial position and results of operations.

The Company's ability to meet its long-term liquidity requirements is subject to several factors, such as generating fees from the mortgage and real estate business activities and realizing cash flows from the long-term mortgage portfolio. The Company's future financial performance and success are dependent in large part upon the ability to grow the mortgage and real estate business activities, including providing services to third parties and expanding the mortgage lending operations. The Company believes that current cash balances, cash flows from mortgage and real estate services fees generated from the long-term mortgage portfolio, and residual interest cash flows from the long-term mortgage portfolio are adequate for the current operating needs. However, the mortgage and real estate services market is volatile, highly competitive and subject to increased regulation. The Company's ability to successfully compete in the mortgage and real estate services industry is challenging as its business activities have been established in the last few years and many competitors have recently entered or have established businesses delivering similar services. Additionally, the mortgage lending environment is extremely competitive and highly regulated. The future success of the mortgage lending operations will depend on a number of factors, including the ability to procure adequate financing to fund loan production, maintaining associated financial covenants of lenders, the profitability and growth of our origination channels, housing market conditions, economic recovery and financial regulatory reform. If the Company is unsuccessful, the Company may be unable to satisfy the future operating costs and liabilities, including repayment of the note payable and long-term debt. To be successful in expanding the business and providing adequate returns to the shareholders, the Company may seek financing in the form of debt or equity capital.

## *Financial Regulatory Reform*

On July 21, 2010, the "Dodd-Frank Wall Street Reform and Consumer Protection Act" was signed into law. This legislation is a sweeping overhaul of the financial regulatory system.

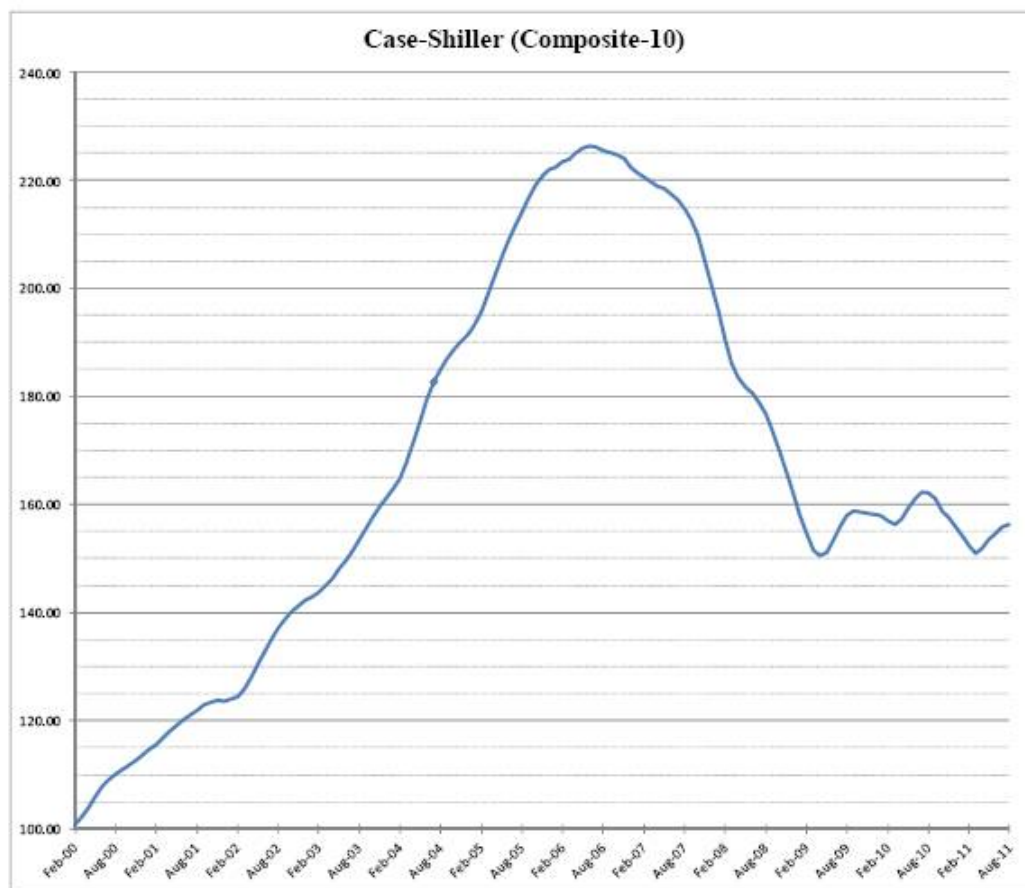
The legislation provides for new regulation on financial institutions, creates new supervisory and advisory bodies, including the new Consumer Financial Protection Bureau, and contains many consumer related provisions including provisions addressing mortgage reform. In the area of mortgage origination, it appears there is an effective elimination of stated income loans and low document loans along with a requirement to apply a net tangible benefit test for all refinancing transactions. There are also numerous revised servicing requirements for mortgage loans.

The legislation will have a significant effect on the operations of many financial institutions in the U.S. As the legislation calls for extensive regulations to be promulgated to interpret and implement the legislation, it is not possible to precisely determine the impact to operations and financial results at this time. The Company will continue to assess the effect of the legislation on the Company's business as the associated regulations are adopted.



### Effects of Recent Market Activity

During the first nine months of 2011, the Company's investment in securitized non-conforming loans (residual interests) continued to be affected by the aforementioned economic and housing market conditions resulting in increased estimated defaults and severities.



As depicted in the chart above, average home prices peaked in June 2006 at 226.29 and continued their dramatic decline through much of the first half of 2009, while increasing slightly over the remaining half of the year. The Standard & Poor's Case-Shiller 10-City Composite Home Price Index (the Index) for August 2011 was 156.4 (with the base of 100.00 for January 2000.) Beginning in the third quarter of 2007, the Company began to believe that there was a correlation between the borrowers' perceived equity in their homes and defaults. The original loan-to-value (defined as loan amount as a percentage of collateral value, LTV) and original combined loan-to-value (defined as first lien plus total subordinate liens to collateral value, CLTV) ratios of single-family mortgages remaining in the Company's securitized mortgage collateral as of September 30, 2011 was 73% and 82%, respectively. The current LTV and CLTV ratios likely increased from origination date as a result of the deterioration in the real estate market. We believe that home prices that have declined below the borrower's original purchase price have a higher risk of default within our portfolio. Based on the Index, home prices have declined 32% through May 2011 from the 2006 peak. Further, we believe the home prices in general within California and Florida, the states with the highest concentration of our mortgages, have declined even further than the Index. We have considered the deterioration in home prices and its impact on our loss severities, which are a primary assumption used in the valuation of securitized mortgage collateral and borrowings.

### Critical Accounting Policies

We define critical accounting policies as those that are important to the portrayal of our financial condition and results of operations. Our critical accounting policies require management to make difficult and complex judgments that rely on estimates about the effect of matters that are inherently uncertain due to the effect of changing market conditions and/or consumer behavior. In determining which accounting policies meet this definition, we considered our policies with respect to

the valuation of our assets and liabilities and estimates and assumptions used in determining those valuations. We believe the most critical accounting issues that require the most complex and difficult judgments and that are particularly susceptible to significant change to our financial condition and results of operations include those issues included in IMH's report on Form 10-K on pages 27 through 29 of Management's Discussion and Analysis of Results of Operations for the year ended December 31, 2010. Such policies have not changed during 2011.

### Selected Financial Results for the Three Months Ended September 30, 2011

#### Continuing Operations

- Earnings from continuing operations of \$4.4 million for the third quarter of 2011, including a \$1.78 million gain from the sale of Experience 1, Inc. and a non-cash impairment charge of a deferred charge of \$949 thousand, compared to earnings of \$2.3 million for the comparable 2010

period.

- Mortgage and real estate services fees of \$17.9 million for the third quarter of 2011, compared to \$15.5 million for the comparable 2010 period.
- In September and October 2011, the Company sold its interest in Experience 1, Inc., the parent of the title insurance company, for \$3.7 million, recording a total gain of approximately \$1.9 million (\$1.78 million recorded in the third quarter and \$160 thousand to be recorded in the fourth quarter) ceasing the Company's involvement in title and escrow activities.
- The mortgage lending operations originated \$256.6 million and sold \$250.3 million of loans during the third quarter as compared to a minimal amount of loans originated for the comparable period in 2010.
- Net interest income of \$160 thousand for the third quarter of 2011, primarily from our long-term mortgage portfolio, compared to \$1.7 million for the comparable 2010 period.
- Non-interest income - net trust assets of \$3.4 million for the third quarter of 2011, compared to a loss of \$574 thousand for the comparable 2010 period.

#### Discontinued Operations

- Loss from discontinued operations of \$1.5 million for the third quarter of 2011, compared to a loss of \$1.3 million for the comparable 2010 period.
- Repurchase reserve was \$5.4 million at September 30, 2011, compared to \$8.0 million at December 31, 2010.

### Selected Financial Results for the Nine Months Ended September 30, 2011

#### Continuing Operations

- Earnings from continuing operations of \$3.7 million for the nine months ended September 30, 2011, including a \$1.78 million gain from the sale of Experience 1, Inc. and a non-cash impairment charge of a deferred charge of \$949 thousand, compared to earnings of \$7.9 million for the comparable 2010 period.
- Mortgage and real estate services fees of \$44.6 million for the nine months ended September 30, 2011, compared to \$42.2 million for the comparable 2010 period.
- The mortgage lending operations originated \$538.1 million and sold \$485.5 million of loans during the nine months ended September 30, 2011 as compared to \$22.1 million of loans originated for the comparable period in 2010.
- Net interest income of \$3.0 million for the nine months ended September 30, 2011, primarily from our long-term mortgage portfolio, compared to \$4.0 million for the comparable 2010 period.
- Non-interest income - net trust assets of \$5.7 million for the nine months ended September 30, 2011, compared to \$6.4 million for the comparable 2010 period.

#### Discontinued Operations

- Loss from discontinued operations of \$1.8 million for the nine months ended September 30, 2011, compared to earnings of \$1.9 million for the comparable 2010 period.

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### Financial Condition and Results of Operations

#### Financial Condition

#### Condensed Balance Sheet Data

	September 30, 2011	December 31, 2010	Increase (Decrease)	% Change
Securitized mortgage collateral	\$ 5,441,590	\$ 6,011,675	\$ (570,085)	(9)%
Other trust assets	61,736	93,393	(31,657)	(34)
Total trust assets	5,503,326	6,105,068	(601,742)	(10)
Mortgage loans held-for-sale	50,093	4,283	45,810	1,070
Assets of discontinued operations	105	373	(268)	(72)
Other assets	43,321	44,215	(894)	(2)
<b>Total assets</b>	<b>\$ 5,596,845</b>	<b>\$ 6,153,939</b>	<b>\$ (557,094)</b>	<b>(9)%</b>
Securitized mortgage borrowings	\$ 5,446,030	\$ 6,012,745	\$ (566,715)	(9)%
Other trust liabilities	31,062	65,916	(34,854)	(53)
Total trust liabilities	\$ 5,477,092	\$ 6,078,661	\$ (601,569)	(10)
Warehouse borrowings	46,948	4,057	42,891	1,057
Liabilities of discontinued operations	10,197	13,053	(2,856)	(22)
Other liabilities	32,389	30,471	1,918	6

Total liabilities	5,566,626	6,126,242	(559,616)	(9)
Total IMH stockholders' equity	29,108	26,396	2,712	10
Noncontrolling interest	1,111	1,301	(190)	(15)
Total equity	30,219	27,697	2,522	9
<b>Total liabilities and stockholders' equity</b>	<b>\$ 5,596,845</b>	<b>\$ 6,153,939</b>	<b>\$ (557,094)</b>	<b>(9)%</b>

Total assets and total liabilities were \$5.6 billion at September 30, 2011 as compared to \$6.2 billion and \$6.1 billion, respectively, at December 31, 2010. The changes in total assets and liabilities are primarily attributable to decreases in the Company's trust assets and trust liabilities as summarized below.

- Securitized mortgage collateral declined \$570.1 million during the nine months ended September 30, 2011, primarily due to reductions in principal from borrower payments, transfers of loans to REO and an increase in net loss assumptions for single-family and multifamily collateral. Additionally the \$31.7 million reduction in other trust assets during the nine months ended September 30, 2011 was primarily due to REO liquidations of \$95.1 million and additional impairment write-downs of \$11.8 million. Partially offsetting the decrease from liquidations were increases in REO from foreclosures of \$75.4 million.
- Securitized mortgage borrowings declined \$566.7 million during the nine months ended September 30, 2011, primarily due to reductions in principal balances from principal payments during the period and an increase in net loss assumptions for single-family and multifamily collateral. The 34.9 million dollar reduction in other trust liabilities during the nine months ended September 30, 2011 was primarily due to \$43.2 million in derivative cash payments from the securitization trusts, partially offset by an \$8.3 million increase in derivative fair value resulting from changes in forward LIBOR interest rates.

Since our consolidated and unconsolidated securitization trusts are nonrecourse to the Company, our economic risk is limited to our residual interests in these securitization trusts. Therefore, in the following table we have netted trust assets and trust liabilities to present these residual interests more simply. Our residual interests in securitizations are segregated between our single-family (SF) residential and multifamily (MF) residential portfolios and are represented by the difference between trust assets and trust liabilities.

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The following tables present the estimated fair value of our residual interests, including investment securities available for sale, by securitization vintage year and other related assumptions used to derive these values at September 30, 2011:

Origination Year	Estimated Fair Value of Residual Interests by Vintage Year		
	SF	MF	Total
2002-2003(1)	\$ 11,446	\$ 4,998	\$ 16,444
2004	3,777	5,899	9,676
2005(2)	—	114	114
2006(2)	—	—	—
2007(2)	—	—	—
<b>Total</b>	<b>\$ 15,223</b>	<b>\$ 11,011</b>	<b>\$ 26,234</b>
Weighted avg. prepayment rate	7.2%	4.5%	6.6%
Weighted avg. discount rate	30%	20%	26%

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

The Company utilizes a number of assumptions to value securitized mortgage collateral, securitized mortgage borrowings and residual interests. These assumptions include estimated collateral default rates and loss severities (credit losses), collateral prepayment rates, forward interest rates and investor yields (discount rates). The Company uses the same collateral assumptions for securitized mortgage collateral and securitized mortgage borrowings as the collateral assumptions determine collateral cash flows which are used to pay interest and principal for securitized mortgage borrowings and excess spread, if any, to the residual interests. However, the Company uses different investor yield (discount rate) assumptions for securitized mortgage collateral and securitized mortgage borrowings and the discount rate used for residual interests based on underlying collateral characteristics, vintage year, assumed risk and market participant assumptions. The table below reflects the estimated future credit losses and investor yield requirements for trust assets by product (SF and MF) and securitization vintage:

	Estimated Future Losses (1)		Investor Yield Requirement (2)	
	SF	MF	SF	MF
2002-2003	9%	0%	9%	11%
2004	19%	2%	10%	9%
2005	36%	8%	10%	9%
2006	44%	15%	15%	13%
2007	33%	8%	17%	10%

- Estimated future losses derived by dividing future projected losses by unpaid principal balances at September 30, 2011.
- Investor yield requirements represent the Company's estimate of the yield third-party market participants would require to price our trust assets and liabilities given our prepayment, credit loss and forward interest rate assumptions.

As illustrated in S&P's Case Shiller 10-City Composite Home Price Index, from 2002 through 2006, home price appreciation escalated to historic levels. During 2005 through 2007, the company originated or acquired mortgages supported by these elevated real estate values. Beginning in 2007, deterioration in the economy resulting in high unemployment and a dramatic drop in home prices resulted in significant negative equity for borrowers. These factors have led to significant increases in loss severities resulting from deterioration in the credit quality of borrowers, as well as strategic defaults, whereby borrowers with the ability to pay are defaulting on their mortgages based on the belief that home prices will not recover in a reasonable amount of time. Home prices have deteriorated back to December 2003 levels which has significantly reduced or eliminated equity for loans originated after 2003. Future loss estimates are significantly higher for mortgage loans included in securitization vintages after 2004 which reflect severe home price deterioration and defaults experienced with mortgages originated during these periods.

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The long-term mortgage portfolio and mortgage lending operations are affected by the following market and operational risks:

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

*Interest Rate Risk — Securitized Trusts, Long-term Debt.* The Company's earnings from the long-term mortgage portfolio depend largely on our interest rate spread, represented by the relationship between the yield on our interest-earning assets (primarily investment securities available-for-sale and securitized mortgage collateral) and the cost of our interest-bearing liabilities (primarily securitized mortgage borrowings and long-term debt). Our interest rate spread is impacted by several factors, including general economic factors, forward interest rates and the credit quality of mortgage loans in the long-term mortgage portfolio.

The residual interests in our long-term mortgage portfolio are sensitive to changes in interest rates on securitized mortgage collateral and the related securitized mortgage borrowings. Changes in interest rates can significantly affect the cash flows and fair values of the Company's assets and liabilities, as well as our earnings and stockholders' equity.

The Company uses derivative instruments to manage some of its interest rate risk in its long-term mortgage portfolio. However, the Company does not attempt to hedge interest rate risk completely. To help mitigate some of the exposure to the effect of changing interest rates on cash flows on securitized mortgage borrowings, the Company utilized derivative instruments primarily in the form of interest rate swap agreements (swaps) and, to a lesser extent, interest rate cap agreements (caps) and interest rate floor agreements (floors). These derivative instruments are recorded at fair value in the consolidated balance sheets. For non-exchange traded contracts, fair value is based on the amounts that would be required to settle the positions with the related counterparties as of the valuation date. Valuations of derivative assets and liabilities are based on observable market inputs, if available. To the extent observable market inputs are not available, fair values measurements include the Company's judgments about future cash flows, forward interest rates and certain other factors, including counterparty risk. Additionally, these values also take into account the Company's own credit standing, to the extent applicable; thus, the valuation of the derivative instrument includes the estimated value of the net credit differential between the counterparties to the derivative contract.

At September 30, 2011, derivative liabilities, net were \$31.0 million and reflect the securitization trust's liability to pay third-party counterparties based on the estimated value to settle the derivative instruments. Cash payments on these derivative instruments are based on notional amounts that are decreasing over time. Excluding the effects of other factors such as portfolio delinquency and loss severities within the securitization trusts, as the notional amount of these derivative instruments decrease over time, payments to counterparties in the current interest rate environment are reduced, thereby potentially increasing cash flows on our residual interests in securitizations. Conversely, increases in interest rates from current levels could potentially reduce overall cash flows on our residual interests in securitizations. Since our consolidated and unconsolidated securitization trusts are nonrecourse to the Company, our economic risk is limited to our residual interests in these securitization trusts.

The Company is also subject to interest rate risk on its long-term debt (consisting of trust preferred securities and junior subordinated notes) and notes payable. These interest bearing liabilities include adjustable rate periods based on one-month LIBOR (note payable) and three-month LIBOR (trust preferred securities and junior subordinated notes). The Company does not currently hedge its exposure to the effect of changing interest rates related to these interest-bearing liabilities. Significant fluctuations in interest rates could have a material adverse effect on the Company's business, financial condition, results of operations or liquidity.

*Interest Rate Risk — Mortgage Lending.* The Company is exposed to interest rate risks relating to its ongoing mortgage lending operations. The Company uses financial instruments to manage some of its interest rate risk. However, the Company does not attempt to hedge interest rate risk completely. The Company enters into interest rate lock commitments and commitments to sell mortgages to help mitigate some of the exposure to the effect of changing interest rates on mortgage lending cash flows.

Interest rate lock commitments expose the Company to interest rate risk. The mortgage lending operations currently utilizes forward sold Fannie Mae and Ginnie Mae mortgage backed securities to hedge the fair value changes associated with changes in interest rates relating to its new conforming mortgage loan origination operations. These financial instruments are considered derivatives instruments under GAAP.

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

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

We monitor our servicers to attempt to ensure that they perform loss mitigation, foreclosure and collection functions according to their servicing practices and each securitization trust's pooling and servicing agreement. We have met with the management of our servicers to assess our borrowers' current ability to pay their mortgages and to make arrangements with selected delinquent borrowers which will result in the best interest of the trust and borrower, in an effort to minimize the number of mortgages which become seriously delinquent. When resolving delinquent mortgages, servicers are required to take timely action. The servicer is required to determine payment collection under various circumstances, which will result in the maximum financial benefit. This is accomplished by either working with the borrower to bring the mortgage current by modifying the loan with terms that will maximize the recovery or by foreclosing and liquidating the property. At a foreclosure sale, the trusts consolidated on our balance sheet generally acquire title to the property.

We use the Mortgage Bankers Association (MBA) method to define delinquency as a contractually required payment being 30 or more days past due. We measure delinquencies from the date of the last payment due date in which a payment was received. Delinquencies for loans 60 days late or greater, foreclosures and delinquent bankruptcies were \$2.1 billion or 20.4% as of September 30, 2011.

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

	September 30, 2011	Total Collateral %	December 31, 2010	Total Collateral %
<b><u>Mortgage loans held-for-sale and investment</u></b>				
60 - 89 days delinquent	\$ —	*	\$ —	*
90 or more days delinquent	529	*	1,121	*
Foreclosures (1)	1,127	*	1,020	*
Total 60+ days delinquent mortgage loans held-for-sale and investment (2)	<u>1,656</u>	*	<u>2,141</u>	*
<b><u>Securitized mortgage collateral</u></b>				
60 - 89 days delinquent	\$ 203,718	2.0%	\$ 260,106	2.3%
90 or more days delinquent	657,986	6.5%	734,459	6.5%
Foreclosures (1)	841,663	8.3%	1,062,362	9.4%
Delinquent bankruptcies (3)	372,428	3.7%	337,976	3.0%
Total 60+ days delinquent long-term mortgage portfolio	<u>2,075,795</u>	20.4%	<u>2,394,903</u>	21.3%
Total 60 or more days delinquent	<u>\$ 2,077,451</u>	20.4%	<u>\$ 2,397,044</u>	21.3%
Total collateral	<u>\$ 10,182,909</u>		<u>\$ 11,256,312</u>	

\* Less than 0.1%

(1) Represents properties in the process of foreclosure.

(2) Represents legacy mortgage loans held-for-sale included in discontinued operations in the consolidated balance sheets.

(3) Represents bankruptcies that are 30 days or more delinquent.

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

	September 30, 2011	Total Collateral %	December 31, 2010	Total Collateral %
90 or more days delinquent, foreclosures and delinquent bankruptcies	\$ 1,873,733	18.4%	\$ 2,136,938	19.0%
Real estate owned	61,327	0.6%	92,780	0.8%
Total non-performing assets	<u>\$ 1,935,060</u>	19.0%	<u>\$ 2,229,718</u>	19.8%

Non-performing assets consist of non-performing loans (mortgages that are 90 or more days delinquent, including loans in foreclosure and delinquent bankruptcies) plus REO. It is our policy to place a mortgage on non-accrual status when it becomes 90 days delinquent and to reverse from revenue any accrued interest, except for interest income on securitized mortgage collateral when the scheduled payment is received from the servicer. The servicers are required to advance principal and interest on loans within the securitization trusts to the extent the advances are considered recoverable. We, as master servicer, may be required to advance funds, or in most cases cause our loan servicers to advance funds, to cover principal and interest payments not received from borrowers depending on the status of their mortgages. As of September 30, 2011, non-performing assets (unpaid principal balance of loans 90 or more days delinquent, foreclosures and delinquent bankruptcies plus REO) as a percentage of the total collateral was 19.0%. At December 31, 2010, non-performing assets to total collateral was 19.8%. As of September 30, 2011, the estimated fair value of non-performing assets (representing the fair value of loans 90 or more days delinquent, foreclosures and delinquent bankruptcies plus REO) was \$566.0 million or 10.1% of total assets. At December 31, 2010, the estimated fair value of non-performing assets was \$657.5 million or 10.7% of total assets.

REO, which consists of residential real estate acquired in satisfaction of loans, is carried at the lower of cost or net realizable value less estimated selling costs. Adjustments to the loan carrying value required at the time of foreclosure are included in the change in the fair value of net trust assets. Changes in the Company's estimates of net realizable value subsequent to the time of foreclosure and through the time of ultimate disposition are recorded as gains or losses from real estate owned in the consolidated statements of operations. REO, for continuing and discontinued operations, at September 30, 2011 decreased \$31.5 million or 33.9% from December 31, 2010, as a result of liquidations and a decrease in foreclosures associated with foreclosure delays.

We realized losses on the sale of real estate owned in the amount \$13 thousand and \$23 thousand for the three and nine months ended September 30, 2011, respectively, compared to gains of \$111 thousand and \$3.5 million for the comparable 2010 period. Additionally, during the three and nine months ended September 30, 2011, the Company recorded write-downs of the net realizable value of the REO in the amount of \$7.0 million and \$12.0 million, respectively, compared to a write-down and recovery of \$10.3 million and \$9.8 million, respectively, for the comparable 2010 period. These write-downs of the net realizable value reflect declines in value of the REO subsequent to foreclosure date.

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

	September 30, 2011	December 31, 2010
REO	\$ 80,495	\$ 122,279
Impairment (1)	(19,168)	(29,499)
Ending balance	<u>\$ 61,327</u>	<u>\$ 92,780</u>
REO inside trusts	\$ 61,255	\$ 92,708
REO outside trusts	72	72
Total	<u>\$ 61,327</u>	<u>\$ 92,780</u>

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

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

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

*Prepayment Risk.* The Company historically used prepayment penalties as a method of partially mitigating prepayment risk for those borrowers that have the ability to refinance. The recent economic downturn, lack of available credit and declines in property values have limited borrowers' ability to refinance. These factors have significantly reduced prepayment risk within our long-term mortgage portfolio. With the seasoning of the long-term mortgage portfolio, a significant portion of prepayment penalties terms have expired, thereby further reducing prepayment penalty income.

**Results of Operations**

*For the Three and Nine Months Ended September 30, 2011 compared to the Three and Nine Months Ended September 30, 2010*

	For the Three Months Ended September 30,			
	2011	2010	Increase (Decrease)	% Change
Interest income	\$ 172,657	\$ 230,927	\$ (58,270)	(25)%
Interest expense	172,497	229,256	(56,759)	(25)
Net interest income	160	1,671	(1,511)	(90)
Total non-interest income	24,337	16,162	8,175	51
Total non-interest expense	19,104	15,552	3,552	23
Income tax expense	957	14	943	6,736
Net earnings from continuing operations	4,436	2,267	2,169	96
Loss from discontinued operations, net	(1,490)	(1,285)	(205)	(16)
Net earnings	2,946	982	1,964	200
Net loss (earnings) attributable to noncontrolling interests (1)	156	(8)	164	2,050
Net earnings attributable to IMH	<u>\$ 3,102</u>	<u>\$ 974</u>	<u>\$ 2,128</u>	<u>218%</u>
Earnings per share available to common stockholders - basic	<u>\$ 0.40</u>	<u>\$ 0.13</u>	<u>\$ 0.27</u>	<u>216</u>
Earnings per share available to common stockholders - diluted	<u>\$ 0.37</u>	<u>\$ 0.12</u>	<u>\$ 0.25</u>	<u>218</u>



**For the Nine Months Ended September 30,**

	2011	2010	Increase (Decrease)	% Change
Interest income	\$ 593,122	\$ 759,016	\$ (165,894)	(22)%
Interest expense	590,117	755,020	(164,903)	(22)
Net interest income	3,005	3,996	(991)	(25)
Total non-interest income	53,378	49,455	3,923	8
Total non-interest expense	51,748	45,410	6,338	14
Income tax expense	978	143	835	584
Net earnings from continuing operations	3,657	7,898	(4,241)	(54)
(Loss) earnings from discontinued operations, net	(1,832)	1,905	(3,737)	(196)
Net earnings	1,825	9,803	(7,978)	(81)
Net loss attributable to noncontrolling interests (1)	651	375	276	74
Net earnings attributable to IMH	<u>\$ 2,476</u>	<u>\$ 10,178</u>	<u>\$ (7,702)</u>	<u>(76)%</u>
Earnings per share available to common stockholders - basic	<u>\$ 0.32</u>	<u>\$ 1.32</u>	<u>\$ (1.00)</u>	<u>(76)%</u>
Earnings per share available to common stockholders - diluted	<u>\$ 0.30</u>	<u>\$ 1.22</u>	<u>\$ (0.93)</u>	<u>(76)%</u>

(1) Net loss attributable to noncontrolling interest represents the portion of the losses of Experience 1, Inc. and AmeriHome Mortgage Corporation (both subsidiaries of IRES) that the Company does not wholly own.

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*Net Interest Income*

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

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

	For the three months ended September 30,					
	2011			2010		
	Average Balance	Interest	Yield	Average Balance	Interest	Yield
<b>ASSETS</b>						
Securitized mortgage collateral	\$ 5,541,774	\$ 172,364	12.44%	\$ 6,148,164	\$ 230,837	15.02%
Loans held-for-sale	38,243	376	3.93%	—	—	—
Other	4,393	(83)	(7.56)%	1,262	90	28.53%
Total interest-earning assets	<u>\$ 5,584,410</u>	<u>\$ 172,657</u>	12.37%	<u>\$ 6,149,426</u>	<u>\$ 230,927</u>	15.02%
<b>LIABILITIES</b>						
Securitized mortgage borrowings	\$ 5,548,936	\$ 170,395	12.28%	\$ 6,130,796	\$ 228,077	14.88%
Long-term debt	11,740	1,044	35.57%	11,089	1,071	38.63%
Notes payable	7,448	614	32.98%	10,322	108	4.19%
Warehouse borrowings	35,137	444	5.05%	—	—	—
Total interest-bearing liabilities	<u>\$ 5,603,261</u>	<u>\$ 172,497</u>	12.31%	<u>\$ 6,152,207</u>	<u>\$ 229,256</u>	14.91%
<b>Net Interest Spread (1)</b>		\$ 160	0.06%		\$ 1,671	0.11%
<b>Net Interest Margin (2)</b>			0.01%			0.11%

(1) Net interest spread is calculated by subtracting the weighted average yield on interest-bearing liabilities from the weighted average yield on interest-earning assets.

(2) Net interest margin is calculated by dividing net interest spread by total average interest-earning assets.

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Net interest income spread decreased \$1.5 million for the three months ended September 30, 2011 primarily attributable to a decrease in net spread on the long-term portfolio due to increases in pricing and the corresponding reduction in investor yield requirements between periods on securitized mortgage collateral and securitized mortgage borrowings, an increase in interest expense on notes payable and warehouse borrowings, partially offset by an increase in interest income on loans held-for-sale for the quarter ended September 30, 2011. As a result, net interest margin decreased from 0.11% for the three months ended September 30, 2010 to 0.01% for the three months ended September 30, 2011.

During the three months ended September 30, 2011, the yield on interest-earning assets decreased to 12.37% from 15.02% in the comparable 2010 period. The yield on interest-bearing liabilities decreased to 12.31% for the three months ended September 30, 2011 from 14.91% for the comparable 2010 period. In connection with the fair value accounting for investment securities available-for-sale and securitized mortgage collateral and borrowings, interest income and interest expense is recognized using effective yields based on estimated fair values for these instruments. The decrease in yield for securitized mortgage collateral and securitized mortgage borrowings is primarily related to increased prices on mortgage-backed bonds which resulted in a decrease in yield. Bond prices received from pricing services and other market participants have increased over the past few quarters as investor's demand for mortgage-backed securities has increased. This has resulted in an increase in fair value for both securitized mortgage collateral and securitized mortgage borrowings. These increases in fair value have decreased the effective yields used for purposes of recognizing interest income and interest expense on these instruments.

	For the nine months ended September 30,					
	2011			2010		
	Average Balance	Interest	Yield	Average Balance	Interest	Yield
<b>ASSETS</b>						
Securitized mortgage collateral	\$ 5,787,247	\$ 591,774	13.63%	\$ 6,119,520	\$ 758,813	16.53%
Loans held-for-sale	30,227	1,079	4.76%	—	—	—
Other	4,604	269	7.79%	927	203	29.20%
Total interest-earning assets	<u>\$ 5,822,078</u>	<u>\$ 593,122</u>	13.58%	<u>\$ 6,120,447</u>	<u>\$ 759,016</u>	16.54%
<b>LIABILITIES</b>						
Securitized mortgage borrowings	\$ 5,791,798	\$ 584,319	13.45%	\$ 6,095,991	\$ 751,022	16.43%
Long-term debt	11,810	2,905	32.80%	10,671	3,433	42.90%
Notes payable	6,691	1,793	35.73%	17,234	565	4.37%
Warehouse borrowings	27,741	1,100	5.29%	—	—	—
Total interest-bearing liabilities	<u>\$ 5,838,040</u>	<u>\$ 590,117</u>	13.48%	<u>\$ 6,123,896</u>	<u>\$ 755,020</u>	16.44%
<b>Net Interest Spread (1)</b>		\$ 3,005	0.10%		\$ 3,996	0.10%
<b>Net Interest Margin (2)</b>			0.07%			0.09%

- (1) Net interest spread is calculated by subtracting the weighted average yield on interest-bearing liabilities from the weighted average yield on interest-earning assets.
- (2) Net interest margin is calculated by dividing net interest spread by total average interest-earning assets.

Net interest income spread decreased \$1.0 million for the nine months ended September 30, 2011 primarily attributable to an increase in interest expense on notes payable and a decrease in net interest spread on the long-term portfolio due to increases in pricing and the corresponding reduction in investor yield requirements between periods on securitized mortgage collateral and securitized mortgage borrowings, partially offset by a decrease in interest expense on long-term debt for the nine months ended September 30, 2011. As a result, net interest margin decreased from 0.09% for the nine months ended September 30, 2010 to 0.07% for the nine months ended September 30, 2011.

During the nine months ended September 30, 2011, the yield on interest-earning assets decreased to 13.58% from 16.54% in the comparable 2010 period. The yield on interest-bearing liabilities decreased to 13.48% for the nine months ended September 30, 2011 from 16.44% for the comparable 2010 period. In connection with the fair value accounting for investment securities available-for-sale and securitized mortgage collateral and borrowings, interest income and interest expense is recognized using effective yields based on estimated fair values for these instruments. The decrease in yield for securitized mortgage collateral and securitized mortgage borrowings is primarily related to increased prices on mortgage-

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backed bonds which resulted in a decrease in yield. Bond prices received from pricing services and other market participants have increased over the past few quarters as investor's demand for mortgage-backed securities has increased. This has resulted in an increase in fair value for both securitized mortgage collateral and securitized mortgage borrowings. These increases in fair value have decreased the effective yields used for purposes of recognizing interest income and interest expense on these instruments.

## Non-Interest Income

### Changes in Non-Interest Income

	For the Three Months Ended September 30,			
	2011	2010	Increase (Decrease)	% Change
Change in fair value of net trust assets, excluding REO	\$ 10,297	\$ 9,573	\$ 724	8%
Losses from REO	(6,867)	(10,147)	3,280	32
Non-interest income - net trust assets	3,430	(574)	4,004	698
Mortgage and real estate services fees	17,857	15,547	2,310	15
Gain on sale of Experience 1, Inc.	1,780	—	1,780	N/A
Other income	1,270	1,189	81	7
Total non-interest income	<u>\$ 24,337</u>	<u>\$ 16,162</u>	<u>\$ 8,175</u>	51%

*Non-interest income—net trust assets.* Since our consolidated and unconsolidated securitization trusts are nonrecourse to the Company, our economic risk is limited to our residual interests in these securitization trusts. To understand the economics on our residual interests in securitizations better, it is necessary to consider the net effect of changes in fair value of net trust assets and losses from REO. All estimated future losses are included in the estimate of the fair value of securitized mortgage collateral and REO. Losses on REO are reported separately in the consolidated statement of operations as REO is a nonfinancial asset which is the only component of trust assets and liabilities that is not recorded at fair value. Therefore, REO value at the time of sale or losses from further write-downs are recorded separately in the Company's consolidated statement of operations. The net effect of changes in value related to

our investment in all trust assets and liabilities is shown as non-interest income—net trust assets, which includes losses from REO. Non-interest income related to our net trust assets (residual interests in securitizations) was \$3.4 million for the three months ended September 30, 2011, compared to a loss of \$574 thousand in the comparable 2010 period. The individual components of the non-interest income from net trust assets are discussed below:

*Change in fair value of net trust assets, excluding REO.* For the quarter ended September 30, 2011, the Company recognized a \$10.3 million gain from the change in fair value of net trust assets, excluding REO. The net gain recognized during the period was comprised of gains resulting from the decrease in fair value of securitized mortgage borrowings and increase in fair value of investment securities available-for-sale of \$106.8 million and \$17 thousand, respectively. Offsetting these gains were losses resulting from decreases in the fair value of securitized mortgage collateral and an increase in fair value of net derivative liabilities of \$92.5 million and \$4.0 million, respectively.

For the quarter ended September 30, 2010, the Company recognized a \$9.6 million gain from the change in fair value of net trust assets, excluding REO. The net gain recognized during the period was comprised of gains resulting from the reduction in the fair market value of securitized mortgage borrowings of \$66.2 million, offset by losses resulting from the decreases in the fair value of investment securities-for-sale and of securitized mortgage collateral of \$66 thousand and \$44.3 million, respectively, as well as an increase in the fair value of net derivative liabilities of \$12.3 million.

*Losses from REO.* Losses from REO were \$6.9 million for the three months ended September 30, 2011. This loss was comprised of \$6.9 million in additional impairment write-downs during the period and \$1 thousand in loss on sale of REO. During the three months ended September 30, 2011, additional impairment write-downs were attributable to higher expected loss severities on properties held during the period as compared to previously reserved.

Losses from REO were \$10.1 million for the three months ended September 30, 2010. This loss was comprised of \$10.2 million in additional impairment write-downs during the period partially offset by \$111 thousand in gain on sale of REO. During the three months ended September 30, 2010, additional impairment write-downs were attributable to higher expected loss severities on properties held during the period as compared to previously reserved. The gain is attributable to mortgage insurance recovery collected in the period as a result of our increased loss mitigation efforts of our portfolio.

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*Mortgage and real estate services fees.* Revenues generated from these businesses are primarily from the Company's long-term mortgage portfolio. For the three months ended September 30, 2011, mortgage and real estate services fees were \$17.9 million compared to \$15.5 million in fees in the comparable 2010 period. The mortgage and real estate services fees of \$17.9 million for the three months ended September 30, 2011, were primarily comprised of \$5.2 million in real estate services and recovery fees, \$4.9 million in title and escrow fees, \$4.7 million in mortgage lending, \$1.8 million in loss mitigation fees, and \$1.2 million in portfolio service fees. The \$2.3 million increase in mortgage and real estate services fees was comprised of increases in mortgage lending and title and escrow fees of approximately \$4.6 million and \$121 thousand, respectively. Offsetting these increases were decreases in monitoring, surveillance and recovery fees, loss mitigation fees and portfolio service fees of approximately \$961 thousand, \$796 thousand, and \$178 thousand, respectively, primarily the result of a reduction in loan modifications and foreclosures. Additionally, the sale of our interest in Experience 1, Inc., the parent of the title insurance company, during the third quarter of 2011 may result in future reductions in mortgage and real estate service fees related to title and escrow fees.

*Gain on sale of Experience 1, Inc.* During the three months ended September 30, 2011, the \$1.8 million increase is the result of the sale of the title insurance company. In September 2011, the Company sold 7,000 of its 8,000 shares of common stock of its majority-owned subsidiary Experience 1, Inc., for \$3.36 million, recording a gain of \$1.78 million and subsequently sold the remaining 1,000 shares in October 2011 for \$360 thousand recording a gain of \$160 thousand in the fourth quarter of 2011.

	For the Nine Months Ended September 30,			
	2011	2010	Increase (Decrease)	% Change
Change in fair value of net trust assets, excluding REO	\$ 17,596	\$ 12,701	\$ 4,895	39%
Losses from REO	(11,855)	(6,290)	(5,565)	(88)
Non-interest income - net trust assets	5,741	6,411	(670)	(10)
Mortgage and real estate services fees	44,558	42,168	2,390	6
Gain on sale of Experience 1, Inc.	1,780	—	1,780	N/A
Other income	1,299	876	423	48
<b>Total non-interest income</b>	<b>\$ 53,378</b>	<b>\$ 49,455</b>	<b>\$ 3,923</b>	<b>8%</b>

*Non-interest income—net trust assets.* Non-interest income related to our net trust assets (residual interests in securitizations) was \$5.7 million for the nine months ended September 30, 2011, compared to \$6.4 million in the comparable 2010 period. The individual components of the non-interest income from net trust assets are discussed below:

*Change in fair value of net trust assets, excluding REO.* For the nine months ended September 30, 2011, the Company recognized a \$17.6 million gain from the change in fair value of net trust assets, excluding REO. The net gain recognized during the period was comprised of gains resulting from the decrease in fair value of securitized mortgage borrowings of \$265.8 million. Offsetting these gains were losses resulting from decreases in the fair value of securitized mortgage collateral and investment securities available-for-sale and an increase in fair value of net derivative liabilities of \$239.7 million, \$128 thousand and \$8.3 million, respectively.

For the nine months ended September 30, 2010, the Company recognized a \$12.7 million gain from the change in fair value of net trust assets, excluding REO. The net gain recognized during the period was comprised of gains resulting from the increase in fair value of investment securities-for-sale and securitized mortgage collateral of \$653 thousand and \$606.5 million, respectively. Offsetting these gains were losses resulting from increases in the fair value of securitized mortgage borrowings and net derivative liabilities of \$552.9 million and \$41.6 million, respectively.

*Losses from REO.* Losses from REO were \$11.9 million for the nine months ended September 30, 2011. This loss was comprised of \$11.9 million in additional impairment write-downs during the period and \$12 thousand in loss on sale of REO. During the nine months ended September 30, 2011, additional impairment write-downs were attributable to higher expected loss severities on properties held during the period as compared to previously reserved.

Losses from REO were \$6.3 million for the nine months ended September 30, 2010. This loss was comprised of \$9.8 million in additional impairment write-downs during the period partially offset by \$3.5 million in gain on sale of REO. During the nine months ended September 30, 2010, additional impairment write-downs were attributable to higher expected loss severities on properties held during the period as compared to previously reserved. The gain is attributable to mortgage insurance recovery collected in the period as a result of our increased loss mitigation efforts of our portfolio.

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**Mortgage and real estate services fees.** Revenues generated from these businesses are primarily from the Company's long-term mortgage portfolio. For the nine months ended September 30, 2011, mortgage and real estate services fees were \$44.6 million compared to \$42.2 million in fees in the comparable 2010 period. The mortgage and real estate services fees of \$44.6 million for the nine months ended September 30, 2011, was primarily comprised of \$13.9 million in title and escrow fees, \$13.8 million in real estate services and recovery fees, \$7.7 million in mortgage lending, \$5.0 million in loss mitigation fees and \$4.1 million in portfolio service fees. The \$2.4 million increase in mortgage and real estate services fees was comprised of increases in mortgage lending, title and escrow fees of approximately \$7.3 million and \$2.7 million, respectively. Offsetting these increases were decreases in loss mitigation fees, real estate services and recovery fees and portfolio service fees of approximately \$4.5 million, \$3.0 million and \$151 thousand, respectively. Additionally, the sale of our interest in Experience 1, Inc., the parent of the title insurance company, during the third quarter of 2011 may result in future reductions in mortgage and real estate service fees related to title and escrow fees.

**Gain on sale of Experience 1, Inc.** During the nine months ended September 30, 2011, the \$1.8 million increase is the result of the sale of the title insurance company. In September 2011, the Company sold 7,000 of its 8,000 shares of common stock of its majority-owned subsidiary Experience 1, Inc., for \$3.36 million, recording a gain of \$1.78 million and subsequently sold the remaining 1,000 shares in October 2011 for \$360 thousand recording a gain of \$160 thousand in the fourth quarter of 2011.

*Non-Interest Expense*

Changes in Non-Interest Expense

	For the Three Months Ended September 30,			
	2011	2010	Increase (Decrease)	% Change
General and administrative	\$ 5,505	\$ 4,869	\$ 636	13%
Personnel expense	13,599	10,683	2,916	27
Total operating expense	\$ 19,104	\$ 15,552	\$ 3,552	23%

Total non-interest expense was \$19.1 million for the three months ended September 30, 2011, compared to \$15.6 million for the comparable period of 2010. The \$3.6 million increase in non-interest expense was primarily attributable to a \$2.9 million increase in personnel and related costs associated with the continued expansion of the Company's mortgage lending platform.

	For the Nine Months Ended September 30,			
	2011	2010	Increase (Decrease)	% Change
General and administrative	\$ 15,089	\$ 14,278	\$ 811	6%
Personnel expense	36,659	31,132	5,527	18
Total operating expense	\$ 51,748	\$ 45,410	\$ 6,338	14%

Total non-interest expense was \$51.7 million for the nine months ended September 30, 2011, compared to \$45.4 million for the comparable period of 2010. The \$6.3 million increase in non-interest expense was primarily attributable to a \$5.5 million increase in personnel and related costs associated with the continued expansion of the Company's mortgage lending platform.

**Income Taxes**

The Company recorded income tax expense of \$957 thousand and \$978 thousand for the three and nine months ended September 30, 2011, respectively. The Company recorded income tax expense of \$14 thousand and \$143 thousand for the three and nine months ended September 30, 2010, respectively. The income tax expense for 2011 is the result of deferred charge impairment write-downs based on changes in estimated fair value of securitized mortgage collateral as well as state income taxes primarily from states where the Company does not have net operating loss carryforwards. The income tax expense for 2010 is the result of state income taxes primarily from states where the Company does not have net operating loss carryforwards.

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As of December 31, 2010, the Company had federal and California net operating loss carryforwards of approximately \$493.8 million and \$463.4 million, respectively, of which \$275.6 million (federal) relate to discontinued operations. During the year ended December 31, 2010, net operating loss carryforwards were reduced as a result of the Company generating taxable income from cancellation of debt for approximately \$426.2 million of securitized mortgage borrowings. Federal and state net operating loss (NOL) carryforwards begin to expire in 2020 and 2017, respectively. California net operating loss carryforwards have been suspended by the state until 2012, thus the expiration begins in 2017. The Company recorded a full valuation allowance against the deferred tax assets as it believes that as of September 30, 2011 it is more likely than not that the deferred tax assets will not be recoverable.

During the fourth quarter of 2009, the Company received a federal income tax refund in the amount of \$8.9 million as a result of an election to carryback NOLs five years pursuant to 2009 federal legislation, *The Worker, Homeownership, and Business Assistance Act of 2009*. The Company files income tax returns in the U.S. federal and various state jurisdictions. The Company is subject to routine income tax audits in the various jurisdictions. A subsidiary of the Company is currently under examination by the Internal Revenue Service for tax year 2008. Management believes that there are no unresolved issues or claims likely to be material to our financial position. As of September 30, 2011, the Company has no material uncertain tax positions.

## Mortgage and Real Estate Services

## Condensed Statements of Operations Data

	For the Three Months Ended September 30,			
	2011	2010	Increase (Decrease)	% Change
Net interest income	\$ (68)	\$ 5	\$ (73)	(1,460)%
Mortgage and real estate services fees	17,857	15,547	2,310	15
Gain on sale of Experience 1, Inc.	1,780	—	1,780	N/A
Other income	(205)	—	(205)	N/A
Total non-interest income	19,432	15,547	3,885	25
Personnel expense	12,139	9,072	3,067	34
Non-interest expense and income taxes	4,503	2,130	2,373	111
Net earnings	\$ 2,722	\$ 4,350	\$ (1,628)	(37)%

For the three months ended September 30, 2011, mortgage and real estate services fees were \$17.9 million compared to \$15.5 million in fees in the comparable 2010 period. The mortgage and real estate services fees of \$17.9 million for the three months ended September 30, 2011, were primarily comprised of \$5.2 million in real estate services and recovery fees, \$4.9 million in title and escrow fees, \$4.7 million in mortgage lending, \$1.8 million in loss mitigation fees, and \$1.2 million in portfolio service fees. The \$2.3 million increase in mortgage and real estate services fees was comprised of increases in mortgage lending and title and escrow fees of approximately \$4.6 million and \$121 thousand, respectively. Offsetting these increases were decreases in monitoring, surveillance and recovery fees, loss mitigation fees and portfolio service fees of approximately \$961 thousand, \$796 thousand, and \$178 thousand, respectively, primarily the result of a reduction in loan modifications and foreclosures.

The \$4.6 million increase in mortgage lending during the three months ended September 30, 2011 was primarily the result of an increase in net gain on sale of loans slightly offset by an increase in provision for repurchases as compared to the same period in 2010. For the three months ended September 30, 2011, net gain on sale of loans was \$4.6 million as compared to \$194 thousand in the third quarter of 2010. Provision for repurchases increased to \$128 thousand for the three months ended September 30, 2011 as compared to \$16 thousand for the same period in 2010. For the three months ended September 30, 2011, the increase in net gain on sale of loans and provision for repurchase was the result of \$250.3 million in loan sales during the period as compared to a minimal amount of loans brokered for the comparable 2010 period.

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During the three months ended September 30, 2011, the \$1.6 million increase in other income is primarily the result of the sale of the title insurance company. In September 2011, the Company sold 7,000 of its 8,000 shares of common stock of its majority-owned subsidiary, Experience 1, Inc., for \$3.36 million, recording a gain of approximately \$1.78 million.

For the three months ended September 30, 2011, personnel and non-interest expense and income taxes increased as a result of the continued expansion of the Company's mortgage lending platform.

	For the Nine Months Ended September 30,			
	2011	2010	Increase (Decrease)	% Change
Net interest income	\$ (18)	\$ 16	\$ (34)	(213)%
Mortgage and real estate services fees	44,558	42,168	2,390	6
Gain on sale of Experience 1, Inc.	1,780	—	1,780	N/A
Other income	(462)	—	(462)	N/A
Total non-interest income	45,876	42,168	3,708	9
Personnel expense	32,065	25,512	6,553	26
Non-interest expense and income taxes	9,343	6,459	2,884	45
Net earnings	\$ 4,450	\$ 10,213	\$ (5,763)	(56)%

For the nine months ended September 30, 2011, mortgage and real estate services fees were \$44.6 million compared to \$42.2 million in fees in the comparable 2010 period. The mortgage and real estate services fees of \$44.6 million for the nine months ended September 30, 2011, was primarily comprised of \$13.9 million in title and escrow fees, \$13.8 million in real estate services and recovery fees, \$7.7 million in mortgage lending, \$5.0 million in loss mitigation fees and \$4.1 million in portfolio service fees. The \$2.4 million increase in mortgage and real estate services fees was comprised of increases in mortgage lending, title and escrow fees of approximately \$7.3 million and \$2.7 million, respectively. Offsetting these increases were decreases in loss mitigation fees, real estate services and recovery fees and portfolio service fees of approximately \$4.5 million, \$3.0 million and \$151 thousand, respectively, primarily the result of a reduction in loan modifications and foreclosures.

The \$7.3 million increase in other non-interest income during the nine months ended September 30, 2011 was primarily the result of an increase in net gain on sale of loans slightly offset by an increase in provision for repurchases as compared to the same period in 2010. For the nine months ended September 30, 2011, net gain on sale of loans was \$7.6 million as compared to \$436 thousand for the same period in 2010. Provision for repurchases increased to \$350 thousand for the nine months ended September 30, 2011 as compared to \$25 thousand for the same period in 2010. For the nine months ended September 30, 2011, the increase in net gain on sale of loans and provision for repurchase was the result of \$485.5 million in loan sales during the period as compared to a minimal amount of loans brokered for the comparable 2010 period.



During the nine months ended September 30, 2011, the \$1.3 million increase in other income is primarily the result of the sale of the title insurance company. In September 2011, the Company sold 7,000 of its 8,000 shares of common stock of its majority-owned subsidiary, Experience 1, Inc., for \$3.36 million, recording a gain of approximately \$1.78 million.

For the nine months ended September 30, 2011, personnel and non-interest expense and income taxes increased as a result of startup costs of approximately \$2.0 million the Company invested in its mortgage lending operation infrastructure and the continued expansion of the Company's mortgage lending platform.

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**Long-term Portfolio**

Condensed Statements of Operations Data

	For the Three Months Ended September 30,			
	2011	2010	Increase (Decrease)	% Change
Net interest income	\$ 228	\$ 1,666	\$ (1,438)	(86)%
Change in fair value of net trust assets, excluding REO	10,297	9,573	724	8
Losses from REO	(6,867)	(10,147)	3,280	32
Non-interest income (loss)- net trust assets	3,430	(574)	4,004	698
Other income	1,475	1,189	286	24
Total non-interest income	4,905	615	4,290	698
Personnel expense	1,459	1,611	(152)	(9)
Non-interest expense and income taxes	1,960	2,753	(793)	(29)
Net earnings (loss)	\$ 1,714	\$ (2,083)	\$ 3,797	182%

Net interest income spread decreased \$1.4 million for the three months ended September 30, 2011 to \$228 thousand from \$1.7 million for the comparable 2010 period. The decrease in net interest spread was primarily attributable increases in pricing and the corresponding reduction in investor yield requirements between periods on securitized mortgage collateral and securitized mortgage borrowings and an increase in interest expense on notes payable for the quarter ended September 30, 2011.

For the quarter ended September 30, 2011, the Company recognized a \$10.3 million gain from the change in fair value of net trust assets, excluding REO. The net gain recognized during the period was comprised of gains resulting from the decrease in fair value of securitized mortgage borrowings and increase in fair value of investment securities available-for-sale of \$106.8 million and \$17 thousand, respectively. Offsetting these gains were losses resulting from decreases in the fair value of securitized mortgage collateral and an increase in fair value of net derivative liabilities of \$92.5 million and \$4.0 million, respectively. Losses from REO were \$6.9 million for the three months ended September 30, 2011. This loss was comprised of \$6.9 million in additional impairment write-downs during the period and \$1 thousand in loss on sale of REO. During the three months ended September 30, 2011, additional impairment write-downs were attributable to higher expected loss severities on properties held during the period as compared to previously reserved.

Non-interest expense and income taxes decreased \$793 thousand during the three months ended September 30, 2011 primarily as a result of a reduction in personnel related expenses with the long-term portfolio segment of the Company. Additionally, for the three months ended September 30, 2011, the Company recorded \$949 thousand in income tax expense resulting from deferred charge impairment write-downs based on changes in estimated fair value of securitized mortgage collateral.

	For the Nine Months Ended September 30,			
	2011	2010	Increase (Decrease)	% Change
Net interest income	\$ 3,023	\$ 3,980	\$ (957)	(24)%
Change in fair value of net trust assets, excluding REO	17,596	12,701	4,895	39
Losses from REO	(11,855)	(6,290)	(5,565)	(88)
Non-interest income- net trust assets	5,741	6,411	(670)	(10)
Other income	1,761	876	885	101
Total non-interest income	7,502	7,287	215	3
Personnel expense	4,594	5,620	(1,026)	(18)
Non-interest expense and income taxes	6,724	7,962	(1,238)	(16)
Net earnings (loss)	\$ (793)	\$ (2,315)	\$ 1,522	66%

Net interest income spread decreased \$1.0 million for the nine months ended September 30, 2011 to \$3.0 million from \$4.0 million for the comparable 2010 period. The decrease in net interest spread was primarily attributable to overall increases in pricing and the corresponding reduction in investor yield requirements between periods on securitized mortgage collateral and securitized mortgage borrowings and an increase in interest expense on notes payable, partially offset by a decrease in interest expense on long-term debt for the nine months ended September 30, 2011.



For the nine months ended September 30, 2011, the Company recognized a \$17.6 million gain from the change in fair value of net trust assets, excluding REO. The net gain recognized during the period was comprised of gains resulting from the decrease in fair value of securitized mortgage borrowings of \$265.8 million. Offsetting these gains were losses resulting from decreases in the fair value of securitized mortgage collateral and investment securities available-for-sale and an increase in fair value of net derivative liabilities of \$239.7 million, \$128 thousand and \$8.3 million, respectively. Losses from REO were \$11.9 million for the nine months ended September 30, 2011. This loss was comprised of \$11.9 million in additional impairment write-downs during the period and \$12 thousand in loss on sale of REO. During the nine months ended September 30, 2011, additional impairment write-downs were attributable to higher expected loss severities on properties held during the period as compared to previously reserved.

Personnel expense and non-interest expense and income taxes decreased \$1.0 million and \$1.2 million, respectively, during the nine months ended September 30, 2011 primarily as a result of reduced personnel and personnel related expenses associated with the long-term portfolio segment of the Company. Additionally, for the nine months ended September 30, 2011, the Company recorded \$949 thousand in income tax expense resulting from deferred charge impairment write-downs based on changes in estimated fair value of securitized mortgage collateral.

### Discontinued Operations

#### Condensed Statements of Operations Data

	For the Three Months Ended September 30,			
	2011	2010	Increase (Decrease)	% Change
Net interest income	\$ —	\$ 4	\$ (4)	(100)%
Loss on loans held-for-sale	(77)	(66)	(11)	(17)
Provision for repurchases	(1,140)	(1,787)	647	36
Other income	228	180	48	27
Total non-interest income	(989)	(1,673)	684	41
Non-interest expense and income taxes	501	(384)	885	230
Net loss	\$ (1,490)	\$ (1,285)	\$ (205)	(16)%

Provision for repurchases decreased \$647 thousand to a provision of \$1.1 million for the three months ended September 30, 2011, compared to a provision of \$1.8 million for the same period in 2010. The \$647 thousand decrease is the result of reductions in repurchase requests and settlements of repurchase obligations of \$2.2 million during the third quarter of 2011.

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Non-interest income and income taxes decreased \$885 thousand between periods primarily due to a recovery in the third quarter of 2010 related to legal and professional expenses.

	For the Nine Months Ended September 30,			
	2011	2010	Increase (Decrease)	% Change
Net interest income	\$ —	\$ 48	\$ (48)	(100)%
Gain on loans held-for-sale	21	18	3	17
Provision for repurchases	(2,133)	(2,151)	18	1
Other income	1,338	2,593	(1,255)	(48)
Total non-interest income	(774)	460	(1,234)	(268)
Non-interest expense and income taxes	1,058	(1,397)	2,455	176
Net (loss) earnings	\$ (1,832)	\$ 1,905	\$ (3,737)	(196)%

Provision for repurchases only slightly decreased as compared to the nine months ended September 30, 2010 as a result of \$5.0 million in settlements partially offset by increases in estimated repurchase requests during the nine months of 2011.

The \$1.3 million decrease in other non-interest income is primarily the result of gains of \$1.9 million on sales of REO properties not in trusts and recovery of REO write-downs during the nine months ended September 30, 2010 as compared to \$304 thousand in 2011. Additionally during the nine months ended September 30, 2011, the Company received a \$775 thousand settlement on loans previously purchased by our discontinued mortgage operations.

Non-interest expense and income taxes decreased \$2.5 million between periods primarily due to a gain in the second quarter of 2010 related to lease impairment adjustments as a result of changes in our expected minimum future lease payments.

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

As a smaller reporting company, we are not required to provide the information required by this Item.

### ITEM 4: CONTROLS AND PROCEDURES

#### Evaluation of Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures (as defined in the Securities Exchange Act of 1934 Rules 13a-15(e) or 15d-15(e)) designed to ensure that information required to be disclosed in reports filed or submitted under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without

limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in its reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

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

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

There has been no change in the Company's internal control over financial reporting during the Company's quarter ended September 30, 2011, that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

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## ***PART II. OTHER INFORMATION***

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

On May 26, 2011, a matter was filed in the United States district Court, Central district of California as Case No. CV11-4514 DSF entitled Citigroup Global Markets, Inc. v. Impac Secured Assets Corp., Impac Funding Corporation and Impac Mortgage Holdings, Inc. The action alleges a violation of Section 18 and Section 20 of the Securities and Act of 1933 and negligent misrepresentation, all involved in the issuance and sale of bonds from a securitization trust. The plaintiff alleges they relied on certain documents filed with the SEC that were subsequently the subject of an amended filing. The matter seeks unspecified damages, interest, legal fees and litigation expenses.

In October of this year, the Company received notices of claims for indemnification relating to mortgage backed securities bonds issued, originated or sold by Impac Secured Assets Corp., Impac Funding Corporation, IMH Assets Corp. and Impac Mortgage Holdings, Inc. from Countrywide Securities Corporation (Countrywide) and Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch). The claims seek indemnification from claims asserted against Countrywide and Merrill Lynch in specified legal actions entitled American International Group Inc. v. Bank of America Corp., et al Case No. 1:11-cv-06212 in the United States District Court for the Southern District of New York and Federal Home Loan Bank of Boston v. Ally Financial, Inc., et al Case No. 11-cv-10952 in the Superior Court Department of the Commonwealth of Massachusetts. The notices each seek indemnification for all losses, liabilities, damages and legal fees and costs incurred in those actions.

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

The Company believes that it has meritorious defenses to the above claims and intends to defend these claims vigorously. Nevertheless, litigation is uncertain and the Company may not prevail in the lawsuits and can express no opinion as to their ultimate resolution. An adverse judgment in any of these matters could have a material adverse effect on the Company's financial position and results of operations.

Please refer to IMH's report on Form 10-K for the year ended December 31, 2010 and Forms 10-Q for the quarters ended June 30, 2011 and March, 31, 2011 for a description of litigation and claims.

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

***Our hedging strategies recently implemented by our mortgage lending operations may not be successful in mitigating our risks associated with interest rates.***

We use various derivative financial instruments to provide a level of protection against interest rate risks in our mortgage lending operations, but no hedging strategy can protect us completely. When rates change, we expect to record a gain or loss on derivatives which would be offset by an inverse change in the value of mortgage loans held for sale. We cannot assure you, however, that our use of derivatives will offset the risks related to changes in interest rates. There have been periods, and it is likely that there will be periods in the future, during which we will not have offsetting gains or losses in mortgage loan values after accounting for our derivative financial instruments. The derivative financial instruments we select may not have the effect of reducing our interest rate risk. In addition, the nature and timing of hedging transactions may influence the effectiveness of these strategies. Poorly designed strategies, improperly executed and recorded transactions or inaccurate assumptions could actually increase our risk and losses. In addition, hedging strategies involve transaction and other costs. We cannot assure you that our hedging strategy and the derivatives that we use will adequately offset the risk of interest rate volatility or that our hedging transactions will not result in losses.

***If we fail to generate adequate profits from our mortgage and real estate services, our financial condition and results of operations could be adversely affected and we may be unable to generate sufficient liquidity to operate.***

During 2011, the mortgage and real estate services have grown from an expansion of the mortgage lending operations although the portfolio loss mitigation and real estate services revenues have declined. The mortgage lending operations that primarily offers government sponsored and conforming agency loans has increased its monthly lending origination volumes to be in excess of \$100 million. In order for the mortgage operations to generate adequate profitability, we will need to (i) increase origination volumes, (ii) improve lending revenues including loan pricing margins and loan fees and (iii) reduce lending operating costs, or some combination of them. Further, although we have sought to expand the portfolio loss mitigation and real estate services by providing services to more third parties in the market place, the revenues from these business activities have declined. The mortgage and real estate services market remains volatile and highly competitive. If we are unable to continue to increase revenues and generate adequate profitability, our financial condition and results of operations may be adversely affected, and we may be unable to generate sufficient liquidity to operate as planned.

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***There is recent litigation in the mortgage industry related to securitizations against issuers, sellers, originators, underwriters and other.***

As defaults, delinquencies, foreclosures, and losses in the real estate market continue, there have been recent lawsuits by various investors, insurers, underwriters and others against various participants in securitizations, such as sponsors, depositors, underwriters, and loan sellers. Some lawsuits have alleged that the mortgage loans had origination defects, that there were misrepresentations made about the mortgage loans and the parties failed to properly disclose the quality of the mortgage loans or repurchase defective loans or that there were other misrepresentations, lack of representations, or errors in securitization documents. There have been other claims contending errors or misrepresentations in the securitization documents or process itself. Historically, we both securitized and sold mortgage loans to third parties that may have been deposited or included in pools for securitizations. We have discovered discrepancies in our securitization documents and are working with the parties involved, including bondholders, on the issue. Recently, the Company received notices of claims for indemnification relating to mortgage backed securities bonds issued, originated or sold by the Company from Countrywide and Merrill Lynch. The claims seek indemnification from claims asserted against Countrywide and Merrill Lynch in specified legal actions entitled American International Group Inc. v. Bank of America Corp., et al Case No. 1:11-cv-06212 in the United States District Court for the Southern District of New York and Federal Home Loan Bank of Boston v. Ally Financial, Inc., et al Case No. 11-cv-10952 in the Superior Court Department of the Commonwealth of Massachusetts. The notices each seek indemnification for all losses, liabilities, damages and legal fees and costs incurred in those actions. In connection with these potential claims, we may become subject to litigation related to the securitizations. As a result, we may incur significant legal and other expenses in defending against claims and litigation and we may be required to pay settlement costs, damages, penalties or other charges which could adversely affect our financial results.

Our Annual Report on Form 10-K for the year ended December 31, 2010 and our quarterly reports on Form 10-Q for the periods ended June 30, 2011 and March 31, 2011, include a detailed discussion of our risk factors. The information presented below updates and should be read in conjunction with the risk factors and information disclosed in that Form 10-K.

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

None

**ITEM 3: DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4: RESERVED**

None.

**ITEM 5: OTHER INFORMATION**

On August 31, 2011, the Company, through IRES and its subsidiaries, entered into a Master Repurchase Agreement with MetLife Bank providing a \$25 million warehouse facility. The interest rate on the warehouse facility is LIBOR plus 3.25% and it expires August 29, 2012. Under the terms of the warehouse facility, the subsidiary is required to maintain various financial and other covenants.

On September 12, 2011, the Company elected to terminate the \$25.0 million warehouse facility with East West bank.

On September 22, 2011, the warehouse facility under the Master Repurchase Agreement with Alliance Bank was increased from \$20.0 million to \$30.0 million.

**ITEM 6: EXHIBITS**

- (a) Exhibits:
- 10.1 Master Repurchase Agreement dated as of August 31, 2011 between MetLife Bank, Excel Mortgage Servicing and AmeriHome Mortgage Corporation.
  - 10.2 Amendment dated September 22, 2011 to Master Repurchase Agreement with Alliance Bank.
  - 31.1 Certification of Chief Executive Officer pursuant to Item 601(b)(31) of Regulation S-K, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
  - 31.2 Certification of Chief Financial Officer pursuant to Item 601(b)(31) of Regulation S-K, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
  - 32.1\* Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
  - 101\* The following materials from Impac Mortgage Holdings, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, formatted in XBRL (Extensible Business Reporting Language): (1) the Condensed Consolidated Balance Sheets, (2) the Condensed Consolidated Statements of Operations, (3) the Condensed Consolidated Statements of Cash Flows, and (4) Notes to Consolidated Financial Statements, tagged as blocks of text.

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

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

**IMPAC MORTGAGE HOLDINGS, INC.**

/s/ TODD R. TAYLOR

\_\_\_\_\_  
Todd R. Taylor

*Chief Financial Officer*

*(authorized officer of registrant and principal financial officer)*

November 14, 2011

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**MASTER REPURCHASE AGREEMENT**

Among:

**METLIFE BANK, N.A., as Buyer**

and

**EXCEL MORTGAGE SERVICING, INC.**

and

**AMERIHOM MORTGAGE CORPORATION, as Sellers**

Dated as of August 31, 2011

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**SCHEDULES AND EXHIBITS**

SCHEDULE 1	Schedule of Representations and Warranties with Respect to the Mortgage Loans
EXHIBIT A	Form of Opinion Letter
EXHIBIT B	Form of Servicer Notice
EXHIBIT C	Form of Bailee Letter
EXHIBIT D	Form of Section 7 Certificate
EXHIBIT E	Form of Power of Attorney

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**MASTER REPURCHASE AGREEMENT**

This is a MASTER REPURCHASE AGREEMENT (this “Agreement”), dated as of August 31, 2011, between Excel Mortgage Servicing, Inc., a California corporation (“Excel”), and AmeriHome Mortgage Corporation, a Michigan corporation (“AmeriHome,” and, with Excel, each, a “Seller”, and collectively, the “Sellers”), and METLIFE BANK, N.A., a national banking association (the “Buyer”).

**SECTION 1.      *APPLICABILITY; INCORPORATION OF METLIFE WAREHOUSE CUSTOMER GUIDE AND PRICING LETTER; JOINT AND SEVERAL LIABILITY***

From time to time the parties hereto may enter into transactions in which a Seller agrees to transfer to Buyer Eligible Mortgage Loans on a servicing released basis against the transfer of funds by Buyer, with a simultaneous agreement by Buyer to transfer to such Seller such Eligible Mortgage Loans on a servicing released basis at a date certain after the related Purchase Date, against the transfer of funds by such Seller. Each such transaction shall be referred to herein as a “Transaction” and shall be governed by this Agreement (including any supplemental terms or conditions contained in any annexes identified herein, as applicable hereunder), unless otherwise agreed in writing.

The MetLife Warehouse Customer Guide is one of the Facility Documents as defined below. The MetLife Warehouse Customer Guide is incorporated by reference into this Agreement and each Seller agrees to adhere to all terms, conditions and requirements of the MetLife Warehouse Customer Guide in effect on the date hereof. Buyer may amend the MetLife Warehouse Customer Guide from time to time as more particularly described in Section 36(e). In the event of a conflict or inconsistency between this Agreement and the MetLife Warehouse Customer Guide, the terms of this Agreement shall govern. Each Seller’s execution and delivery of this Agreement constitutes such Seller’s acknowledgment of receipt of the MetLife Warehouse Customer Guide and such Seller’s agreement to the terms and conditions set forth therein and herein with respect thereto.



The Pricing Letter is one of the Facility Documents as defined below. The Pricing Letter is incorporated by reference into this Agreement and each Seller agrees to adhere to all terms, conditions and requirements of the Pricing Letter as incorporated herein. In the event of a conflict or inconsistency between this Agreement and the Pricing Letter, the terms of the Pricing Letter shall govern.

Without derogation or limitation of any other provisions of this Agreement or of any other Facility Document (including, without limitation, as respects the Guarantor, the Facility Guaranty), and whether or not so stated in the particular provision creating or instrument evidencing any given Obligation, the liability of the Sellers hereunder is joint and several, not merely as a sureties but also as a co-debtors. The Sellers hereby: (a) acknowledge and agree that Buyer shall have no obligation to proceed against one Seller (or any other Person) before proceeding against any other Seller, (b) waive all suretyship defenses and defenses in the nature of suretyship defenses, and any defense to their obligations under this Agreement based upon or arising out of the disability or other defense or cessation of liability of one Seller versus another or of any other Person, and (c) waive any right of subrogation or ability to proceed against any Person until the Obligations are paid in full and the Facility Documents are terminated in accordance with the terms thereof.

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## SECTION 2. DEFINITIONS

Capitalized terms used but not defined herein shall have the respective meanings set forth in the Pricing Letter. As used herein, the following terms shall have the following meanings (all terms defined in this Section 2 or in other provisions of this Agreement in the singular to have the same meanings when used in the plural and *vice versa*):

“1934 Act” shall have the meaning set forth in Section 33 hereof.

“Accepted Servicing Practices” shall mean, with respect to any Mortgage Loan, those mortgage servicing practices of prudent mortgage lending institutions which service mortgage loans of the same type as such Mortgage Loan in the jurisdiction where the related Mortgaged Property is located.

“Adjustable Rate Loan” shall mean a Mortgage Loan that provides for the adjustment of the Mortgage Interest Rate payable in connection with such Mortgage Loan.

“Adjusted Tangible Net Worth” shall mean, with respect to any Person at any date, the Net Worth of such Person plus (a) (i) all unpaid principal of all Subordinated Debt of such Person at such date; and (ii) the MSR Value at such date; minus: (b) (i) the aggregate book value of all intangible assets of such Person (as determined in accordance with GAAP), including, without limitation, goodwill; trademarks, trade names, service marks, copyrights, patents, licenses and franchises; capitalized Servicing Rights; organizational expenses; deferred expenses; prepaid expenses; and prepaid assets; (ii) receivables from equity owners, Affiliates or employees; (iii) advances of loans to Affiliates unless otherwise eliminated by consolidation; (iv) investments in Affiliates unless otherwise eliminated by consolidation; (v) assets pledged to secure any liabilities not included in the Indebtedness of such Person; and (vi) any other assets which would be deemed by HUD to be unacceptable in calculating adjusted tangible net worth; in all cases, calculated on a consolidated basis and determined in accordance with GAAP consistent with those applied in the preparation of the Financial Statements referred to herein.

“Affiliate” shall mean with respect to any Person, any “affiliate” of such Person, as such term is defined in the Bankruptcy Code.

“Agency” shall mean Freddie Mac, Fannie Mae or Ginnie Mae, as applicable.

“Aging Limit” shall have the meaning specified in the Pricing Letter.

“Agreement” shall mean this Master Repurchase Agreement between Buyer and each Seller, dated as of the date hereof, as the same may be amended, supplemented or otherwise modified in accordance with the terms hereof.

“ALTA” shall mean the American Land Title Association, or any successors thereto.

“AmeriHome” is defined in the introductory paragraph of this Agreement.

“Annual Financial Statement Date” shall have the meaning set forth in the Pricing Letter.

“Anti-Money Laundering Laws” shall have the meaning set forth in Section 11(z) hereof.

“Appraisal” shall mean an appraisal by a licensed appraiser selected in accordance with Agency guidelines and not identified to the applicable Seller as an unacceptable appraiser by an Agency, and who is experienced in estimating the value of property of that same type in the community where it is

located, and who — unless approved by Buyer on a case-by-case basis — is not, and is not a Relative of or a Relative of a spouse of, a shareholder (other than a less than 1% shareholder of any publicly-held Affiliate), director, officer or employee of a Seller or any of its Affiliates, a signed copy of the written report of which Appraisal is in the possession of the applicable Seller or the Subservicer.

“Appraised Value” shall mean the value set forth in an Appraisal made in connection with the origination of the related Mortgage Loan as the value of the Mortgaged Property.

“Appropriate Federal Banking Agency” shall have the meaning ascribed to it by Section 1813(q) of Title 12 of the United States Code, as amended from time to time.

“Approved CPA” shall mean Squar, Milner, Peterson, Miranda & Williamson, LLP or another certified public accountant approved by Buyer in writing in its sole reasonable discretion.

“Approved Flood Policy Insurer” shall mean any of the insurers approved by Buyer in its sole reasonable discretion.

“Approved Hedging Manager” shall mean Mortgage Investors Advisory Corporation, its successors and assigns, or a replacement hedging manager acceptable to Buyer in its sole reasonable discretion.

“Approved Mortgage Product” shall have the meaning specified in the Pricing Letter.

“Approved Servicing Appraiser” shall mean an independent appraiser that is nationally known as expert in the evaluation of Servicing Rights, and is pre-approved in writing by Buyer from time to time, in its sole and absolute discretion.

“Approved Tax Service Contract Provider” shall mean any provider as approved from time to time by Buyer, in its sole reasonable discretion.

“Asset Value” shall mean with respect to each Purchased Mortgage Loan that is (a) an Eligible Mortgage Loan, the applicable Purchase Price Percentage for such Purchased Mortgage Loan multiplied by the least of (i) the Market Value of such Mortgage Loan, (ii) the outstanding principal balance of such Mortgage Loan, and (iii) the purchase price for such Mortgage Loan set forth in the related Takeout Commitment, and (b) not an Eligible Mortgage Loan, zero.

Notwithstanding and without limiting the generality of the foregoing, Sellers acknowledge that the Asset Value of a Purchased Mortgage Loan may be reduced to zero by Buyer, in its sole discretion if:

such Purchased Mortgage Loan ceases to be an Eligible Mortgage Loan;

the Purchased Mortgage Loan has been released from the possession of Buyer (other than to a Takeout Investor pursuant to a Bailee Letter) for a period in excess of 10 calendar days;

the Purchased Mortgage Loan has been released from the possession of Buyer to a Takeout Investor pursuant to a Bailee Letter for a period in excess of 45 calendar days;

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the Purchased Mortgage Loan is a Wet Mortgage Loan for which the related Mortgage File has not been received by Buyer by the Wet Delivery Deadline for such Purchased Mortgage Loan;

such Purchased Mortgage Loan is rejected by the related Takeout Investor and Seller does not provide another Takeout Commitment within 2 Business Days following notice of such rejection;

such Purchased Mortgage Loan is or becomes a Defective Mortgage Loan or a Delinquent Mortgage Loan;

such Purchased Mortgage Loan has been subject to a Transaction hereunder for a period of greater than the applicable Transaction Term Limitation;

Buyer has determined in its sole reasonable discretion that the Purchased Mortgage Loan is not eligible for whole loan sale or securitization in a transaction consistent with the prevailing sale and securitization industry with respect to substantially similar Mortgage Loans; or

such Purchased Mortgage Loan contains a breach of a representation or warranty made by Sellers in this Agreement.

The aggregate Asset Value of Mortgage Loans included in any Concentration Category shall not exceed the Concentration Limit applicable to such Concentration Category.

“Assignment and Acceptance” shall have the meaning set forth in Section 18 hereof.

“Assignment of Proprietary Lease” shall mean the specific agreement creating a first Lien on and pledge of the Co-op Shares and appurtenant Proprietary Lease securing a Co-op Loan.

“Bailee Letter” shall mean the bailee letter, in the form of Exhibit C, for use by Buyer in connection with the release of Mortgage Loans to a Takeout Investor pursuant to Section 10 hereof.

“Bank” shall mean an institution acceptable to Buyer from time to time, in its capacity as bank with respect to the Custodial Account.

“Bankruptcy Code” shall mean the United States Bankruptcy Code of 1978, as amended from time to time.

“Business Day” shall mean a day other than (i) a Saturday or Sunday, (ii) any day on which banking institutions are authorized or required by law, executive order or governmental decree to be closed in the State of New York or (iii) any day on which the Federal Reserve is closed.

“Buy Back Threshold” shall have the meaning specified in the Pricing Letter.

“Buyer” shall mean MetLife Bank, N.A., its successors in interest and assigns and, with respect to Section 7, its participants.

“Capital Lease Obligations” shall mean, for any Person, all obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) Property to the extent such obligations are required to be classified and accounted for as a capital lease on a

balance sheet of such Person under GAAP, and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

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“Cash Equivalents” shall mean (a) securities with maturities of 90 days or less from the date of acquisition issued or fully guaranteed or insured by the United States Government or any agency thereof, (b) certificates of deposit and eurodollar time deposits with maturities of 90 days or less from the date of acquisition and overnight bank deposits of Buyer or its Affiliates or of any commercial bank having capital and surplus in excess of \$500,000,000, (c) repurchase obligations of Buyer or its Affiliates or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than seven days with respect to securities issued or fully guaranteed or insured by the United States Government, (d) commercial paper of a domestic issuer rated at least A-1 or the equivalent thereof by S&P or P-1 or the equivalent thereof by Moody’s and in either case maturing within 90 days after the day of acquisition, (e) securities with maturities of 90 days or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody’s, (f) securities with maturities of 90 days or less from the date of acquisition backed by standby letters of credit issued by Buyer or any commercial bank satisfying the requirements of clause (b) of this definition, or (g) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition.

“Change in Control” shall have the meaning specified in the Pricing Letter.

“Closing Protection Letter” shall mean a letter of indemnification from a title insurer addressed to the applicable Seller and/or Buyer or for which Buyer is a third party beneficiary, with coverage that is customarily acceptable to Persons engaged in the origination of mortgage loans, identifying the Settlement Agent covered thereby and indemnifying the applicable Seller and/or Buyer (directly or as a third party beneficiary) against losses incurred due to malfeasance or fraud by the Settlement Agent or the failure of the Settlement Agent to follow the specific escrow instructions specified by the applicable Seller to the Settlement Agent or otherwise by Buyer with respect to the closing of the Mortgage Loan. The Closing Protection Letter shall be either with respect to the individual Mortgage Loan being purchased pursuant hereto or a blanket Closing Protection Letter which covers closings conducted by the Settlement Agent in the jurisdiction in which the closing of such Mortgage Loan takes place.

“CLTA” shall mean the California Land Title Association, or any successors thereto.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“Concentration Category” shall have the meaning specified in the Pricing Letter.

“Concentration Limit” shall mean, for each Concentration Category, the applicable limitation set forth in the Pricing Letter.

“Confidential Terms” shall have the meaning set forth in Section 31 hereof.

“Conventional Mortgage Loan” shall mean a Conforming Mortgage Loan other than a Government Mortgage Loan.

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“Co-op Corporation” shall mean, with respect to any Co-op Loan, the cooperative apartment corporation that holds legal title to the related Co-op Project and grants occupancy rights to units therein to stockholders through Proprietary Leases or similar arrangements.

“Co-op Loan” shall mean a Mortgage Loan secured by the pledge of stock allocated to a dwelling unit in a residential cooperative housing corporation and the collateral assignment of the related Proprietary Lease.

“Co-op Project” shall mean, with respect to any Co-op Loan, all real property and improvements thereto and rights therein and thereto owned by a Co-op Corporation including without limitation the land, separate dwelling units and all common elements.

“Co-op Shares” shall mean, with respect to any Co-op Loan, the shares of stock issued by a Co-op Corporation and allocated to a Co-op Unit and represented by a stock certificate or certificates.

“Co-op Unit” shall mean, with respect to any Co-op Loan, a specific unit in a Co-op Project.

“Costs” shall have the meaning set forth in Section 15(a) hereof.

“Credit File” shall mean with respect to each Mortgage Loan, the documents and instruments relating to the origination and administration of such Mortgage Loan.

“Custodial Account” shall have the meaning set forth in Section 5(a) hereof.

“Daily Activity Report” shall mean for each Business Day, the daily activity pursuant to this Agreement reflected on the MetLife Warehouse Electronic System, including without limitation, any purchases of Mortgage Loans, any repurchases of Mortgage Loans, any payments received by Buyer or in the Inbound Account with respect to the Purchased Mortgage Loans, and the activity in each of the Inbound and Haircut Accounts.

“Debt for Borrowed Money Arrangements” shall have the meaning set forth in Section 11(o) hereof.

“Debt Service” shall mean, for any period, the sum of a Person’s (a) Interest Expense for such period, plus (b) the aggregate amount of regularly scheduled or mandatory principal payments of Indebtedness for such period (but excluding (i) principal payments required under Warehouse

Facilities upon the ordinary course sale of a Mortgage Loan financed thereunder to an investor, and (ii) balloon principal payments due on maturity required to be made during such period).

“Default” shall mean an Event of Default or an event that with notice or lapse of time or both would become an Event of Default.

“Defaulting Party” shall have the meaning set forth in Section 30 hereof.

“Defective Mortgage Loan” shall mean a Mortgage Loan (a) which is in foreclosure, has been foreclosed upon or has been converted to real estate owned property, (b) for which the Mortgagor is in bankruptcy, (c) that is not either (i) subject to a valid and binding Takeout Commitment or (ii) unless a Takeout Commitment is required for the applicable Approved Mortgage Product type, covered within the applicable Seller’s hedging program, as approved by Buyer, (d) that is subject to a Takeout Commitment with respect to which the applicable Seller or Takeout Investor is in default, (e) that is rejected or

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excluded for any reason from the related Takeout Commitment by the Takeout Investor and Seller does not provide another Takeout Commitment within 2 Business Days following notice of such exclusion, (f) that is not purchased by the Takeout Investor in compliance with the Takeout Commitment at or prior to the expiration or termination of the Takeout Commitment for any reason, or (g) that is not repurchased by the applicable Seller in compliance with the provisions of Section 3(d).

“Delinquent Mortgage Loan” shall mean any Mortgage Loan as to which any Monthly Payment, or part thereof, remains unpaid for 30 days or more following the original Due Date for such Monthly Payment.

“Distribution Percentage” shall have the meaning specified in the Pricing Letter.

“Dollars” and “\$” shall mean lawful money of the United States of America.

“Due Date” shall mean the day of the month on which the Monthly Payment is due on a Mortgage Loan, exclusive of any days of grace.

“Due Diligence Costs” shall have the meaning set forth in Section 17 hereof.

“Due Diligence Review” shall mean the performance by Buyer of any or all of the reviews permitted under Section 17 hereof with respect to any Seller or any or all of the Mortgage Loans, as desired by Buyer from time to time.

“E-Sign” shall mean the federal Electronic Signatures in Global and National Commerce Act, as amended from time to time.

“EBITDA” shall mean for any Person for any period, Net Income of such Person and its Subsidiaries for such period plus, without duplication and to the extent reflected as a charge in the statement of such Net Income for such period, the sum of (a) income tax expense, (b) Interest Expense of such Person and its Subsidiaries, amortization or writeoff of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness, (c) depreciation and amortization expense, (d) amortization of intangibles (including, but not limited to, goodwill) and organization costs, (e) any extraordinary, unusual or non-recurring non-cash expenses or losses (including, whether or not otherwise includable as a separate item in the statement of such Net Income for such period, losses on sales of assets outside of the ordinary course of business) and (f) any other non-cash charges, and minus, to the extent included in the statement of such Net Income for such period, the sum of (a) interest income (except to the extent deducted in determining such Net Income), (b) any extraordinary, unusual or non-recurring income or gains (including, whether or not otherwise includable as a separate item in the statement of such Net Income for such period, gains on the sales of assets outside of the ordinary course of business), (c) any other non-cash income and (d) any cash payments made during such period in respect of items described in clause (e) above subsequent to the fiscal quarter in which the relevant non-cash expenses or losses were reflected as a charge in the statement of Net Income, all as determined on a consolidated basis.

“Effective Date” shall mean the date upon which the conditions precedent set forth in Section 3(a) shall have been satisfied.

“Electronic Record” shall mean “Record” and “Electronic Record,” both as defined in E-Sign, and shall include, but not be limited to, recorded telephone conversations, fax copies or electronic transmissions, including, without limitation, those involving the MetLife Warehouse Electronic System.

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“Electronic Signature” shall have the meaning set forth in E-Sign.

“Electronic Tracking Agreement” shall mean, collectively, Electronic Tracking Agreements respectively among Buyer, each Seller, MERS and MERSCORP, Inc., as the same may be amended from time to time.

“Electronic Transactions” shall mean transactions conducted using Electronic Records and/or Electronic Signatures or fax copies of signatures.

“Eligible Mortgage Loan” shall mean a Mortgage Loan which (a) is an Approved Mortgage Product, (b) complies with the representations and warranties set forth on Schedule 1 hereto, (c) is not a Defective Mortgage Loan, and (d) is not a Delinquent Mortgage Loan.

“EO13224” shall have the meaning set forth in Section 11(aa) hereof.

“ERISA” shall, with respect to any Person, mean the Employee Retirement Income Security Act of 1974, as amended from time to time and any successor thereto, and the regulations promulgated and rulings issued thereunder.

“ERISA Affiliate” shall, with respect to any Person, mean any Person which is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Code is treated as a single employer described in Section 414 of the Code.

“ERISA Liability Threshold” shall have the meaning specified in the Pricing Letter.

“Escrow Amount” shall mean any amount paid by the Mortgagor or retained by the applicable Seller with respect to the Mortgage Loan that constitute escrowed funds, which shall include any amounts representing Escrow Payments or unapplied principal prepayments.

“Escrow Payments” shall mean, with respect to any Mortgage Loan, the amounts constituting ground rents, taxes, assessments, water rates, sewer rents, municipal charges, mortgage insurance premiums, fire and hazard insurance premiums, condominium charges, and any other payments required to be escrowed by the Mortgagor with the mortgagee pursuant to the Mortgage or any other document.

“Excel” is defined in the introductory paragraph of this Agreement.

“Event of Default” shall have the meaning specified in Section 13 hereof.

“Event of ERISA Termination” shall, with respect to any Seller Party, mean (i) with respect to any Plan, a reportable event, as defined in Section 4043 of ERISA, as to which the PBGC has not by regulation waived the reporting of the occurrence of such event, or (ii) the withdrawal of Seller Party or any ERISA Affiliate thereof from a Plan during a plan year in which it is a substantial employer, as defined in Section 4001(a)(2) of ERISA, or (iii) the failure by Seller Party or any ERISA Affiliate thereof to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA with respect to any Plan, including, without limitation, the failure to make on or before its due date a required installment under Section 430(j) of the Code or Section 303(j) of ERISA, or (iv) the distribution under Section 4041 of ERISA of a notice of intent to terminate any Plan or any action taken by Seller Party or any ERISA Affiliate thereof to terminate any Plan, or (v) the failure to meet the requirements of Section 436 of the Code resulting in the loss of qualified status under Section 401(a)(29) of the Code, or (vi) the institution by the PBGC of proceedings under Section 4042 of ERISA for the termination of, or the

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appointment of a trustee to administer, any Plan, or (vii) the receipt by Seller Party or any ERISA Affiliate thereof of a notice from a Multiemployer Plan that action of the type described in the previous clause (vi) has been taken by the PBGC with respect to such Multiemployer Plan, or (viii) any event or circumstance exists which may reasonably be expected to constitute grounds for Seller Party or any ERISA Affiliate thereof to incur liability under Title IV of ERISA or under Sections 412(b) or 430 (k) of the Code with respect to any Plan.

“Excess Proceeds” shall mean the excess, if any, of the proceeds received in the Inbound Account with respect to a purchase or repurchase of a Purchased Mortgage Loan over the Repurchase Price for such Purchased Mortgage Loan.

“Excluded Taxes” shall have the meaning specified in Section 7(e) hereof.

“Expenses” shall mean all present and future actual out-of-pocket expenses incurred by or on behalf of Buyer in connection with this Agreement or any of the other Facility Documents and any amendment, supplement or other modification or waiver related hereto or thereto, whether incurred heretofore or hereafter, which expenses shall include the cost of title, lien, judgment and other record searches; attorneys’ fees; and costs of preparing and recording any UCC financing statements or other filings necessary to perfect the security interest created hereby. For the avoidance of doubt, the “Expenses” does not include Buyer’s general overhead or other similar expenses which do not relate specifically to this Agreement, the other Facility Documents and this Agreement.

“Facility Guaranty” shall mean that certain Guaranty made by the Guarantor in favor of Buyer, dated as of the date of this Agreement, as amended from time to time.

“Facility Documents” shall mean this Agreement, the Pricing Letter, the MetLife Warehouse Customer Guide, the Facility Guaranty, the Electronic Tracking Agreement, a Servicer Notice, if any, and the Power of Attorney.

“Fannie Mae” shall mean Fannie Mae, or any successor thereto.

“FDIA” shall have the meaning set forth in Section 32 hereof.

“FDICIA” shall have the meaning set forth in Section 32 hereof.

“FHA” shall mean the Federal Housing Administration, an agency within the United States Department of Housing and Urban Development, or any successor thereto, and including the Federal Housing Commissioner and the Secretary of Housing and Urban Development where appropriate under the FHA Regulations.

“FHA Loan” shall mean a Mortgage Loan which is the subject of an FHA Mortgage Insurance Certificate.

“FHA Mortgage Insurance Certificate” shall mean the certificate evidencing the contractual obligation of the FHA respecting the insurance of a Mortgage Loan.

“FHA Regulations” shall mean the regulations promulgated by the Department of Housing and Urban Development under the National Housing Act, as amended from time to time and codified in 24 Code of Federal Regulations, and other Department of Housing and Urban Development issuances relating to FHA Loans, including the related handbooks, circulars, notices and mortgage letters.

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“FICO” shall mean Fair Isaac Corporation, or any successor thereto.

“Fidelity Insurance” shall mean, collectively, whether or not provided in the same policy or policies, insurance coverage with respect to employee errors, omissions, dishonesty, forgery, theft, disappearance and destruction, robbery and safe burglary, property (other than money and securities) and computer fraud in an aggregate amount acceptable to Buyer.

“Fidelity Insurance Requirement” shall have the meaning specified in the Pricing Letter.

“Financial Reporting Party” shall have the meaning specified in the Pricing Letter.

“Financial Statements” shall mean the consolidated financial statements of the Financial Reporting Party prepared in accordance with GAAP (subject to year-end adjustments) for the year or other period then ended. Such financial statements will be audited, in the case of annual statements, by an Approved CPA.

“Fitch” shall mean Fitch Ratings, Inc., or any successor thereto.

“Freddie Mac” shall mean Freddie Mac, or any successor thereto.

“GAAP” shall mean generally accepted accounting principles in the United States of America, applied on a consistent basis and applied to both classification of items and amounts, and shall include, without limitation, the official interpretations thereof by the Financial Accounting Standards Board, its predecessors and successors.

“Ginnie Mae” shall mean the Government National Mortgage Association, or any successor thereto.

“Government Mortgage Loan” shall mean a first Lien Mortgage Loan that is (a) eligible for FHA mortgage insurance and is so insured, is subject to, or an application has been or will be submitted for, a binding and enforceable commitment for such insurance pursuant to the provisions of the National Housing Act, as amended, and is originated in strict compliance with the requirements of Ginnie Mae and is eligible for inclusion in a Ginnie Mae mortgage-backed security pool; or (b) eligible to be guaranteed by the VA and is so guaranteed, is subject to, or an application has been or will be submitted for, a binding and enforceable commitment for such guarantee pursuant to the provisions of the Servicemen’s Readjustment Act, as amended, and is otherwise eligible for inclusion in a Ginnie Mae mortgage-backed security pool.

“Governmental Authority” shall mean any nation or government, any state, county, municipality or other political subdivision thereof or any governmental body, agency, authority, department or commission (including, without limitation, any taxing authority) or any instrumentality or officer of any of the foregoing (including, without limitation, any court or tribunal) exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation, partnership or other entity directly or indirectly owned by or controlled by the foregoing (including without limitation the Appropriate Federal Banking Agency).

“Guarantee” shall mean, as to any Person, any obligation of such Person directly or indirectly guaranteeing any Indebtedness of any other Person or in any manner providing for the payment of any Indebtedness of any other Person or otherwise protecting the holder of such Indebtedness against loss (whether by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, or to take-or-pay or otherwise); provided that the term “Guarantee” shall not

include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee of a Person shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith. The terms “Guarantee” and “Guaranteed” used as verbs shall have correlative meanings.

“Guarantor” shall mean Integrated Real Estate Service Corp., a Maryland corporation, and its legal representatives, successors, and assigns.

“Haircut Account” shall mean the account established pursuant to Section 9(e) hereof.

“Haircut Amount” shall mean the excess of the amount the relevant Seller is required to deliver to the Settlement Agent with respect to the Purchased Mortgage Loan being purchased on the Purchase Date over the Purchase Price to be paid by Buyer to the relevant Seller for such Purchased Mortgage Loan.

“Hedge Agreement” shall mean, with respect to any Mortgage Loans, any short sale of a US Treasury Security, or futures contract, or mortgage related security, or Eurodollar futures contract, or options related contract, or interest rate swap, cap or collar agreement, or similar arrangement providing for protection against fluctuations in interest rates or the exchange of nominal or notional interest obligations, either generally or under specific contingencies, entered into by a Seller with a party and with terms, both acceptable to Buyer in its sole reasonable discretion.

“High Cost Mortgage Loan” shall mean a mortgage loan classified as (a) a “high cost” or “higher priced” loan under the Home Ownership and Equity Protection Act of 1994 or (b) a “high cost,” “high risk,” “high rate,” “threshold,” “covered,” or “predatory” loan under any other applicable state, federal or local law (or a similarly classified loan using different terminology under a law, regulation or ordinance imposing heightened regulatory scrutiny or additional legal liability for residential mortgage loans having high interest rates, points and/or fees).

“HUD” shall mean the Department of Housing and Urban Development.

“Inbound Account” shall mean the account established pursuant to Section 9(d) hereof.

“Income” shall mean, with respect to any Mortgage Loan at any time, any principal thereof then payable and all interest, dividends or other distributions payable thereon.



“Indebtedness” shall mean, with respect to any Person, without duplication, the sum of (a) obligations created, issued or incurred by such Person for borrowed money (whether by loan, the issuance and sale of debt securities, or the sale of Property to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such Property from such Person, and including and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments); (b) obligations of such Person to pay the deferred purchase or acquisition price of Property or services, other than trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business, so long as such trade accounts payable are payable within 90 days after the date the respective goods are delivered or the respective services are rendered; (c) Indebtedness of others secured by a Lien on the Property of such Person, whether or not the respective Indebtedness so secured has been assumed by such Person; (d) obligations (contingent or otherwise) of such Person in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for the account of such Person; (e) Capital Lease Obligations of such Person; (f) obligations of such Person under repurchase agreements, sale/buy-back agreements or like arrangements;

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(g) Indebtedness of others Guaranteed by such Person; (h) all obligations of such Person incurred in connection with the acquisition or carrying of fixed assets by such Person; (i) Indebtedness of general or limited partnerships of which such Person is a general partner; and (j) all other indebtedness, obligations, and liabilities of such Person, which in accordance with GAAP, should be included in determining the total liabilities of such Person on such Person’s balance sheet.

“Indemnified Party” shall have the meaning set forth in Section 15(a) hereof.

“Initial Haircut Account Funded Amount” shall mean, with respect to any Purchased Mortgage Loan, the amount deposited by the applicable Seller into the Haircut Account on or prior to the related Purchase Date, which amount shall equal the Haircut Amount plus any Escrow Amount related to the Purchased Mortgage Loan.

“Insolvency Event” shall mean, for any Person:

that such Person shall discontinue or abandon operation of its business; or

that such Person shall fail generally to, or admit in writing its inability to, pay its debts as they become due; or

a proceeding shall have been instituted in a court having jurisdiction in the premises seeking a decree or order for relief in respect of such Person in an involuntary case under any applicable bankruptcy, insolvency, liquidation, reorganization or other similar Requirement of Law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator, conservator or other similar official of such Person, or for any substantial part of its property, or for the winding-up or liquidation of its affairs; or

the commencement by such Person of a voluntary case under any applicable bankruptcy, insolvency or other similar Requirement of Law now or hereafter in effect, or such Person’s consent to the entry of an order for relief in an involuntary case under any such Requirement of Law, or consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator, conservator or other similar official of such Person, or for any substantial part of its property, or any general assignment for the benefit of creditors; or

that such Person shall become insolvent; or

if such Person is a corporation, such Person, or any of their Subsidiaries, shall take any corporate action in furtherance of, or the action of which would result in, any of the actions set forth in the preceding clauses (a), (b), (c), (d) or (e).

“Insured Depository Institution” shall have the meaning ascribed to such term by Section 1813(c)(2) of Title 12 of the United States Code, as amended from time to time.

“Interest Expense” shall mean, for any period, total interest expense (including that attributable to Capital Lease Obligations) of such Person for such period with respect to all outstanding Indebtedness of such Person (including, without limitation, all commissions, discounts and other fees and charges owed by such Person with respect to letters of credit and bankers’ acceptance financing and net costs of such Person under Hedge Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP), as determined in accordance with GAAP.

“LIBOR Floor” shall have the meaning set forth in the Pricing Letter.

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“LIBOR Rate” shall mean, with respect to each day a Transaction is outstanding, the rate per annum equal to the greater of (a) the rate appearing at Reuters Screen LIBOR01 Page (or such other page as may replace the Reuters LIBOR01 Page on such service or such other service as may be designated by Buyer for the purpose of displaying London interbank offered rates for U.S. Dollar deposits) as one month LIBOR on such date (and if such date is not a Business Day, the LIBOR Rate in effect on the Business Day immediately preceding such date), and if such rate shall not be so quoted, the rate per annum at which Buyer or its Affiliate is offered dollar deposits at or about 10:00 a.m., New York City time, on such date, by prime banks in the interbank eurodollar market where the eurodollar and foreign currency exchange operations in respect of its Transactions are then being conducted for delivery on such day for a period of one month and in an amount comparable to the amount of the Transactions outstanding on such day, and (b) the LIBOR Floor.

“Lien” shall mean any lien, claim, charge, restriction, pledge, security interest, mortgage, deed of trust or other encumbrance.

“Litigation Threshold” shall have the meaning specified in the Pricing Letter.

“Loan-to-Value Ratio” or “LTV” shall mean with respect to any Mortgage Loan, the ratio of the original outstanding principal amount of the Mortgage Loan to the Appraised Value of the Mortgaged Property at origination.

“Margin Call” shall have the meaning specified in Section 4.

“Margin Deficit” shall have the meaning specified in Section 4.

“Market Value” shall mean, as of any date with respect to any Purchased Mortgage Loan, the price at which such Mortgage Loan could readily be sold as determined by Buyer in its sole reasonable discretion, *provided, however*, that the “Market Value” of any Mortgage Loan that is not an Eligible Mortgage Loan is zero.

“Material Adverse Effect” shall mean a material adverse effect on (a) the Property, business, operations or financial condition of any Seller Party, (b) the ability of any Seller Party to perform its obligations under any of the Facility Documents to which it is a party, (c) the validity or enforceability of any of the Facility Documents, (d) the rights and remedies of Buyer under any of the Facility Documents, (e) the timely payment of any amounts payable under the Facility Documents, or (f) the Asset Value of the Purchased Mortgage Loans taken as a whole.

“Maturity Event” shall mean with respect to a Mortgage Loan, the earliest to occur of: (a) the Mortgaged Property is sold or transferred; (b) the death of the last remaining Mortgagor; (c) the Mortgaged Property ceases to be the principal residence of a Mortgagor for reasons other than death and the Mortgaged Property is not the principal residence of at least one other Mortgagor, together with the required FHA approval; (d) for a period of longer than twelve (12) consecutive months, a Mortgagor fails to occupy the Mortgaged Property because of physical or mental illness and the Mortgaged Property is not the principal residence of at least one other Mortgagor, together with the required FHA approval; or (e) Mortgagor violates any other covenant of the Mortgage or Mortgage Note and is unable (or refuses) to correct the violation, together with the required FHA approval.

“Maximum Purchase Amount” shall have the meaning set forth in the Pricing Letter.

“MERS” shall mean Mortgage Electronic Registration Systems, Inc., a corporation organized and existing under the laws of the State of Delaware, or any successor thereto.

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“MERS System” shall mean the system of recording transfers of mortgages electronically maintained by MERS.

“MetLife Warehouse Customer Guide” shall mean the guidelines and other information provided to Sellers by Buyer from time to time, setting forth the operational policies and procedures to be followed by Sellers when utilizing the facility contemplated under this Agreement.

“MetLife Warehouse Electronic System” shall mean the system utilized by Buyer either directly, or through its vendors, and which may be accessed by Sellers in connection with delivering and obtaining information and requests as described further in the MetLife Warehouse Customer Guide.

“Minimum Reserve Amount” shall have the meaning set forth in the Pricing Letter.

“Monthly Payment” shall mean the scheduled monthly payment of principal and interest on a Mortgage Loan.

“Moody’s” shall mean Moody’s Investor’s Service, Inc. or any successors thereto.

“Mortgage” shall mean each mortgage, assignment of rents, security agreement and fixture filing, deed of trust, deed to secure debt, or similar instrument creating and evidencing a lien on real property and other property and rights incidental thereto, unless such Mortgage is granted in connection with a Co-op Loan, in which case the first lien position is in the Co-op Shares of the subject Co-op Corporation and in the tenant’s rights in the Proprietary Lease relating to such Co-op Shares.

“Mortgage File” shall mean, with respect to a Mortgage Loan, the documents and instruments relating to such Mortgage Loan and set forth in the MetLife Warehouse Customer Guide.

“Mortgage Interest Rate” shall mean the rate of interest borne on a Mortgage Loan from time to time in accordance with the terms of the related Mortgage Note.

“Mortgage Loan” shall mean any first lien, one-to-four-family residential mortgage loan evidenced by a Mortgage Note and secured by a Mortgage.

“Mortgage Loan Schedule” shall mean with respect to any Transaction as of any date, a mortgage loan schedule in the form of a computer tape or other electronic medium generated by the applicable Seller and delivered to Buyer via the MetLife Warehouse Electronic System which provides information (including, without limitation, the information required pursuant to the MetLife Warehouse Customer Guide relating to the Purchased Mortgage Loans in a format required pursuant to the MetLife Warehouse Customer Guide).

“Mortgage Note” shall mean the promissory note or other evidence of the indebtedness of a Mortgagor secured by a Mortgage.

“Mortgaged Property” shall mean the real property securing repayment, or other Co-op Loan collateral, of the debt evidenced by a Mortgage Note.

“Mortgagor” shall mean the obligor or obligors on a Mortgage Note, including any Person who has assumed or guaranteed the obligations of the obligor thereunder.

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“MSR Appraised Value” means, as of any date of determination, the fair market value of a Seller’s Servicing Rights at such time (on a consolidated basis, if applicable), calculated as a percentage (using the mid-point if expressed as a range) of the then unpaid principal balances of each

category of Mortgage Loan then being serviced, as set forth in a Servicing Rights Appraisal. For the avoidance of doubt, in order to take into account changes in the unpaid principal balances of Mortgage Loans from the date of a particular appraisal to the date of any later determination of MSR Value for purposes of calculating Adjusted Tangible Net Worth at any time, the applicable value percentage shall be applied to the then (updated) unpaid principal balance of Mortgage Loans then included in the applicable Seller's capitalized Servicing Rights within each applicable category of Mortgage Loans of the date of such later determination of MSR Value.

"MSR Value" shall mean, as of any date of determination, the lesser of (a) the applicable Seller's capitalized Servicing Rights at such time, and (b) as applicable, and with respect to the same Servicing Rights (i) the MSR Appraised Value, at such time, with respect to those Mortgage Loans then included in such Seller's capitalized Servicing Rights, or (ii) if the applicable Servicing Rights Appraisal has not been timely delivered to Buyer, such amount as Buyer shall determine in its sole and absolute discretion, using such means of valuation as it deems appropriate under the circumstances.

"Multiemployer Plan" shall mean, with respect to any Person, a "multiemployer plan" as defined in Section 3(37) of ERISA which is or was at any time during the current year or the immediately preceding five years contributed to (or required to be contributed to) by such Person or any ERISA Affiliate thereof on behalf of its employees and which is covered by Title IV of ERISA.

"Net Account Funded Amount" shall mean, for each Purchased Mortgage Loan, the Initial Haircut Account Funded Amount minus the Haircut Amount withdrawn from the Haircut Account by Buyer plus all additional amounts received in the Haircut Account related to the applicable Purchased Mortgage Loan, including amounts on account of Repurchase Price (including, without duplication, Excess Proceeds) minus any Shortfall Proceeds withdrawn by Buyer on account of the applicable Purchased Mortgage Loan, minus all Warehouse Fees withdrawn by Buyer on account of the applicable Purchased Mortgage Loan minus any additional amounts withdrawn by Buyer as permitted under Section 9(e) or otherwise, and attributed to such Purchased Mortgage Loan.

"Net Income" shall mean, for any Person for any period, the net income of such Person for such period as determined in accordance with GAAP.

"Net Worth" shall mean, with respect to any Person, an amount equal to, on a consolidated basis, such Person's stockholder equity (determined in accordance with GAAP).

"Non-Excluded Taxes" shall have the meaning set forth in Section 7(a) hereof.

"Non-Exempt Buyer" shall have the meaning set forth in Section 7(e) hereof.

"Nondefaulting Party" shall have the meaning set forth in Section 30 hereof.

"Obligations" shall mean (a) any amounts owed by Sellers to Buyer in connection with a Transaction hereunder, together with interest thereon (including interest which would be payable as post-petition interest in connection with any bankruptcy or similar proceeding) and all other fees or expenses which are payable hereunder or under any of the Facility Documents; (b) all other obligations or amounts owed to Buyer under the Facility Guaranty, and (c) all other obligations or amounts owed by a Seller to Buyer or an Affiliate of Buyer under any other contract or agreement, in each case, whether such amounts or obligations owed are direct or indirect, absolute or contingent, matured or unmatured.

"OFAC" shall have the meaning set forth in Section 11(aa) hereof.

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"Operating Cash Flow" shall mean, for any Person, such Person's EBITDA plus any non-recurring cash expenses.

"Other Taxes" shall have the meaning set forth in Section 7(b) hereof.

"PBGC" shall mean the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Pension Protection Act" shall mean the Pension Protection Act of 2006.

"Person" shall mean any individual, corporation, company, voluntary association, partnership, joint venture, limited liability company, trust, unincorporated association or government (or any agency, instrumentality or political subdivision thereof).

"Plan" shall mean, with respect to any Person, any employee benefit or similar plan that is or was at any time during the current year or immediately preceding five years established, maintained or contributed to by such Person or any ERISA Affiliate thereof and that is covered by Title IV of ERISA, other than a Multiemployer Plan.

"Pledge Instruments" shall mean the Assignment of Proprietary Lease and the stock power related to the Co-op Shares.

"Post-Default Rate" shall have the meaning set forth in the Pricing Letter.

"Power of Attorney" shall mean a Power of Attorney substantially in the form of Exhibit E hereto.

"Price Differential" shall mean, with respect to any Transaction hereunder as of any date, the aggregate amount obtained by daily application of the Pricing Rate (or, during the continuation of an Event of Default, by daily application of the Post-Default Rate) for such Transaction to the Purchase Price for such Transaction on a 360 day per year basis for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the Repurchase Date (reduced by any amount of such Price Differential previously paid by Sellers to Buyer with respect to such Transaction).

"Pricing Letter" shall mean that certain letter agreement among Buyer and each Seller, dated as of the date hereof, as the same may be amended from time to time.

“Pricing Rate” shall mean a rate per annum equal to the sum of (a) the LIBOR Rate plus (b) the Pricing Spread.

“Pricing Spread” shall have the meaning set forth in the Pricing Letter.

“Prohibited Person” shall have the meaning set forth in Section 11(aa) hereof.

“Property” shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

“Property Value” shall mean, with respect to each Mortgage Loan, the value of the related Mortgaged Property, as determined in accordance with FHA Regulations, provided that the Property Value shall not be greater than the Appraised Value of such Mortgaged Property.

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“Proprietary Lease” shall mean the lease of a Co-op Unit evidencing the possessory interest of the owner of the Co-op Shares in such Co-op Unit.

“Purchase Date” shall mean the date on which Purchased Mortgage Loans are transferred by a Seller to Buyer or its designee.

“Purchase Price” shall have the meaning set forth in the Pricing Letter.

“Purchase Price Percentage” shall have the meaning set forth in the Pricing Letter.

“Purchased Mortgage Loan” shall mean each Mortgage Loan sold by a Seller to Buyer in a Transaction, as reflected in the MetLife Warehouse Electronic System and as evidenced by the Daily Activity Report, prior to the time repurchased by a Seller in accordance with the terms hereof.

“Qualified Insurer” shall mean a mortgage guaranty insurance company duly authorized and licensed where required by law to transact mortgage guaranty insurance business and acceptable under the Underwriting Guidelines.

“Rating Agency” shall mean any of S&P, Moody’s or Fitch.

“Recognition Agreement” shall mean an agreement among a Co-op Corporation, a lender, and a Mortgagor with respect to a Co-op Loan whereby such parties (i) acknowledge that such lender may make, or intends to make, such Co-op Loan, and (ii) make certain agreements with respect to such Co-op Loan.

“Records” shall mean all instruments, agreements and other books, records, and reports and data generated by other media for the storage of information maintained by a Seller or any other person or entity with respect to a Mortgage Loan. Records shall include the Mortgage Notes, any Mortgages, the Mortgage Files, the credit files related to a Mortgage Loan and any other instruments necessary to document or service a Mortgage Loan.

“Register” shall have the meaning set forth in Section 19(b) hereof.

“Regulations T, U and X” shall mean Regulations T, U and X of the Board of Governors of the Federal Reserve System (or any successor), as the same may be modified and supplemented and in effect from time to time.

“Relative” shall have the meaning set forth in the Pricing Letter.

“REO Property” shall mean a Mortgaged Property acquired through foreclosure or by deed in lieu of foreclosure.

“Repair Set Aside Account” shall mean funds held by a Seller with respect to a Mortgage Loan necessary for disbursement after closing in order to pay for required repairs to the Mortgaged Property pursuant to the Requirements of Law, contractual obligations of either party (including those contained in this Agreement), or Takeout Investor or insurer requirements.

“Reportable Event” shall mean any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty day notice period is waived under subsections .21, .22, .24, .26, .27 or .28 of PBGC Reg. § 4043.

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“Reporting Date” shall have the meaning set forth in the Pricing Letter.

“Repurchase Assets” shall have the meaning provided in Section 8(a) hereof.

“Repurchase Date” shall mean the date on which Sellers are to repurchase the Purchased Mortgage Loans, or any particular Purchased Mortgage Loan, subject to a Transaction from Buyer, which shall be the earliest of (a) the date specified in the related Transaction Request, (b) the date requested pursuant to Section 3(d), (c) a date no later than the applicable Aging Limit, (d) one (1) Business Day after such Purchased Mortgage Loan is no longer an Eligible Mortgage Loan, (e) the Termination Date, or (f) any date determined by application of the provisions of Sections 3(d) or 14.

“Repurchase Price” shall mean the price at which a Purchased Mortgage Loan is to be transferred from Buyer or its designee to the applicable Seller upon termination of a Transaction, which will be determined in each case as the sum of (a) the Purchase Price for such Purchased Mortgage Loan as of the date of such determination, plus (b) any accrued and unpaid Price Differential with respect to such Purchased Mortgage Loan as of the date of such determination, plus (c) any other accrued and unpaid fees, expenses, indemnities, and other amounts then due and owing to Buyer with respect to such Purchased Mortgage Loan.

“Requirement of Law” shall mean as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule, regulation, procedure or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its Property is subject.

“Reserve Account” shall mean the account established pursuant to Section 9(c) hereof.

“Reserve Amount” shall mean all cash and other amounts on deposit in the Reserve Account.

“Responsible Officer” shall mean, as to Buyer and Seller, respectively, an officer of such Person listed on Schedule 3 to the Pricing Letter, as such Schedule 3 may be amended from time to time.

“Restricted Cash” shall mean for any Person, any amount of cash or Cash Equivalents of such Person that is contractually required to be set aside, segregated or otherwise reserved.

“S&P” shall mean Standard & Poor’s Ratings Services, or any successor thereto.

“SEC” shall have the meaning set forth in Section 33 hereof.

“Section 4402” shall have the meaning set forth in Section 30 hereof.

“Section 7 Certificate” shall have the meaning set forth in Section 7(e) hereof.

“Seller” and “Sellers” are defined in the introductory paragraph of this Agreement, and includes any permitted successor in interest thereto.

“Seller Party” shall mean, respectively, each of the Sellers and the Guarantor, and collectively, “Seller Parties.”

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“Servicer Notice” shall mean a notice acknowledged by each Subservicer, if any, substantially in the form of Exhibit B hereto.

“Servicing Agreement” shall have the meaning set forth in Section 16(c) hereof.

“Servicing Rights Appraisal” shall mean a written appraisal or evaluation by an Approved Servicing Appraiser evaluating the MSR Appraised Value of all of the Servicing Rights as of a date stated in the written report of such evaluation, each such evaluation and report to be made at Sellers’ expense, to be addressed to Buyer and to be in form and substance acceptable to Buyer in its sole and absolute discretion.

“Servicing Rights” shall mean the rights of any Person to administer, service or subservice Mortgage Loans, to collect payments thereon or to possess related Records.

“Settlement Agent” shall mean, with respect to any Transaction, the entity approved by Buyer, in its sole discretion, which may be a title company, escrow company or attorney in accordance with local law and practice in the jurisdiction where the proceeds of the related Mortgage Loan are being disbursed.

“Shortfall Proceeds” shall mean the shortfall, if any, between the proceeds received in the Inbound Account with respect to a purchase or repurchase of a Purchased Mortgage Loan and the Repurchase Price for such Purchased Mortgage Loan.

“Single-Employer Plan” shall mean a single-employer plan as defined in Section 4001(a)(15) of ERISA which is subject to the provisions of Title IV of ERISA.

“SIPA” shall have the meaning set forth in Section 33 hereof.

“Subordinated Debt” means, Indebtedness of the applicable Seller (i) which is unsecured, (ii) no part of the principal of such Indebtedness is required to be paid (whether by way of mandatory sinking fund, mandatory redemption, mandatory prepayment or otherwise) prior to the date which is one year following the Termination Date and (iii) the payment of the principal of and interest on such Indebtedness and other obligations of the applicable Seller in respect of such Indebtedness are subordinated to the prior payment in full of the principal of and interest (including post-petition obligations) on the Transactions and all other obligations and liabilities of the applicable Seller to Buyer hereunder on terms and conditions approved in writing by Buyer and all other terms and conditions of which are satisfactory in form and substance to Buyer in its sole and absolute discretion.

“Subordination Agreement” shall mean an agreement among Buyer, an applicable Seller, and all applicable third parties which satisfies the requirements of clause (iii) of the definition of “Subordinated Debt.”

“Subservicer” shall have the meaning set forth in Section 16(c) hereof, and includes the permitted successors and assigns of each such Person, including any Successor Servicer. The initial subservicer shall be LoanCare, a division of FNF Servicing, Inc.

“Subsidiary” shall mean, with respect to any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership

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or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

“Successor Servicer” shall have the meaning set forth in Section 16(h) hereof.

“Surplus Amount” shall have the meaning set forth in the Pricing Letter.

“Takeout Commitment” shall mean a commitment of a Seller to sell one or more Mortgage Loans to a Takeout Investor, and the corresponding Takeout Investor’s commitment back to such Seller to effectuate the foregoing.

“Takeout Failure” shall mean the failure of a Takeout Investor to purchase one or more Mortgage Loans pursuant to the applicable Takeout Commitment.

“Takeout Investor” shall mean any institution which has made a Takeout Commitment and has been approved by Buyer, in its sole and absolute discretion.

“Takeout Investor Purchase Advice” shall mean a summary of the purchase and sale of a Purchased Mortgage Loan to a Takeout Investor, which shall be in form and substance acceptable to Buyer and shall specify the proceeds to be paid by the Takeout Investor and shall direct such proceeds to be paid into the Inbound Account.

“Taxes” shall have the meaning set forth in Section 7(a) hereof.

“Termination Date” shall have the meaning set forth in the Pricing Letter.

“Test Period” shall have the meaning set forth in the Pricing Letter.

“Transaction” shall have the meaning specified in Section 1.

“Transaction Request” shall mean a request from a Seller to Buyer to enter into a Transaction, which shall be submitted electronically through the MetLife Warehouse Electronic System in accordance with the MetLife Warehouse Customer Guide.

“Transaction Term Limitation” shall have the meaning set forth in the Pricing Letter.

“Underwriting Guidelines” shall mean the standards, procedures and guidelines of the applicable Seller for underwriting and acquiring Mortgage Loans, which are set forth in the written policies and procedures of such Seller, a copy of which have been provided to Buyer and such other guidelines as are identified and approved in writing by Buyer.

“Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non perfection of the security interest in any Repurchase Assets or the continuation, renewal or enforcement thereof is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non perfection.

“USPAP Guidelines” shall mean the Uniform Standards of Professional Appraisal Practice, as approved by the Appraisal Standards Board of The Appraisal Foundation, as revised, interpreted and amended from time to time.

“VA” shall mean the Department of Veterans Affairs, or any successors thereto.

“Warehouse Facility” shall mean any loan, repurchase or other arrangement for incurring Indebtedness secured by a Seller’s Mortgage Loans.

“Warehouse Fees” shall have the meaning set forth in the Pricing Letter.

“Well Capitalized” shall mean, with respect to any Insured Depository Institution, the maintenance by such Insured Depository Institution of capital ratios at or above the required minimum levels for such capital category under the regulations promulgated pursuant to Section 1831(o) (“Prompt Corrective Action”) of the United States Code, as amended from time to time, by the Appropriate Federal Banking Agency for such institution, as such regulation may be amended from time to time.

“Wet Delivery Deadline” shall have the meaning set forth in the Pricing Letter.

“Wet File” shall mean, with respect to a Wet Mortgage Loan, the documents and instruments relating to such Mortgage Loan and set forth in the MetLife Warehouse Customer Guide for Wet Mortgage Loans.

“Wet Mortgage Loan” shall mean an Eligible Mortgage Loan which a Seller is selling to Buyer simultaneously with the origination thereof and for which the Mortgage File has not been delivered to Buyer.

### SECTION 3. INITIATION; TERMINATION

(a) **Conditions Precedent to Initial Transaction.** Buyer’s agreement to enter into the initial Transaction hereunder is subject to the satisfaction, immediately prior to or concurrently with the making of such Transaction, of the condition precedent that Buyer shall have received from Sellers any fees and expenses payable hereunder, and all of the following documents, each of which shall be satisfactory to Buyer and its counsel in form and substance:



(i) The following Facility Documents, duly executed and delivered to Buyer:

(A) Agreement. *This Agreement, duly executed by the parties thereto.*

(B) Facility Guaranty. *The Facility Guaranty, duly executed by the Guarantor.*

(C) Electronic Tracking Agreement. *The Electronic Tracking Agreement, duly executed and delivered by the parties thereto, in full force and effect, free of any modification, breach or waiver.*

(D) Pricing Letter. *The Pricing Letter, duly executed by the parties thereto in form and substance acceptable to Buyer.*

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(E) Power of Attorney. *Powers of Attorney, duly executed and acknowledged by each Seller, respectively.*

(F) Servicing Agreement(s). *The Servicing Agreement(s) (including the corresponding Servicer Notice) with respect to the current Subservicer, duly executed by the parties thereto.*

(ii) Organizational Documents. A certificate of corporate or other applicable entity existence of each Seller Party that is not an individual and certified copies of the charter and bylaws (or equivalent documents) of each such Seller Party and of all corporate or other applicable authority documents for each such Seller Party with respect to the execution, delivery and performance of the Facility Documents and each other document to be delivered by each such Seller Party from time to time in connection herewith.

(iii) Good Standing Certificate. A certified copy of a good standing certificate from the jurisdiction of organization of each Seller Party, dated as of no earlier than the date 10 Business Days prior to the Purchase Date with respect to the initial Transaction hereunder.

(iv) Incumbency Certificate. An incumbency certificate of the corporate secretary of each Seller Party, certifying the names, true signatures and titles of the representatives duly authorized to request transactions hereunder and to execute the Facility Documents.

(v) Opinion of Counsel. An opinion of each Seller Party's counsel, in form and substance substantially as set forth in Exhibit A attached hereto.

(vi) Security Interest. Evidence that all other actions necessary or, in the opinion of Buyer, desirable to perfect and protect Buyer's interest in the Purchased Mortgage Loans and other Repurchase Assets have been taken, including, without limitation, UCC searches and duly authorized and filed Uniform Commercial Code financing statements on Form UCC-1.

(vii) Insurance. Evidence that each Seller has added Buyer as an additional loss payee under such Seller's Fidelity Insurance.

(viii) Fees. Payment of any fees due to Buyer hereunder.

(ix) Other Documents. Such other documents as Buyer may reasonably request, in form and substance reasonably acceptable to Buyer.

**(b) Conditions Precedent to all Transactions. Upon satisfaction of the conditions set forth in this Section 3(b), Buyer shall enter into a Transaction with a Seller. Buyer's entering into each Transaction (including the initial Transaction) is subject to the satisfaction of the following further conditions precedent, both immediately prior to entering into such Transaction and also after giving effect thereto to the intended use thereof:**

(i) Due Diligence Review. Without limiting the generality of Section 17 hereof, Buyer shall have completed, to its satisfaction, its due diligence review of the related Mortgage Loans and Seller Parties.

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(ii) No Default. No Default or Event of Default shall have occurred and be continuing under, and such Transaction is in full compliance with all applicable terms and conditions of, the Facility Documents.

(iii) Representations and Warranties. Both immediately prior to the Transaction and also after giving effect thereto and to the intended use thereof, the representations and warranties made by each Seller in Section 11 hereof, shall be true, correct and complete on and as of such Purchase Date in all material respects with the same force and effect as if made on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date).

(iv) Maximum Purchase Price. After giving effect to the requested Transaction, the aggregate outstanding Purchase Price for all Purchased Mortgage Loans subject to then outstanding Transactions under this Agreement shall not exceed the Maximum Purchase Amount.

(v) No Margin Deficit. Both immediately prior to, and after giving effect to, the requested Transaction, there shall be no Margin Deficit.

(vi) Transaction Request. On or prior to the times set forth in the MetLife Warehouse Customer Guide, on the related Purchase Date, the applicable Seller shall have delivered to Buyer a Transaction Request via the MetLife Warehouse Electronic System, and the pre-funding documents specified in the MetLife Warehouse Customer Guide.

(vii) Delivery of Wet File; Mortgage File. The applicable Seller shall have delivered to Buyer (A) with respect to each Purchased Mortgage Loan which is not a Wet Mortgage Loan, by 1:00 p.m. (New York Time) on the Purchase Date, the Mortgage File, and (B) with respect to each Wet Mortgage Loan, (y) by no later than 1:00 p.m. (New York Time) on the Purchase Date, the Wet File, and (z) on or prior to the Wet Delivery Deadline, the Mortgage File.

(viii) Fees and Expenses. Buyer shall have received all fees and expenses of counsel to Buyer as contemplated by Sections 9 and 15(b).

(ix) No Material Adverse Change. None of the following shall have occurred and/or be continuing:

**(A) an event or events shall have occurred in the good faith determination of Buyer resulting in the effective absence of a “repo market” or comparable “lending market” for financing debt obligations secured by securities or an event or events shall have occurred resulting in Buyer not being able to finance Purchased Mortgage Loans through the “repo market” or “lending market” with traditional counterparties at rates which would have been reasonable prior to the occurrence of such event or events; or**

**(B) an event or events shall have occurred resulting in the effective absence of a “securities market” for securities backed by mortgage loans or an event or events shall have occurred resulting in Buyer not being able to sell securities backed by mortgage loans at prices which would have been reasonable prior to such event or events; or**

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**(C) there shall have occurred a material adverse change in the financial condition of Buyer which affects (or can reasonably be expected to affect) materially and adversely the ability of Buyer to fund its obligations under this Agreement; or**

**(D) there shall have occurred (i) a material change in financial markets, an outbreak or escalation of hostilities or a material change in national or international political, financial or economic conditions; (ii) a general suspension of trading on major stock exchanges; or (iii) a disruption in or moratorium on commercial banking activities or securities settlement services.**

Each Transaction Request delivered by a Seller hereunder shall constitute a certification by Sellers that all the conditions set forth in this Section 3(b) (other than clause (i) and (ix) hereof) have been satisfied (both as of the date of such notice or request and as of Purchase Date).

**(c) Initiation**

(i) The applicable Seller shall deliver a Transaction Request through the MetLife Warehouse Electronic System to Buyer on or prior to the date and time set forth in Section 3(b)(vi) prior to entering into any Transaction. Such Transaction Request shall include all information required by Buyer pursuant to the MetLife Warehouse Customer Guide. Following receipt of such request, Buyer may agree to enter into such requested Transaction, in which case it will fund the Purchase Price therefor as contemplated in this Agreement. Buyer shall confirm the terms of each Transaction on the MetLife Warehouse Electronic System, including information that sets forth (A) the Purchase Date, (B) the Purchase Price, (C) the Repurchase Date, (D) the Pricing Rate applicable to the Transaction, (E) the applicable Purchase Price Percentages, and (F) additional terms or conditions not inconsistent with this Agreement; provided that Buyer’s failure to enter the information into the MetLife Warehouse Electronic System shall not affect the obligations of Sellers to make any payment due with respect to such Transaction.

(ii) The information entered into the MetLife Warehouse Electronic System with respect to any Transaction, together with this Agreement, shall be conclusive evidence of the terms of the Transaction(s) covered thereby unless objected to in writing by the applicable Seller no more than two (2) Business Days after the Purchase Date of the Transaction. An objection sent by the applicable Seller must state specifically that such writing is an objection, must specify the provision(s) being objected to by such Seller, must set forth such provision(s) in the manner that such Seller believes they should be stated, and must be received by Buyer no more than two (2) Business Days after the Purchase Date for the Transaction. Notwithstanding the foregoing, to the extent that a Seller accepts funding of the Transaction, Sellers shall be deemed to have consented to the terms of the Transaction as set forth in the MetLife Warehouse Electronic System. All Transactions entered into on any Business Day shall be reflected in the Daily Activity Report on such Business Day.

(iii) The Repurchase Date for each Transaction shall not be later than the Termination Date.

(iv) Subject to the terms and conditions of this Agreement, prior to the Termination Date Sellers may sell, repurchase and resell Eligible Mortgage Loans hereunder.

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(v) No later than the date and time set forth in Section 3(b)(vii), the applicable Seller shall deliver to Buyer the (x) Mortgage Loan File pertaining to each Eligible Mortgage Loan (other than Wet Mortgage Loans) to be purchased by Buyer, and (y) the Wet File for each Wet Mortgage Loan to be purchased by Buyer.

(vi) Subject to the provisions of this Section 3, the Purchase Price will then be made available to the applicable Seller by Buyer transferring, via wire transfer, in the aggregate amount of such Purchase Price in funds immediately available, as provided in Section 9(b).

(vii) In addition to the other payment and performance obligations of the Sellers under this Agreement and the other Facility Documents, in the event that Buyer transfers any amounts for the purchase of a Mortgage Loan as provided herein, Sellers, jointly and severally, shall be fully, absolutely, and unconditionally obligated and liable to repay to Buyer the full amount thereof, if (x) on the related scheduled Purchase Date or within 2 Business Days thereafter such Mortgage Loan does not close, or (y) such Mortgage Loan otherwise fails to become a Purchased Mortgage Loan. Any amounts due pursuant to this Section 3(c)(vii) shall be payable on demand, and the unpaid amount thereof shall accrue interest (A) at the Pricing Rate which would have been applicable had such Mortgage Loan become a Purchased Mortgage Loan, from the date so transferred until demand, and (B) unless earlier paid in full, from and after demand, until paid in full, at the Post-Default Rate.

**(d) Repurchase; Purchase by a Takeout Investor**

(i) Sellers may repurchase Purchased Mortgage Loans without penalty or premium on any date. Such repurchase may occur simultaneously with a sale of the Purchased Mortgage Loan to a Takeout Investor. If a Seller intends to make such a repurchase, such Seller shall give at least one (1) Business Day's prior written notice thereof to Buyer through the MetLife Warehouse Electronic System and in accordance with the MetLife Warehouse Customer Guide, designating the Purchased Mortgage Loans to be repurchased and providing such other information required pursuant thereto, including without limitation, delivery of a Takeout Investor Purchase Advice to the extent that such Purchased Mortgage Loan shall be purchased by a Takeout Investor. If such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, and, on receipt, such amount shall be applied to the Repurchase Price for the designated Purchased Mortgage Loans.

(ii) On the Repurchase Date, termination of the Transaction will be effected by reassignment to the applicable Seller or its designee of the Purchased Mortgage Loans, including the related Servicing Rights (and any Income in respect thereof received by Buyer not previously credited or transferred to, or applied to the obligations of, Sellers pursuant to Section 5) against the simultaneous transfer of the Repurchase Price to an account of Buyer. Such obligation to repurchase exists without regard to any prior or intervening liquidation or foreclosure with respect to any Purchased Mortgage Loan (but liquidation or foreclosure proceeds received by Buyer shall be applied to reduce the Repurchase Price for such Purchased Mortgage Loan except as otherwise provided herein). Sellers shall comply with all of the provisions of the MetLife Warehouse Customer Guide in order to effectuate a repurchase hereunder. Sellers are obligated to obtain the Mortgage Files from Buyer or its designee at Sellers' expense on the Repurchase Date. All repurchases effected on any Business Day shall be reflected in the Daily Activity Report for such Business Day.

**SECTION 4. MARGIN AMOUNT MAINTENANCE**

**(a) Buyer shall determine the Asset Value of each Purchased Mortgage Loan at such intervals as determined by Buyer in its sole discretion.**

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**(b) If at any time the Asset Value of any Purchased Mortgage Loans subject to a Transaction is less than the Purchase Price for such Transaction, or any applicable Concentration Limit has been exceeded (a "Margin Deficit"), then Buyer may by notice to Sellers (as such notice is more particularly set forth below, a "Margin Call"), require Sellers to transfer to Buyer or its designee cash so that, as applicable, (i) the Asset Value of the Purchased Mortgage Loans will thereupon equal or exceed the Purchase Price for such Transaction, and (ii) no Concentration Limit will be exceeded.**

**(c) Notice delivered pursuant to Section 4(b) may be given by any written or electronic means. Any notice given before 10:00 a.m. (New York City time) on a Business Day shall be met, and the related Margin Call satisfied, no later than 5:00 p.m. (New York City time) on the next Business Day; notice given after 10:00 a.m. (New York City time) on a Business Day shall be met, and the related Margin Call satisfied, no later than 5:00 p.m. (New York City time) on the second Business Day (the foregoing time requirements for satisfaction of a Margin Call are referred to as the "Margin Deadlines").**

**(d) The failure of Buyer, on any one or more occasions, to exercise its rights hereunder, shall not change or alter the terms and conditions to which this Agreement is subject or limit the right of Buyer to do so at a later date. Sellers and Buyer each agree that a failure or delay by Buyer to exercise its rights hereunder shall not limit or waive Buyer's rights under this Agreement or otherwise existing by law or in any way create additional rights for Sellers.**

**(e) Any cash transferred to Buyer pursuant to Section 4(b) above shall be credited to the Repurchase Price of the related Transactions.**

**SECTION 5. COLLECTIONS; INCOME PAYMENTS**

**(a) Upon request of Buyer, Sellers shall establish and maintain a segregated time or demand deposit account for the benefit of Buyer (the "Custodial Account") with a Bank and shall deposit into the Custodial Account, within two (2) Business Days after receipt, all Income received with respect to each Mortgage Loan sold hereunder. Sellers shall cause all applicable Subservicers to remit all Income received by them with respect to each such Mortgage Loan directly to the Custodial Account on the remittance date specified in the related servicing agreement (but in no event less frequently than monthly). Under no circumstances shall a Seller deposit any of its own funds into the Custodial Account or otherwise commingle its own funds with funds belonging to Buyer as owner of any Mortgage Loans. Sellers shall name the Custodial Account "Excel Mortgage Servicing, Inc. and AmeriHome Mortgage Corporation, jointly, in trust for and for the benefit of MetLife Bank, N.A."**

**(b) All Income received with respect to a Mortgage Loan purchased hereunder, whether or not deposited in the Custodial Account, shall be held in trust for the exclusive benefit of Buyer as the owner of such Mortgage Loan and, to the extent in the Custodial Account, shall be released only as follows:**

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(i) after the Repurchase Price for, and any Warehouse Fees and other Obligations related to, such Mortgage Loan have been paid in full to Buyer, all amounts previously deposited in the Custodial Account with respect to such Mortgage Loan and then in the Custodial Account shall be:

**(A) applied to any Obligations then due and payable;**

**(B) to the extent that there exists no Default, released by Buyer to the applicable Seller;**

(ii) if a Successor Servicer is appointed by Buyer, all amounts deposited in the Custodial Account with respect to Mortgage Loans to be so serviced shall be transferred into an account established by the Successor Servicer pursuant to its agreement with Buyer;

(iii) upon the occurrence of an Event of Default that is continuing hereunder, all funds then held in the Custodial Account with respect to Mortgage Loans shall only be released by the Bank to, or at the direction of, Buyer; and

(iv) funds may, in Buyer's discretion, be remitted to Buyer to cure any Margin Deficit.

(c) **Sellers shall not change the identity or location of the Custodial Account without thirty (30) days prior notice to Buyer. Sellers shall from time to time, at their own cost and expense, execute such directions to the depository Bank, and other papers, documents or instruments as may be reasonably requested by Buyer to reflect Buyer's partial or complete ownership interest in the Custodial Account.**

(d) **If Buyer so requests, Sellers shall promptly notify Buyer of each deposit in the Custodial Account, and each withdrawal from the Custodial Account, made with respect to Mortgage Loans owned by Buyer and serviced by Sellers or a Subservicer. Sellers shall also promptly deliver to Buyer photocopies of all periodic bank statements and other records relating to the Custodial Account as Buyer may from time to time request.**

(e) **At any time while a Custodial Account is not required hereunder, the following provisions shall apply:**

(i) Where a particular term of a Transaction extends over the date on which Income is paid in respect of any Purchased Assets subject to that Transaction, such Income shall be the property of Buyer. Notwithstanding the foregoing, and provided no Default has occurred and is continuing, Buyer agrees that Sellers shall be entitled to receive, solely from such Income, an amount equal to all Income received in respect of the Purchased Assets; provided, however, that any Income received by or on behalf of Sellers while the related Transaction is outstanding shall be deemed held by Sellers solely in trust for Buyer pending the repurchase on the related Repurchase Date.

(ii) In the event that a Default has occurred and is continuing, notwithstanding any provision set forth herein, Sellers shall remit to Buyer, by wire transfer in accordance with wire transfer instructions previously given to Sellers by Buyer, all Income received with respect to each Purchased Mortgage Loan on such date or dates as Buyer notifies Sellers in writing.

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(f) **All amounts required to be paid or remitted by Sellers to Buyer which are not made when due shall bear interest from the due date until the remittance, transfer or payment is made, payable by Sellers, at the lesser of the Post-Default Rate or the maximum rate of interest permitted by law. If there is no maximum rate of interest specified by applicable law, interest on such sums shall accrue at the Post-Default Rate.**

#### SECTION 6. REQUIREMENTS OF LAW

(a) **If any Requirement of Law (other than with respect to any amendment made to Buyer's certificate of incorporation and bylaws or other organizational or governing documents) or any change in the interpretation or application thereof or compliance by Buyer with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority made subsequent to the date hereof:**

(i) shall subject Buyer to any Tax or increased Tax of any kind whatsoever with respect to this Agreement or any Transaction or change the basis of taxation of payments to Buyer in respect thereof;

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, or other extensions of credit by, or any other acquisition of funds by, any office of Buyer which is not otherwise included in the determination of the LIBOR Rate hereunder;

(iii) shall impose on Buyer any other condition;

and the result of any of the foregoing is to increase the cost to Buyer, by an amount which Buyer deems to be material, of entering, continuing or maintaining any Transaction or to reduce any amount due or owing hereunder in respect thereof, then, in any such case, Sellers shall promptly pay Buyer such additional amount or amounts as calculated by Buyer in good faith as will compensate Buyer for such increased cost or reduced amount receivable.

(b) **If Buyer shall have determined that the adoption of or any change in any Requirement of Law (other than with respect to any amendment made to Buyer's certificate of incorporation and bylaws or other organizational or governing documents) regarding capital adequacy or in the interpretation or application thereof or compliance by Buyer or any corporation controlling Buyer with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the date hereof shall have the effect of reducing the rate of return on Buyer's or such corporation's capital as a consequence of its obligations hereunder to a level below that which Buyer or such corporation could have achieved but for such adoption, change or compliance (taking into consideration Buyer's or such corporation's policies with respect to capital adequacy) by an amount deemed by Buyer to be material, then from time to time, Sellers shall promptly pay to Buyer such additional amount or amounts as will compensate Buyer for such reduction.**

(c) **If Buyer becomes entitled to claim any additional amounts pursuant to this Section, it shall promptly notify Sellers of the event by reason of which it has become so entitled. A certificate as to any additional amounts payable pursuant to this Section submitted by Buyer to Sellers shall be conclusive in the absence of manifest error.**

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#### SECTION 7. TAXES.

(a) Any and all payments by any Seller under or in respect of this Agreement or any other Facility Documents to which Seller is a party shall be made free and clear of, and without deduction or withholding for or on account of, any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities (including penalties, interest and additions to tax) with respect thereto, whether now or hereafter imposed, levied, collected, withheld or assessed by any taxation authority or other Governmental Authority (collectively, “Taxes”), unless required by law. If a Seller shall be required under any applicable Requirement of Law to deduct or withhold any Taxes from or in respect of any sum payable under or in respect of this Agreement or any of the other Facility Documents to Buyer, (i) such Seller shall make all such deductions and withholdings in respect of Taxes, (ii) such Seller shall pay the full amount deducted or withheld in respect of Taxes to the relevant taxation authority or other Governmental Authority in accordance with any applicable Requirement of Law, and (iii) the sum payable by such Seller shall be increased as may be necessary so that after such Seller has made all required deductions and withholdings (including deductions and withholdings applicable to additional amounts payable under this Section 7) such Buyer receives an amount equal to the sum it would have received had no such deductions or withholdings been made in respect of Non-Excluded Taxes. For purposes of this Agreement the term “Non-Excluded Taxes” are Taxes other than, in the case of a Buyer, Taxes that are imposed on its overall Net Income (and franchise taxes imposed in lieu thereof) by the jurisdiction under the laws of which such Buyer is organized or of its applicable lending office, or any political subdivision thereof, unless such Taxes are imposed as a result of such Buyer having executed, delivered or performed its obligations or received payments under, or enforced, this Agreement or any of the other Facility Documents (in which case such Taxes will be treated as Non-Excluded Taxes).

(b) In addition, each Seller hereby agrees to pay any present or future stamp, recording, documentary, excise, property or value-added taxes, or similar taxes, charges or levies that arise from any payment made under or in respect of this Agreement or any other Facility Document or from the execution, delivery or registration of, any performance under, or otherwise with respect to, this Agreement or any other Facility Document (collectively, “Other Taxes”).

(c) Each Seller hereby agrees to indemnify Buyer for, and to hold it harmless against, the full amount of Non-Excluded Taxes and Other Taxes, and the full amount of Taxes of any kind imposed by any jurisdiction on amounts payable under this Section 7 imposed on or paid by such Buyer and any liability (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto. The indemnity by each Seller provided for in this Section 7(c) shall apply and be made whether or not the Non-Excluded Taxes or Other Taxes for which indemnification hereunder is sought have been correctly or legally asserted. Amounts payable by a Seller under the indemnity set forth in this Section 7(c) shall be paid within ten (10) days from the date on which Buyer makes written demand therefor.

(d) Within thirty (30) days after the date of any payment of Taxes, each Seller (or any Person making such payment on behalf of such Seller) shall furnish to Buyer for its own account a certified copy of the original official receipt evidencing payment thereof.

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(e) For purposes of subsection (e) of this Section 7, the terms “United States” and “United States person” shall have the meanings specified in Section 7701 of the Internal Revenue Code. Each Buyer (including for avoidance of doubt any assignee, successor or participant) that either (i) is not incorporated under the laws of the United States, any State thereof, or the District of Columbia or (ii) whose name does not include “Incorporated,” “Inc.,” “Corporation,” “Corp.,” “P.C.,” “insurance company,” or “assurance company” (a “Non-Exempt Buyer”) shall deliver or cause to be delivered to Sellers the following properly completed and duly executed documents:

(i) in the case of a Non-Exempt Buyer that is not a United States person, a complete and executed (x) U.S. Internal Revenue Form W-8BEN with Part II completed in which Buyer claims the benefits of a tax treaty with the United States providing for a zero or reduced rate of withholding (or any successor forms thereto), including all appropriate attachments or (y) a U.S. Internal Revenue Service Form W-8ECI (or any successor forms thereto); or

(ii) in the case of an individual, (x) a complete and executed U.S. Internal Revenue Service Form W-8BEN (or any successor forms thereto) and a certificate substantially in the form of Exhibit D (a “Section 7 Certificate”) or (y) a complete and executed U.S. Internal Revenue Service Form W-9 (or any successor forms thereto); or

(iii) in the case of a Non-Exempt Buyer that is organized under the laws of the United States, any State thereof, or the District of Columbia, a complete and executed U.S. Internal Revenue Service Form W-9 (or any successor forms thereto), including all appropriate attachments; or

(iv) in the case of a Non-Exempt Buyer that (x) is not organized under the laws of the United States, any State thereof, or the District of Columbia and (y) is treated as a corporation for U.S. federal income tax purposes, a complete and executed U.S. Internal Revenue Service Form W-8BEN (or any successor forms thereto) and a Section 7 Certificate; or

(v) in the case of a Non-Exempt Buyer that (A) is treated as a partnership or other non-corporate entity, and (B) is not organized under the laws of the United States, any State thereof, or the District of Columbia, (x)(i) a complete and executed U.S. Internal Revenue Service Form W-8IMY (or any successor forms thereto) (including all required documents and attachments) and (ii) a Section 7 Certificate, and (y) without duplication, with respect to each of its beneficial owners and the beneficial owners of such beneficial owners looking through chains of owners to individuals or entities that are treated as corporations for U.S. federal income tax purposes (all such owners, “beneficial owners”), the documents that would be required by clause (i), (ii), (iii), (iv), (vi), (vii) and/or this clause (v) with respect to each such beneficial owner if such beneficial owner were Buyer, provided, however, that no such documents will be required with respect to a beneficial owner to the extent the actual Buyer is determined to be in compliance with the requirements for certification on behalf of its beneficial owner as may be provided in applicable U.S. Treasury regulations, or the requirements of this clause (v) are otherwise determined to be unnecessary, all such determinations under this clause (v) to be made in the sole discretion of Sellers, provided, however, that Buyer shall be provided an opportunity to establish such compliance as reasonable; or

(vi) in the case of a Non-Exempt Buyer that is disregarded for U.S. federal income tax purposes, the document that would be required by clause (i), (ii), (iii), (iv), (v), (vii) and/or this clause (vi) of this Section 7(e) with respect to its beneficial owner if such beneficial owner were Buyer; or

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(vii) in the case of a Non-Exempt Buyer that (A) is not a United States person and (B) is acting in the capacity as an “intermediary” (as defined in U.S. Treasury Regulations), (x)(i) a U.S. Internal Revenue Service Form W-8IMY (or any successor form thereto) (including all required documents and attachments) and (ii) a Section 7 Certificate, and (y) if the intermediary is a “non-qualified intermediary” (as defined in U.S. Treasury Regulations), from each person upon whose behalf the “non-qualified intermediary” is acting the documents that would be required by clause (i), (ii), (iii), (iv), (v), (vi), and/or this clause (vii) with respect to each such person if each such person were Buyer.

If the forms referred to above in this Section 7(e) that are provided by a Buyer at the time such Buyer first becomes a party to this Agreement or, with respect to a grant of a participation, the effective date thereof, indicate a United States interest withholding tax rate in excess of zero, withholding tax at such rate shall be treated as Taxes other than “Non-Excluded Taxes” (“Excluded Taxes”) and shall not qualify as Non-Excluded Taxes unless and until such Buyer provides the appropriate form certifying that a lesser rate applies, whereupon withholding tax at such lesser rate shall be considered Excluded Taxes solely for the periods governed by such form. If, however, on the date a Person becomes an assignee, successor or participant to this Agreement, Buyer transferor was entitled to indemnification or additional amounts under this Section 7, then Buyer assignee, successor or participant shall be entitled to indemnification or additional amounts to the extent (and only to the extent), that Buyer transferor was entitled to such indemnification or additional amounts for Non-Excluded Taxes, and Buyer assignee, successor or participant shall be entitled to additional indemnification or additional amounts for any other or additional Non-Excluded Taxes.

(f) For any period with respect to which Buyer has failed to provide Sellers with the appropriate form, certificate or other document described in subsection (e) of this Section 7 (other than (i) if such failure is due to a change in any applicable Requirement of Law, or in the interpretation or application thereof, occurring after the date on which a form, certificate or other document originally was required to be provided, (ii) if such form, certificate or other document otherwise is not required under subsection (e) of this Section 7, or (iii) if it is legally inadvisable or otherwise commercially disadvantageous for such Buyer to deliver such form, certificate or other document), Buyer shall not be entitled to indemnification or additional amounts under subsection (a) or (c) of this Section 7 with respect to Non-Excluded Taxes imposed by the United States by reason of such failure; provided, however, that should Buyer become subject to Non-Excluded Taxes because of its failure to deliver a form, certificate or other document required hereunder, Sellers shall take such steps as such Buyer shall reasonably request, to assist such Buyer in recovering such Non-Excluded Taxes.

(g) Without prejudice to the survival of any other agreement of any Seller hereunder, the agreements and obligations of each Seller contained in this Section 7 shall survive the termination of this Agreement. Nothing contained in this Section 7 shall require Buyer to make available any of its tax returns or any other information that it deems to be confidential or proprietary.

(h) Each party to this Agreement acknowledges that it is its intent for purposes of U.S. federal, state and local income and franchise taxes, to treat the Transaction as indebtedness of Sellers that is secured by the Purchased Mortgage Loans and the Purchased Mortgage Loans as owned by Sellers for federal income tax purposes in the absence of an exercise by Buyer of its remedies following the occurrence of an Event of

**Default by Sellers.** All parties to this Agreement agree to such treatment and agree to take no action inconsistent with this treatment, unless required by law.

**SECTION 8. SECURITY INTEREST; BUYER'S APPOINTMENT AS ATTORNEY-IN-FACT**

(a) **Security Interest.** On each Purchase Date, each Seller hereby sells, assigns and conveys all rights, title, and interests in the Purchased Mortgage Loans identified on the related Mortgage Loan Schedule, including the related Mortgage File, Servicing Rights, and all Income therefrom. Although the parties intend that all Transactions hereunder be sales and purchases and not loans, in the event any such Transactions are deemed to be loans, and in any event each Seller hereby pledges to Buyer as security for the performance by Sellers of the Obligations and hereby grants, assigns and pledges to Buyer a fully perfected first priority security interest in all of such Seller's right, title and interest in, to and under the Purchased Mortgage Loans, the Records and all Servicing Rights related to the Purchased Mortgage Loans, the Facility Documents (to the extent such Facility Documents and such Seller's rights thereunder relate to the Purchased Mortgage Loans), any Property relating to any Purchased Mortgage Loan or the related Mortgaged Property, any Takeout Commitments relating to any Purchased Mortgage Loan, any Closing Protection Letter relating to any Purchased Mortgage Loan, all insurance policies and insurance proceeds relating to any Purchased Mortgage Loan or the related Mortgaged Property, including, but not limited to, any payments or proceeds under any related primary insurance or hazard insurance, any Income relating to any Purchased Mortgage Loan, the Custodial Account, the Reserve Amount, the Reserve Account, the Inbound Account, the Haircut Account, any Hedge Agreements relating to any Purchased Mortgage Loan, and any other contract rights, deposit accounts (including any interest of a Seller in escrow accounts) and any other payments, rights to payment (including payments of interest or finance charges) and general intangibles to the extent that the foregoing relates to any Purchased Mortgage Loan and any other assets relating to the Purchased Mortgage Loans (including, without limitation, any other deposit accounts) or any interest in the Purchased Mortgage Loans, all collateral under any other secured debt facility now existing or hereafter entered into between such Seller on the one hand and Buyer or Buyer's Affiliates on the other, and any and all replacements or substitutions for, proceeds (including the related securitization proceeds) of, distributions on, and any other property, rights, title or interests as are specified on a Mortgage Loan Schedule and/or Transaction Request and/or in the MetLife Warehouse Electronic System with respect to, any of the foregoing, in all instances whether now owned or hereafter acquired, now existing or hereafter created and wherever located (collectively, the “Repurchase Assets”). To the extent that any Repurchase Asset is of a type that does not relate to specific Mortgage Loans, Mortgage File and the Servicing Rights, Buyer shall have purchase the applicable Seller's pro rata interest therein to the extent of the applicable Mortgage Loans, Mortgage File and the Servicing Rights interest therein, but the entirety of the applicable Seller's interest therein shall constitute collateral securing the payment and performance of the Obligations.

Except as set forth in Section 16, Sellers acknowledge that they have no rights to service the Purchased Mortgage Loans but only have rights as a party to the current Servicing Agreement. Without limiting the generality of the foregoing and in the event that a Seller is deemed to retain any residual Servicing Rights, and for the avoidance of doubt, each Seller grants, assigns and pledges to Buyer a security interest in the Servicing Rights and proceeds related thereto and in all instances, whether now owned or hereafter acquired,

now existing or hereafter created. The foregoing provision is intended to constitute a security agreement or other arrangement or other credit enhancement related to the Agreement and Transactions hereunder as defined under Sections 101(47)(v) and 741(7)(x) of the Bankruptcy Code.

Each Seller hereby authorizes Buyer to file such financing statement or statements relating to the Repurchase Assets and the Servicing Rights as Buyer, at its option, may deem appropriate without the signature of any Seller thereon. Sellers shall pay the filing costs for any financing statement or statements prepared pursuant to this Section 8.

**(b) Buyer's Appointment as Attorney in Fact.** Each Seller hereby irrevocably constitutes and appoints Buyer and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Seller and in the name of such Seller or in its own name, from time to time in Buyer's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be reasonably necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Seller hereby gives Buyer the power and right, on behalf of such Seller, without assent by, but with notice to, such Seller, if an Event of Default shall have occurred and be continuing, to do the following:

(i) in the name of such Seller, or in its own name, or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due with respect to any other Repurchase Assets and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Buyer for the purpose of collecting any and all such moneys due with respect to any other Repurchase Assets whenever payable;

(ii) to pay or discharge taxes and Liens levied or placed on or threatened against the Repurchase Assets;

(iii) (A) in accordance with all Requirements of Law, to direct any party liable for any payment under any Repurchase Assets to make payment of any and all moneys due or to become due thereunder directly to Buyer or as Buyer shall direct; (B) to ask or demand for, collect, receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Repurchase Assets; (C) to sign and endorse any invoices, assignments, verifications, notices and other documents in connection with any Repurchase Assets; (D) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Repurchase Assets or any proceeds thereof and to enforce any other right in respect of any Repurchase Assets; (E) to defend any suit, action or proceeding brought against such Seller with respect to any Repurchase Assets; (F) to settle, compromise or adjust any suit, action or proceeding described in clause (E) above and, in connection therewith, to give such discharges or releases as Buyer may deem appropriate; and (G) generally, to sell, transfer, pledge and make any agreement with respect to or otherwise deal with any Repurchase Assets as fully and completely as though Buyer were the absolute owner thereof for all purposes, and to do, at Buyer's option and Sellers' expense, at any time, and from time to time, all acts and things which Buyer deems necessary to protect, preserve or realize upon the Repurchase Assets and Buyer's Liens thereon and to effect the intent of this Agreement, all as fully and effectively as such Seller might do;

(iv) for the purpose of carrying out the transfer of servicing with respect to the Mortgage Loans from such Seller to a successor servicer appointed by Buyer in its sole discretion and to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish such transfer of servicing, and, without limiting the generality of the foregoing, each Seller hereby gives Buyer the power and right, on behalf of such Seller, without assent by either Seller, to, in the name of such Seller or its own name, or otherwise, prepare and send or cause to be sent "good-bye" letters to all mortgagors under the Mortgage Loans, transferring the servicing of the Mortgage Loans to a successor servicer appointed by Buyer in its sole discretion; and

(v) for the purpose of delivering any notices of sale to Mortgagors or other third parties, including without limitation, those required by law.

Each Seller hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable. In addition to the foregoing, each Seller agrees to execute a Power of Attorney, in the form of Exhibit E hereto, to be delivered on the date hereof.

Each Seller also authorizes Buyer, if an Event of Default shall have occurred and be continuing, from time to time, to execute, in connection with any sale provided for in Section 14 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Repurchase Assets.

The powers conferred on Buyer hereunder are solely to protect Buyer's interests in the Repurchase Assets and shall not impose any duty upon it to exercise any such powers. Buyer shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to Sellers for any act or failure to act hereunder, except for its or their own gross negligence or willful misconduct.

If an Event of Default shall have occurred and be continuing, Buyer shall be entitled to all remedies available to a secured creditor under the Uniform Commercial Code and shall have the right to apply the Repurchase Assets or any proceeds therefrom to all Obligations.

**SECTION 9. PAYMENT, TRANSFER; ACCOUNTS AND CUSTODY**

**(a) Buyer's Account.** Unless otherwise mutually agreed in writing, all transfers of funds to be made by Sellers hereunder shall be made in Dollars, in immediately available funds, without deduction, set off or counterclaim, to Buyer at the account maintained and indicated by Buyer not later than 3:00 p.m. New York City time, on the date on which such payment shall become due (and each such payment made after such time shall be deemed to have been made on the next succeeding Business Day). Each Seller acknowledges that it has no rights of withdrawal from the foregoing account.



(b) **Remittance of Purchase Price.** On the Purchase Date for each Transaction, ownership of the Purchased Mortgage Loans shall be transferred to Buyer or its designee against the simultaneous transfer of the Purchase Price to the applicable the Settlement Agent. With respect to the Purchased Mortgage Loans being sold by a Seller on a Purchase Date, such Seller hereby sells, transfers, conveys and assigns to Buyer or its designee without recourse, but subject to the terms of this Agreement, all the right, title and interest of a Seller in and to the Purchased Mortgage Loans, including the related Mortgage File and Servicing Rights, all right, title and interest in and to the Income therefrom. Buyer

may confirm that the Initial Haircut Account Funded Amount has been deposited into the Haircut Account prior to its remittance of any amounts in accordance herewith. Subject to Buyer's verification of necessary cleared funds in the Haircut Account, Buyer shall remit to the Settlement Agent the full amount of the outstanding principal balance of such Purchased Mortgage Loan and shall withdraw and retain from the Haircut Account, the Haircut Amount.

(c) **Reserve Account.** Excel shall establish and maintain a Reserve Account identified in the Pricing Letter, in the form of a deposit account. Buyer shall have exclusive withdrawal rights from such Reserve Account. The Reserve Account shall be established with MetLife Bank, N.A. On or prior to the initial Purchase Date, Excel shall deposit an amount equal to the Minimum Reserve Amount. Funds deposited in the Reserve Account may be transferred as set forth herein. Any interest or other earnings on the investment of funds held in the Reserve Account shall be deposited in the Reserve Account, subject to withdrawal pursuant hereto. The Reserve Amount shall be held as cash margin and collateral for all Obligations (and not merely those of Excel) under this Agreement. Without limiting the generality of the foregoing, in the event that an Event of Default exists, Buyer shall be entitled to use any or all of the Reserve Amount to cure such circumstance or otherwise exercise remedies available to Buyer without prior notice to, or consent from, Excel.

(d) **Inbound Account.** Sellers shall establish and maintain an Inbound Account identified in the Pricing Letter, in the form of a deposit account. The Inbound Account shall be established with MetLife Bank, N.A. Buyer shall have exclusive withdrawal rights from such Inbound Account. Funds deposited in the Inbound Account may be transferred as set forth herein. Any interest or other earnings on the investment of funds held in the Inbound Account shall be deposited in the Inbound Account, subject to withdrawal pursuant hereto. All amounts on deposit in the Inbound Account shall be held as cash margin and collateral for all Obligations under this Agreement (such amount, to the extent not applied to Obligations under the Agreement, the "Repurchase Proceeds"). In connection with any repurchase or purchase by a Takeout Investor of a Purchased Mortgage Loan, Sellers shall direct remittance of the proceeds therefor into the Inbound Account. Sellers shall be required to comply with all requirements in connection with any repurchase and remittance into the Inbound Account. Upon receipt of any Repurchase Proceeds in the Inbound Account, Buyer shall apply such Repurchase Proceeds to the Repurchase Price for the related Purchased Mortgage Loans. Any Repurchase Proceeds in excess of the Repurchase Price for the related Purchased Mortgage Loans shall be remitted to the Haircut Account, for application as contemplated pursuant to Section 9(e). Without limiting the generality of the foregoing, in the event that an Event of Default exists, Buyer shall be entitled to use any or all of the Repurchase Proceeds to cure such circumstance or otherwise exercise remedies available to Buyer without prior notice to, or consent from, Sellers.

(e) **Haircut Account.** Sellers shall establish and maintain a Haircut Account identified in the Pricing Letter, in the form of a deposit account. The Haircut Account shall be established with MetLife Bank, N.A. Buyer shall have exclusive withdrawal rights from such Haircut Account. Any interest or other earnings on the investment of funds held in the Haircut Account shall be deposited in the Haircut Account, subject to withdrawal pursuant hereto. Buyer is hereby authorized and instructed by Sellers to withdraw from the Haircut Account any and all amounts contemplated herein. On each

Purchase Date, Sellers shall deposit the Initial Haircut Account Funded Amount into the Haircut Account. Upon purchase by Buyer of the related Purchased Mortgage Loan, Buyer shall withdraw the Haircut Amount to reimburse itself for the difference between the actual amount remitted by Buyer on the Purchase Date on account of the Purchased Mortgage Loan and the Purchase Price for such Purchased Mortgage Loan. Upon repurchase by the applicable Seller, or purchase by a Takeout Investor, of any Purchased Mortgage Loan, if there remain on deposit in the Inbound Account Excess Proceeds with respect to such Mortgage Loan, then Buyer shall remit the Excess Proceeds to the Haircut Account and such Excess Proceeds shall be added to the Net Account Funded Amount for such Mortgage Loan. Upon repurchase by the applicable Seller, or purchase by a Takeout Investor, of any Purchased Mortgage Loan, if there exists in the Inbound Account Shortfall Proceeds with respect to such Mortgage Loan, then Buyer may withdraw from the Haircut Account the amount of any Shortfall Proceeds and such amount shall be deducted from the Net Account Funded Amount. In addition to the foregoing, Buyer shall be entitled to deduct and withdraw from the Haircut Account all Warehouse Fees. To the extent that, following application of all deposits and withdrawals as contemplated herein with respect to a Purchased Mortgage Loan that is repurchased by a Seller or purchased by a Takeout Investor, (i) the Net Account Funded Amount for any such Mortgage Loan is a positive number, then such Net Account Funded Amount for such Mortgage Loan shall, subject to this section, be available for remittance to the applicable Seller upon written request therefor; and (ii) the Net Account Funded Amount for any such repurchased Mortgage Loan is a negative number, then Sellers shall promptly remit to Buyer the amount of such Net Account Funded Amount for such Mortgage Loan. Without limiting the foregoing, to the extent that the Net Account Funded Amount for any repurchased Mortgage Loan is a negative number, Buyer shall be entitled to withdraw, retain and apply any amounts on deposit in the Haircut Account up to the amount of such negative Net Account Funded Amount. To the extent that the aggregate Net Account Funded Amounts (net of any amounts withdrawn as contemplated herein) for all repurchased Mortgage Loans exceeds the Surplus Amount, then Sellers may, no more than once per Business Day, deliver a written request prior to 2:00 p.m. (New York Time) for Buyer to remit any amount in excess of the Surplus Amount to a Seller. To the extent that there exists no Default, Buyer shall, upon receipt of such written request, remit any such amount in excess of the Surplus Amount to the specified Seller. Any interest or other earnings on the investment of funds deposited in the Haircut Account shall be deposited in the Haircut Account, subject to withdrawal pursuant hereto. Without limiting the generality of the foregoing, in the event that a Margin Call or other Default exists, Buyer shall be entitled to use any or all of the amounts on deposit in the Haircut Account to cure such circumstance or otherwise exercise remedies available to Buyer without prior notice to, or consent from, Sellers.

(f) **Commingled Funds.** Buyer may treat all funds from time to time credited to the Inbound Account or the Haircut Account as belonging in whole or in any part to either one of the Sellers, in Buyer's sole discretion, and shall be fully protected, indemnified, defend, and

held harmless by Sellers from any claims, liabilities and expenses (including without limitation, reasonable attorneys' fees and expenses) resulting therefrom or from following the instructions of or relying on any information provided by any Responsible Officer of either of them with respect to any or all of such funds from time to time.

(g) **Fees.** Sellers shall pay in immediately available funds to Buyer all fees, including without limitation, the Warehouse Fees, as and when required hereunder. All such payments shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Buyer at such account designated by Buyer. Without limiting the generality of the foregoing or any other provision of this Agreement, Buyer may withdraw and retain from the Haircut Account any Warehouse Fees due and owing to Buyer.

*SECTION 10. DELIVERY OF DOCUMENTS*

(a) **Custody of Mortgage Files.** In connection with the sale, transfer, conveyance and assignment of Purchased Mortgage Loans, on or prior to each Purchase Date, the applicable Seller shall deliver or cause to be delivered and released to Buyer or its designee the Mortgage File or Wet File, as applicable for the related Purchased Mortgage Loans.

Sellers shall be solely responsible for providing each and every document required for each Mortgage File to Buyer in a timely manner and for completing or correcting any missing, incomplete or inconsistent documents, and Buyer shall not be responsible or liable for taking any such action, causing Sellers or any other person or entity to do so or notifying any Person that any such action has or has not been taken.

(b) **Release of Mortgage Files.** From time to time as appropriate for the sale or repurchase of any of the Purchased Mortgage Loans, Buyer shall, upon receipt of a request for release through the MetLife Warehouse Electronic System and compliance with the requirements of the MetLife Warehouse Customer Guide, release or cause to be released to the applicable Seller the related Mortgage File or the documents of the related Mortgage File set forth in such request for release.

All Mortgage Files or documents from Mortgage Files released by Buyer to a Seller pursuant to this Section shall be held by such Seller in trust for the benefit of Buyer.

Upon the payment in full, sale or repurchase of any Mortgage Loan, and upon receipt by Buyer of such information through the MetLife Warehouse Electronic System, and subject to Buyer receiving all amounts due on account of the Repurchase Price hereunder, and there existing no Event of Default (unless all Obligations have been paid in full, there are no outstanding Transactions hereunder, and this Agreement has terminated and Buyer has no further commitment to enter into Transactions), Buyer shall promptly release the related Mortgage File to the applicable Seller.

(c) **Purchase By Takeout Investor.** The applicable Seller shall provide to Buyer a completed request for release of documents with respect to the related Mortgage Loans to be purchased by a Takeout Investor through the MetLife Warehouse Electronic System and comply with all other requirements set forth in the MetLife Warehouse Customer Guide. The Mortgage Files relating to the Mortgage Loans included in a request for release shall be sent for delivery by Buyer to the applicable Takeout Investor specified by the applicable Seller to Buyer in the MetLife Warehouse Electronic System; provided that such Mortgage File shall be accompanied by a fully completed Bailee Letter. Buyer shall not deliver any Mortgage File to any potential Takeout Investor unless such Takeout Investor was identified by the applicable Seller to Buyer in the MetLife Warehouse Electronic System.

In the event that a Takeout Investor rejects a Mortgage Loan for purchase pursuant to a Takeout Commitment for any reason whatsoever, the applicable Seller shall promptly notify Buyer via the MetLife Warehouse Electronic System upon receipt of notification from the Takeout Investor.

(d) **Written Instructions as to the method of shipment and shipper(s)** that Buyer is directed to utilize in connection with transmission of Mortgage Files shall be delivered by the applicable Seller to Buyer prior to any shipment of any Mortgage Files hereunder. Buyer will arrange for the provision of such services at the sole cost and expense of Sellers, the fees of which shall be billed to Sellers and paid by Sellers as part of the Warehouse Fees. In the absence of Written Instructions from the applicable Seller, Buyer shall not ship the related Mortgage Files.

*SECTION 11. REPRESENTATIONS*

Each Seller, jointly and severally, represents and warrants to Buyer that as of the Purchase Date for any Purchased Mortgage Loans by Buyer from a Seller and as of the date of this Agreement and any Transaction hereunder and at all times while the Facility Documents are in full force and effect and/or any Transaction hereunder is outstanding:

(a) **Acting as Principal.** Sellers will engage in such Transactions as principal (or, if agreed in writing in advance of any Transaction by the other party hereto, as agent for a disclosed principal).

(b) **No Broker.** Sellers have not dealt with any broker (excluding any third-party mortgage broker any payments to which are the sole responsibility of Sellers), investment banker, agent, or other person, except for Buyer, who may be entitled to any commission or compensation in connection with the sale of Purchased Mortgage Loans pursuant to this Agreement.

(c) **Financial Statements.** The Financial Reporting Party has heretofore furnished to Buyer a copy of its (a) consolidated balance sheet and the consolidated balance sheets of its consolidated Subsidiaries for the fiscal year ended the Annual Financial Statement Date and the related consolidated statements of income and retained earnings and of cash flows for the Financial Reporting Party and its consolidated Subsidiaries for such fiscal year, setting forth in each case in comparative form the figures for the previous year, with the opinion thereon of an Approved CPA and (b) consolidated balance sheet and the consolidated balance sheets of its consolidated Subsidiaries for each of the monthly period(s) of the Financial Reporting Party up until Monthly Financial Statement Date, and the related consolidated statements of income and retained earnings and of cash flows for the Financial Reporting Party and its consolidated Subsidiaries for such monthly period(s), setting forth in

each case in comparative form the figures for the previous year. All such Financial Statements are complete and correct and fairly present, in all material respects, the consolidated financial condition of the Financial Reporting Party and its Subsidiaries and the consolidated results of their operations as at such dates and for such monthly periods, all in accordance with GAAP applied on a consistent basis (excluding normal year-end adjustments). Since the Annual Financial Statement Date, there has been no material adverse change in the consolidated business, operations or financial condition of the Financial Reporting Party and its consolidated Subsidiaries taken as a whole from that set forth in said Financial Statements nor is any Seller Party aware of any state of facts which (without notice or the lapse of time) would reasonably be expected to result in any such

material adverse change or would reasonably be expected to have a Material Adverse Effect. The Financial Reporting Party does not have, on the Annual Financial Statement Date, any material liabilities, direct or indirect, fixed or contingent, matured or unmatured, known or unknown, or liabilities for taxes, long-term leases or unusual forward or long-term commitments not disclosed by, or reserved against in, said balance sheet and related statements, and at the present time there are no material unrealized or anticipated losses from any loans, advances or other commitments of the Financial Reporting Party except as heretofore disclosed to Buyer in writing.

(d) **Organization, Etc.** Each Seller Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Each Seller Party (a) has all requisite corporate or other power, and has all governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted, except where the lack of such licenses, authorizations, consents and approvals would not be reasonably likely to have a Material Adverse Effect; (b) is qualified to do business and is in good standing in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary, except where failure so to qualify would not be reasonably likely (either individually or in the aggregate) to have a Material Adverse Effect; and (c) has full power and authority to execute, deliver and perform its obligations under the Facility Documents. Schedule 4 to the Pricing Letter lists all holders of stock of and other equity interests in each Seller Party, and the amounts and types of shares held by each of them. Except as set forth on Schedule 4 to the Pricing Letter, there are no agreements of any kind relating to the issuance of any shares of any Seller Party, or any convertible or exchangeable securities or any options, warrants or other rights relating to the stock of or other equity interests in any Seller Party.

(e) **Authorization, Compliance, Approvals.** The execution and delivery of, and the performance by each Seller Party of its obligations under, the Facility Documents to which it is a party (a) are within such Seller Party's powers, (b) have been duly authorized by all requisite action on the part of such Seller Party, (c) do not violate any provision of any applicable Requirement of Law, rule or regulation, or any order, writ, injunction or decree of any court or other Governmental Authority, or its organizational documents, (d) do not violate any indenture, agreement, document or instrument to which such Seller Party or any of its Subsidiaries is a party, or by which any of them or any of their respective properties or any of the Repurchase Assets is bound or to which any of them is subject and (e) are not in conflict with, do not result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by any Facility Document, result in the creation or imposition of any Lien upon any of the property or assets of such Seller Party or any of its Subsidiaries pursuant to, any such indenture, agreement, document or instrument. No Seller Party is required to obtain any consent, approval or authorization from, or to file any declaration or statement with, any Governmental Authority in connection with or as a condition to the consummation of the Transactions contemplated herein and the execution, delivery or performance of the Facility Documents to which it is a party. With respect to any and all Records or Electronic Records submitted or transmitted to Buyer including, but not limited to, fax copies of Records or Electronic Records, each Seller represents and warrants that any party who submitted or transmitted Records or Electronic Records or who submitted or transmitted Records or Electronic Records containing such Seller's signature or such Seller's Electronic Signature was authorized to do so.

(f) **Litigation.** There are no actions, suits, arbitrations, investigations (including, without limitation, any of the foregoing which are pending or to any Seller Party's knowledge threatened) or other legal or arbitrable proceedings affecting Seller Party or any of its Subsidiaries or affecting any of the Repurchase Assets or any of the other properties of Seller Party before any Governmental Authority which (i) questions or challenges the validity or enforceability of the Facility Documents or any action to be taken in connection with the transactions contemplated hereby, (ii) makes a claim or claims in an aggregate amount greater than the Litigation Threshold, (iii) individually or in the aggregate, if adversely determined, would have a Material Adverse Effect, or (iv) requires filing with the SEC in accordance with its regulations or (v) relates to any violation of the Home Ownership and Equity Protection Act or any state, city or district high cost home mortgage or predatory lending law.

(g) **Purchased Mortgage Loans.**

(i) With respect to each Mortgage Loan to be sold hereunder by a Seller to Buyer, such Mortgage Loan is an Eligible Mortgage Loan, including that all applicable representations and warranties set forth in Schedule 1 hereto are true, correct, and complete.

(ii) Neither Seller has assigned, pledged, or otherwise conveyed or encumbered to any other Person any Mortgage Loan to be sold to Buyer hereunder, and immediately prior to the sale of such Mortgage Loan to Buyer, the applicable Seller was the sole owner of such Mortgage Loan and had good and marketable title thereto, free and clear of all Liens, in each case except for Liens to be released simultaneously with the sale to Buyer hereunder.

(iii) The provisions of this Agreement are effective to either constitute a sale of Repurchase Assets to Buyer or to create in favor of Buyer a valid security interest in all right, title and interest of the applicable Seller in, to and under the Repurchase Assets.

(h) **Proper Names; Chief Executive Office/Jurisdiction of Organization.** Neither Seller operates in any jurisdiction under a trade name, division name or name other than those names previously disclosed in writing by Sellers to Buyer. On the Effective Date, each Seller's chief executive office is, and has been, located as specified on the signature page hereto. Each Seller Party's jurisdiction of organization is as set forth in the Pricing Letter.

(i) **Location of Books and Records.** The location where each Seller keeps its books and records, including all computer tapes and records related to the Repurchase Assets is its chief executive office.

(j) **Enforceability.** This Agreement and all of the other Facility Documents executed and delivered by each Seller Party in connection herewith are legal, valid and binding obligations of Seller Party and are enforceable against Seller Party in accordance with their terms except as such enforceability may be limited by (i) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Requirements of Law affecting creditors' rights generally and (ii) general principles of equity.

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(k) **Ability to Perform.** Seller Party does not believe, nor does it have any reason or cause to believe, that it cannot perform each and every covenant contained in the Facility Documents to which it is a party on its part to be performed.

(l) **No Default.** No Default or Event of Default has occurred and is continuing.

(m) **No Adverse Selection.** Sellers have not selected the Purchased Mortgage Loans in a manner so as to adversely affect Buyer's interests.

(n) **Adjusted Tangible Net Worth.** On the initial Purchase Date, the Adjusted Tangible Net Worth of the applicable Seller Party is not less than the Adjusted Tangible Net Worth required of such Seller Party in the Pricing Letter.

(o) **Debt for Borrowed Money.** All credit facilities, repurchase facilities or substantially similar facilities or other debt for borrowed money of each Seller (the "**Debt for Borrowed Money Arrangements**") which are presently in effect and/or outstanding are listed on Schedule 2 to the Pricing Letter and no events of default exist thereunder.

(p) **Accurate and Complete Disclosure.** The information, reports, Financial Statements, exhibits and schedules furnished in writing by or on behalf of each Seller Party to Buyer in connection with the negotiation, preparation or delivery of this Agreement or performance hereof and the other Facility Documents or included herein or therein or delivered pursuant hereto or thereto, when taken as a whole, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading. There is no fact known to any Seller Party, after due inquiry, that would reasonably be expected to have a Material Adverse Effect that has not been disclosed herein, in the other Facility Documents or in a report, Financial Statement, exhibit, schedule, disclosure letter or other writing furnished to Buyer for use in connection with the transactions contemplated hereby or thereby.

(q) **Margin Regulations.** The use of all funds acquired by Sellers under this Agreement will not conflict with or contravene any of Regulations T, U or X promulgated by the Board of Governors of the Federal Reserve System as the same may from time to time be amended, supplemented or otherwise modified.

(r) **Investment Company.** No Seller Party nor any of their respective Subsidiaries is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(s) **Solvency.** As of the date hereof and immediately after giving effect to each Transaction, the fair value of the assets of each Seller is greater than the fair value of the liabilities (including, without limitation, contingent liabilities if and to the extent required to be recorded as a liability on the Financial Statements of such Seller in accordance with GAAP) of such Seller and each Seller is solvent and, after giving effect to the transactions contemplated by this Agreement and the other Facility Documents, will not be rendered insolvent or left with an unreasonably small amount of capital with which to conduct its business and perform its obligations. Neither Seller intends to incur, or believes that it has incurred, debts beyond its ability to pay such debts as they mature. No Seller Party is contemplating the commencement of an insolvency, bankruptcy, liquidation, or consolidation proceeding or the appointment of a receiver, liquidator, conservator, trustee, or similar official in respect of itself or any of its property.

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(t) **ERISA.**

(i) No liability under Section 4062, 4063, 4064 or 4069 of ERISA has been or is expected by any Seller Party to be incurred by such Seller Party or any ERISA Affiliate thereof with respect to any Plan which is a Single-Employer Plan in an amount that could reasonably be expected to have a Material Adverse Effect.

(ii) No Plan which is a Single Employer Plan had an accumulated funding deficiency, whether or not waived, as of the last day of the most recent fiscal year of such Plan ended prior to the date hereof, and no such plan which is subject to Section 412 of the Code failed to meet the requirements of Section 436 of the Code as of such last day. Neither any Seller Party nor any ERISA Affiliate thereof is subject to a Lien in favor of such a Plan as described in Section 430(k) of the Code or Section 303(k) of ERISA.

(iii) Each Plan of any Seller Party, each of its Subsidiaries and each of its ERISA Affiliates is in compliance with the applicable provisions of ERISA and the Code, except where the failure to comply would not result in any Material Adverse Effect.

(iv) No Seller Party nor any of its Subsidiaries has incurred a tax liability under Chapter 43 of the Code or a penalty under Section 502 of ERISA which has not been paid in full, except where the incurrence of such tax or penalty would not result in a Material Adverse Effect.

(v) No Seller Party nor any of its Subsidiaries nor any ERISA Affiliate thereof has incurred or reasonably expects to incur any withdrawal liability under Section 4201 of ERISA as a result of a complete or partial withdrawal from a Multiemployer Plan in an amount that could reasonably be expected to have a Material Adverse Effect.

(u) **Taxes.** Each Seller Party and its Subsidiaries have timely filed all tax returns that are required to be filed by them and have timely paid all Taxes due, except for any such Taxes as are being appropriately contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been provided. There are no Liens for Taxes, except for statutory liens for Taxes not yet due and payable.

(v) **No Reliance.** Each Seller Party has made its own independent decisions to enter into the Facility Documents and each Transaction and as to whether such Transaction is appropriate and proper for it based upon its own judgment and upon advice from such advisors (including without limitation, legal counsel and accountants) as it has deemed necessary. No Seller Party is relying upon any advice from Buyer as to any aspect of the Transactions, including without limitation, the legal, accounting or tax treatment of such Transactions.

(w) **Plan Assets.** No Seller Party is an employee benefit plan as defined in Section 3 of Title I of ERISA, or a plan described in Section 4975(e)(1) of the Code, and the Purchased Mortgage Loans are not “plan assets” within the meaning of 29 CFR §2510.3-101, as modified by Section 3(42) of ERISA, in any Seller Party’s hands and transactions by or with any Seller Party are not subject to any state or local statute regulating investments of, or fiduciary obligations with respect to governmental plans within the meaning of Section 3(32) of ERISA.

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(x) **Agency Approvals.** Excel is a Fannie Mae approved seller/servicer, full direct endorsed FHA mortgagee, and a VA automatic lender. AmeriHome Mortgage Corporation is an approved Fannie Mae, Freddie Mac, and HUD seller/servicer, and approved Ginnie Mae issuer and servicer. To the extent necessary, each Seller is approved by the Secretary of Housing and Urban Development pursuant to Sections 203 and 211 of the National Housing Act. In each such case, Sellers are in good standing, with no event having occurred or a Seller having any reason whatsoever to believe or suspect will occur, including, without limitation, a change in insurance coverage, which would make either Seller unable to comply with the eligibility requirements for maintaining all such applicable approvals or require notification to the relevant Agency.

(y) **Ability to Service Mortgage Loans; Servicing Agreements.** Each Seller has adequate financial standing, servicing facilities, procedures and experienced personnel necessary for the sound servicing of mortgage loans of the same types as may from time to time constitute Purchased Mortgage Loans and in accordance with Accepted Servicing Practices. Neither Seller is a party to any servicing agreements with respect to any of its Mortgage Loans except as set forth on Schedule 5 to the Pricing Letter, true and complete copies of which servicing agreements have been furnished to Buyer. Except as set forth on Schedule 5 of the Pricing Letter, no Purchased Mortgage Loans will be subject to any such servicing agreements.

(z) **Anti-Money Laundering Laws.** Each Seller has complied with all applicable anti-money laundering laws and regulations, including without limitation the USA Patriot Act of 2001 (collectively, the “Anti-Money Laundering Laws”); each Seller has established an anti-money laundering compliance program to the extent required by the Anti-Money Laundering Laws, has conducted to the extent required the requisite due diligence in connection with the origination of each Mortgage Loan for purposes of the Anti-Money Laundering Laws, including with respect to the legitimacy of the applicable Mortgagor and the origin of the assets used by the said Mortgagor to purchase the property in question, and maintains, and will maintain, to the extent required, sufficient information to identify the applicable Mortgagor for purposes of the Anti-Money Laundering Laws.

(aa) **No Prohibited Persons.** No Seller Party nor any of their respective Affiliates, officers, directors, partners or members, is an entity or person (or to any Seller Party’s knowledge, owned or controlled by an entity or person): (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 (“EO13224”); (ii) whose name appears on the United States Treasury Department’s Office of Foreign Assets Control (“OFAC”) most current list of “Specifically Designated National and Blocked Persons” (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/ofac/t11sdn.pdf>); (iii) who commits, threatens to commit or supports “terrorism”, as that term is defined in EO13224; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses (i) through (iv) above are herein referred to as a “Prohibited Person”).

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(bb) **[Reserved.]**

(cc) **Hedging.** Each Seller has established (or otherwise works with an Affiliate that has established) a formal hedging policy and program, which is managed by an Approved Hedging Manager, with respect to all of its Mortgage Loans, other than those in respect of which such Seller has entered into a Takeout Commitment.

(dd) **Subordinated Debt.** Neither Seller has Subordinated Debt except as described in Schedule 6 to the Pricing Letter, and, if a Seller has any Subordinated Debt, such Seller has provided Buyer with true and complete copies of all documents evidencing such Subordinated Debt.

(ee) **MERS.** Each Seller shall and shall cause each Subservicer to (i) be a member in good standing of MERS, and (ii) comply in all material respects with the rules and regulations of MERS in connection with all Purchased Mortgage Loans.

## SECTION 12. COVENANTS

On and as of the date of this Agreement and each Purchase Date and at all times until this Agreement is no longer in force, each Seller covenants, jointly and severally, as follows:

(a) **Preservation of Existence; Compliance with Law.** Each Seller shall:

(i) Preserve and maintain its legal existence and all of its material rights, privileges, licenses and franchises necessary for the operation of its business;

(ii) Comply with the requirements of all applicable Requirements of Law, rules, regulations and orders, whether now in effect or hereafter enacted or promulgated by any applicable Governmental Authority (including, without limitation, all environmental laws);

(iii) Maintain all licenses, permits or other approvals necessary for Seller to conduct its business and to perform its obligations under the Facility Documents, and conduct its business strictly in accordance with applicable Requirements of Law;

(iv) Keep adequate records and books of account, in which complete entries will be made in accordance with GAAP consistently applied; and

(v) Permit representatives of Buyer, upon reasonable notice (unless an Event of Default shall have occurred and is continuing, in which case, no prior notice shall be required), during normal business hours, to examine, copy and make extracts from its books and records, to inspect any of its Properties, and to discuss its business and affairs with its officers, all to the extent reasonably requested by Buyer, subject to the provisions set forth in Section 17 hereof.

**(b) Taxes. Each Seller shall timely file all tax returns that are required to be filed by it and shall timely pay all Taxes due, except for any such Taxes as are being appropriately contested in good faith by appropriate proceedings diligently conducted with respect to which adequate reserves have been provided.**

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**(c) Notice of Proceedings or Adverse Change. Each Seller shall give notice to Buyer of any of the following within the specified time:**

(i) Immediately after a Responsible Officer of such Seller has any knowledge of:

(A) the occurrence of any Default or Event of Default;

(B) any (x) default or event of default under any Indebtedness of any Seller, (y) litigation, investigation, regulatory action or proceeding that is pending or threatened by or against any Seller in any federal or state court or before any Governmental Authority which, if not cured or if adversely determined, would reasonably be expected to have a Material Adverse Effect or constitute a Default or Event of Default, or (z) any Material Adverse Effect with respect to any Seller;

(C) any litigation or proceeding of which any Seller has knowledge that is pending or threatened against (x) any Seller in which the amount involved exceeds the Litigation Threshold, in which injunctive or similar relief is sought, or which would reasonably be expected to have a Material Adverse Effect, and (y) any litigation or proceeding that is pending or threatened in connection with any of the Repurchase Assets, which, if adversely determined, would reasonably be expected to have a Material Adverse Effect; or

(D) any Lien or security interest (other than security interests created hereby or under any other Facility Document) on, or claim asserted against, any of the Repurchase Assets.

(ii) As soon as reasonably possible, notice of any of the following events:

(A) *a change in the insurance coverage of any Seller required hereunder, with a copy of evidence of same attached;*

(B) *any material change in accounting policies or financial reporting practices of any Seller;*

(C) *any (x) Change in Control, or any cumulative aggregate change of 10% or more in direct or indirect ownership or controlling interest of the direct or indirect owners of any Seller Party, or (y) person (other than a current owner) obtaining a direct or indirect ownership interest (or right to obtain a direct or indirect ownership interest) of 10% or more in any Seller Party; or*

(D) *any other event, circumstance or condition that has resulted, or has a possibility of resulting, in a Material Adverse Effect.*

(iii) Promptly, but no later than two (2) Business Days after Seller Party receives any of the same, deliver to Buyer a true, complete, and correct copy of any material schedule, report, notice, or any other material document delivered to Seller Party by any Person pursuant to, or in connection with, any of the Repurchase Assets, with any of the foregoing which is non-material to be delivered to Buyer promptly upon request.

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(iv) Promptly, but no later than two (2) Business Days after a Seller receives notice of the same, (A) any Mortgage Loan submitted for inclusion into an Agency security and rejected by that Agency for inclusion in such Agency security, (B) any Mortgage Loan submitted to a Takeout Investor (whole loan or securitization) and rejected for purchase by such Takeout Investor, or (C) any Purchased Mortgage Loan ceased to be an Eligible Mortgage Loan, including that any applicable representations and warranties set forth in Schedule 1 hereto ceases to be true, correct, and complete.

**(d) Financial Reporting. Each Seller shall maintain a system of accounting established and administered in accordance with GAAP, and furnish to Buyer (with all Financial Statements delivered hereunder to be separately provided with respect to any Financial Reporting Party which is consolidated into any other Financial Reporting Party):**

(i) Within ninety (90) days after the close of each fiscal year, Financial Statements of each Seller Party, including a statement of income and changes in shareholders' equity, for such year, and the related balance sheet as at the end of such year, all in reasonable detail and accompanied by an opinion of an accounting firm as to said Financial Statements;

(ii) Within thirty (30) days after the end of each fiscal quarter (including the fourth fiscal quarter), the unaudited balance sheets of each Financial Reporting Party as at the end of such period and the related unaudited consolidated statements of income and retained earnings and of cash flows for the Financial Reporting Party for such period and the portion of the fiscal year through the end of such period, subject, however, to year end adjustments, such reports shall include, without limitation, in clearly delineated line items, the result of each Seller's hedging activities for the applicable period;

(iii) Simultaneously with the furnishing of each of the Financial Statements to be delivered pursuant to subsection (i)-(ii) above, a certificate in the form of Exhibit A to the Pricing Letter and certified by an executive officer of the Financial Reporting Party, and (y) a Servicing Rights Appraisal (*provided, however, may elect not to deliver a current Servicing Rights Appraisal as required herein, in which event the MSR Value shall for all purposes of the Facility Documents be treated as zero*). All Servicing Rights Appraisals shall be delivered to Buyer no later than thirty (30) days after the applicable "as of" date therefor. Buyer reserves the right to require at any time that Sellers (or either of them) obtain and deliver current Servicing Rights Appraisals during the pendency of a Default or an Event of Default;

(iv) If applicable, copies of any 10-Ks, 10-Qs, registration statements and other "corporate finance" SEC filings (other than 8-Ks) by Seller Parties' public company parent within 5 Business Days after their filing with the SEC; provided, that, Seller Parties' public company parent will provide Buyer with a copy of its annual 10-K filed with the SEC no later than 90 days after the end of the related fiscal year; and

(v) Promptly, from time to time, such other information regarding the business affairs, operations and financial condition of any Seller as Buyer may reasonably request.

(e) **Visitation and Inspection Rights.** Each Seller shall permit Buyer to inspect, and take all other actions permitted under Section 17 hereof.

(f) **Reimbursement of Expenses.** The Sellers shall promptly reimburse Buyer for all expenses as the same are incurred by Buyer as required by Sections 15 (b) and 17 hereof.

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(g) **Further Assurances.** Each Seller shall execute and deliver to Buyer all further documents, financing statements, agreements and instruments, and take all further actions that may be required under applicable Requirements of Law, or that Buyer may reasonably request, in order to effectuate the transactions contemplated by this Agreement and the Facility Documents or, without limiting any of the foregoing, to grant, preserve, protect and perfect the validity and first priority of the security interests created or intended to be created hereby. Each Seller shall do all things necessary to preserve the Repurchase Assets so that they remain subject to a first priority perfected security interest hereunder. Without limiting the foregoing, each Seller will comply with all applicable Requirements of Law of any Governmental Authority and cause the Repurchase Assets to comply with all applicable Requirements of Law. Each Seller will not allow any default for which such Seller is responsible to occur under any Repurchase Assets or any Facility Document and such Seller shall fully perform or cause to be performed when due all of its obligations under any Repurchase Assets or the Facility Documents.

(h) **True and Correct Information.** All information, reports, exhibits, schedules, Financial Statements or certificates of each Seller or any Affiliates thereof or any of their officers furnished to Buyer hereunder and during Buyer's diligence of each Seller will be true and complete and will not omit to disclose any material facts necessary to make the statements therein or therein, in light of the circumstances in which they are made, not misleading. All required Financial Statements, information and reports delivered by any Seller to Buyer pursuant to this Agreement shall be prepared in accordance with GAAP, or as applicable, to SEC filings, the appropriate SEC accounting requirements.

(i) **ERISA Events.**

(i) Promptly upon becoming aware of the occurrence of any Event of ERISA Termination which together with all other Events of ERISA Termination occurring within the prior 12 months involve a payment of money by or a potential aggregate liability of any Seller Party or any ERISA Affiliate thereof or any combination of such entities in excess of the ERISA Liability Threshold, a Seller shall give Buyer a written notice specifying the nature thereof, what action such Seller Party or any ERISA Affiliate thereof has taken and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto;

(ii) Promptly upon receipt thereof, each Seller shall furnish to Buyer copies of (i) all notices received by such Seller or any ERISA Affiliate thereof of the PBGC's intent to terminate any Plan or to have a trustee appointed to administer any Plan; (ii) all notices received by any Seller or any ERISA Affiliate thereof from the sponsor of a Multiemployer Plan pursuant to Section 4202 of ERISA involving withdrawal liability in excess of the ERISA Liability Threshold; and (iii) all funding waiver requests filed by any Seller or any ERISA Affiliate thereof with the Internal Revenue Service with respect to any Plan, the accrued benefits of which exceed the present value of the plan assets as of the date the waiver request is filed, and all communications received by any Seller or any ERISA Affiliate thereof from the Internal Revenue Service with respect to any such funding waiver request.

(j) **Financial Condition Covenants.** The applicable Seller shall comply with the Financial Condition Covenants set forth in the Pricing Letter.

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(k) **Hedging.** Each Seller shall at all times maintain, implement, and adhere to a formal hedging policy and program, acceptable to Buyer, using appropriate Hedge Agreements, covering all of such Seller's Mortgage Loans, other than those subject to a Takeout Commitment, which is contractually managed by an Approved Hedging Manager. Each Seller shall hedge all Purchased Mortgage Loans with



Takeout Commitments or in accordance with such Seller's hedging policies. Each Seller shall review its hedging policies periodically to confirm that they are being complied with in all material respects and are adequate to meet such Seller's business objectives. In the event a Seller makes any material amendment or modification to the hedging policies, such Seller shall promptly deliver to Buyer a complete copy of the amended or modified hedging policies. Additionally, Buyer may in its reasonable discretion request a current copy of a Seller's hedging policies at any time. By Wednesday of each week, Sellers shall furnish Buyer with a consolidated hedging report as of the end of the immediately preceding week, to be in such form and to contain such information as shall be specified from time to time by Buyer, including, without limitation, Sellers' then locked pipeline, notional hedge positions, and historical pull-throughs.

(l) **No Adverse Selection.** Sellers shall not select Eligible Mortgage Loans to be sold to Buyer as Purchased Mortgage Loans using any type of adverse selection or other selection criteria which would adversely affect Buyer.

(m) **Servicer Approval.** Sellers shall not cause or permit the Purchased Mortgage Loans to be serviced by any servicer other than a servicer expressly approved in writing by Buyer, which approval shall be deemed granted by Buyer with respect to Sellers and the initial Subservicer with the execution of this Agreement.

(n) **Insurance.** Each Seller shall maintain Fidelity Insurance in an aggregate amount at least equal to the Fidelity Insurance Requirement. Each Seller shall maintain Fidelity Insurance in respect of its officers, employees and agents, with respect to any claims made in connection with all or any portion of the Repurchase Assets. Sellers shall notify Buyer of any material change in the terms of any such Fidelity Insurance.

(o) **Books and Records.** Each Seller shall, to the extent practicable, maintain and implement administrative and operating procedures (including, without limitation, an ability to recreate records evidencing the Repurchase Assets in the event of the destruction of the originals thereof), and keep and maintain or obtain, as and when required, all documents, books, records and other information reasonably necessary or advisable for the collection of all Repurchase Assets.

(p) **Illegal Activities.** No Seller shall engage in any conduct or activity that could subject its assets to forfeiture or seizure.

(q) **Material Change in Business.** No Seller shall make any material change in the nature of its business as carried on at the date hereof without the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed.

(r) **Limitation on Dividends and Distributions.** No Seller shall make any payment on account of, or set apart assets for, a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of any equity interest of a Seller or for the payment of Subordinated Debt, whether now or hereafter outstanding, or make any other distribution or dividend in respect of any of the foregoing or to any shareholder or equity owner of such Seller, either directly or indirectly, whether in cash or

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property or in obligations of such Seller or any of such Seller's Subsidiaries in any calendar year (i) following the occurrence and during the continuation of a Default, or (ii) in violation of any applicable Subordination Agreement.

(s) **Disposition of Assets; Liens.** Sellers shall not create, incur, assume or suffer to exist any mortgage, pledge, Lien, charge or other encumbrance of any nature whatsoever on any of the Repurchase Assets, whether real, personal or mixed, now or hereafter owned, other than the Liens created in connection with the transactions contemplated by this Agreement; nor shall Sellers cause any of the Purchased Mortgage Loans to be sold, pledged, assigned or transferred.

(t) **Transactions with Affiliates.** Other than ordinary course parent/subsidiary transactions, no Seller shall enter into any transaction, including, without limitation, the purchase, sale, lease or exchange of property or assets or the rendering or accepting of any service with any Affiliate unless such transaction is (i) not otherwise prohibited in this Agreement, (ii) in the ordinary course of such Seller's business and (iii) upon fair and reasonable terms no less favorable to Seller, as the case may be, than it would obtain in a comparable arm's length transaction with a Person which is not an Affiliate.

(u) **ERISA Matters.**

(i) No Seller shall not permit any event or condition which is described in the definition of "Event of ERISA Termination" to occur or exist with respect to any Plan or Multiemployer Plan if such event or condition, together with all other events or conditions described in the definition of Event of ERISA Termination occurring within the prior 12 months, involves the payment of money by or an incurrence of liability of a Seller or any ERISA Affiliate thereof, or any combination of such entities in an amount in excess of the ERISA Liability Threshold.

(ii) No Seller shall be an employee benefit plan as defined in Section 3 of Title I of ERISA, or a plan described in Section 4975(e) (1) of the Code and Seller Party shall not use "plan assets" within the meaning of 29 CFR §2510.3-101, as modified by Section 3(42) of ERISA, to engage in this Agreement or the Transactions hereunder and transactions by or with a Seller are not subject to any state or local statute regulating investments of, or fiduciary obligations with respect to any governmental plans within the meaning of Section 3(32) of ERISA.

(v) **Consolidations, Mergers and Sales of Assets.** No Seller shall (i) consolidate or merge with or into any other Person or (ii) sell, lease or otherwise transfer all or substantially all of its assets to any other Person other than the sale of Mortgage Loans in the ordinary course of business. No Seller shall (i) cause or permit any change to be made in its name, organizational identification number, identity or corporate structure, each as described in Section 11(h) or (ii) change its jurisdiction of organization, unless it shall have provided Buyer thirty (30) days' prior written notice of such change and shall have first taken all action required by Buyer for the purpose of perfecting or protecting the lien and security interest of Buyer established hereunder.

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(w) **Mortgage Loan Reports.** On the Reporting Date or with such greater frequency as requested by Buyer, each Seller will furnish to Buyer monthly electronic Mortgage Loan performance data, including, without limitation, a Mortgage Loan Schedule, delinquency reports, pool analytic reports and static pool reports (i.e., delinquency, foreclosure and net charge off reports) and monthly stratification reports summarizing the characteristics of the Mortgage Loans.

(x) **Underwriting Guidelines.** Without the prior written consent of Buyer, neither Seller shall deviate from its Underwriting Guidelines, as in effect from time to time, in connection with its origination of Purchased Mortgage Loans.

(y) **No Amendment or Compromise.** Without Buyer's prior written consent no Seller or those acting on behalf of a Seller shall amend or modify, or waive any term or condition of, or settle or compromise any claim in respect of, any item of the Mortgage Loans, provided that a Mortgage Loan may be amended or modified if such amendment or modification does not affect the amount or timing of any payment of principal or interest, extend its scheduled maturity date, modify its interest rate, or constitute a cancellation or discharge of its outstanding principal balance and does not materially and adversely affect the security afforded the Mortgaged Property securing the Mortgage Loan.

(z) **Agency Approvals; Servicing.** Sellers shall maintain their respective status and approvals as set forth in Section 11(x), in each case in good standing (each such approval, an "Approval"). Should a Seller, for any reason, cease to possess all such applicable Approvals to the extent necessary, or should notification to the relevant Agency or to HUD, FHA or VA be required, the applicable Seller shall so notify Buyer immediately in writing. Notwithstanding the preceding sentence, each Seller shall take all necessary action to maintain all of its applicable Approvals at all times during the term of this Agreement and each outstanding Transaction.

(aa) **Sharing of Information.** Each Seller hereby allows and consents to Buyer exchanging information related to such Seller's credit and the Transactions hereunder with third party lenders or facility providers and each Seller shall permit each third party lender or facility provider to share such information with Buyer.

### SECTION 13. EVENTS OF DEFAULT

If any of the following events (each an "Event of Default") shall have occurred and be continuing, Buyer shall have the rights set forth in Section 14, as applicable:

(a) **Payment Default.** Any Seller shall default in the payment of (i) any Repurchase Price or Price Differential payable by it hereunder or under any other Facility Document, including, without limitation, the failure to satisfy any Margin Call by the applicable Margin Deadline, (ii) Expenses (and such failure to pay Expenses shall continue for more than 3 Business Days after notice thereof from Buyer to a Seller) or (iii) any other Obligations (and such failure to pay Expenses shall continue for more than 3 Business Days after notice thereof from Buyer to a Seller), when the same shall become due and payable, whether at the due date thereof, or by acceleration or otherwise; or

(b) **Representation and Warranty Breach.** Any representation, warranty or certification made or deemed made herein or in any other Facility Document by a Seller Party or any certificate furnished to Buyer pursuant to the provisions hereof or thereof or any information with respect to the Mortgage Loans furnished in writing by on behalf of a

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Seller shall prove to have been untrue or misleading in any material respect as of the time made or furnished (other than the representations and warranties set forth in Schedule 1, which shall be considered solely for the purpose of determining whether a Purchased Mortgage Loan is or remains an Eligible Mortgage Loan); or

(c) **Immediate Covenant Default.** The failure of a Seller to perform, comply with or observe any term, covenant or agreement applicable to such Seller Party contained in any of Sections 12(a)(Preservation of Existence; Compliance with Law); (h)(True and Correct Information); (j)(Financial Condition Covenants); (l)(No Adverse Selection); (p)(Illegal Activities); (q)(Material Change in Business); (r)(Limitation on Dividends and Distributions); (s)(Disposition of Assets; Liens); (v)(Consolidations, Mergers and Sales of Assets); or (z)(Agency Approvals; Servicing); or

(d) **Additional Covenant Defaults.** A Seller shall fail to observe or perform any other covenant or agreement contained in this Agreement (and not identified in clause (c) of Section 13) or any other Facility Document, and if such default shall be capable of being remedied, and such failure to observe or perform shall continue unremedied for a period of 10 Business Days; or

(e) **Judgments.** A judgment or judgments for the payment of money in excess of the Litigation Threshold in the aggregate shall be rendered against a Seller Party by one or more courts, administrative tribunals or other bodies having jurisdiction and the same shall not be satisfied, discharged (or provision shall not be made for such discharge) or bonded, or a stay of execution thereof shall not be procured, within 30 days from the date of entry thereof, and such Seller Party shall not, within said period of 30 days, or such longer period during which execution of the same shall have been stayed or bonded, appeal therefrom and cause the execution thereof to be stayed during such appeal; or

(f) **Cross Default.** Any "event of default" or any other default which permits a demand for, or requires, the early repayment of obligations due by a Seller Party under any agreement (after the expiration of any applicable grace period under any such agreement) relating to any Indebtedness of any Seller Party, or any default in the payment or performance under any Obligation (other than any defaults thereunder which are covered by other provisions of this Section 13) when due (after the expiration of any applicable grace period), if individually, or in the aggregate, the amount thereof exceeds \$1,000,000; or

(g) **Insolvency Event.** An Insolvency Event shall have occurred with respect to a Seller Party; or

(h) **Enforceability.** For any reason this Agreement at any time shall not be in full force and effect in all material respects or shall not be enforceable in all material respects in accordance with its terms, or any Lien granted pursuant thereto shall fail to be perfected and of first priority, or any Person (other than Buyer) shall contest the validity, enforceability, perfection or priority of any Lien granted pursuant thereto, or any party thereto (other than Buyer) shall seek to disaffirm, terminate, limit or reduce its obligations hereunder; or

(i) **Liens.** (i) A Seller shall grant, or suffer to exist, any Lien on any Repurchase Asset (except any Lien in favor of Buyer); or (ii) neither one of the following is true (A) the Repurchase Assets shall have been sold to Buyer, or (B) the Liens contemplated hereby are first priority perfected Liens on the Repurchase Assets in favor of Buyer and are not Liens in favor of any Person other than Buyer; or

(j) **Material Adverse Effect.** Buyer shall have determined that a Material Adverse Effect has occurred.

(k) **ERISA.** (i) any Seller Party shall engage in any “**prohibited transaction**” (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any “**accumulated funding deficiency**” (as defined in Section 304 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of a Seller Party or any ERISA Affiliate, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Seller Party’s Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of Buyer, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Seller Party Plan shall terminate for purposes of Title IV of ERISA, (v) any Seller Party or any ERISA Affiliate shall, or in the reasonable opinion of Buyer is likely to, incur any liability in connection with a withdrawal from, or the insolvency or reorganization of, a Multiemployer Plan or (vi) any other event or condition shall occur or exist with respect to a Seller Party Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect; or

(l) **Change in Control.** A Change in Control of any Seller Party shall have occurred; or

(m) **Going Concern.** Any Financial Reporting Party’s audited Financial Statements or notes thereto or other opinions or conclusions stated therein shall be qualified or limited by reference to the status of Seller Party as a “going concern” or reference of similar import; or

(n) **Repurchases of Mortgage Loans; Defective Mortgage Loans.** The Sellers in the aggregate shall have repurchased in the aggregate greater than the Buy Back Threshold (based upon aggregate unpaid principal balance) of Mortgage Loans (excluding repurchases under warehouse or repurchase facilities) in any 30 day period; or one or more Purchased Mortgage Loans shall be Defective Mortgage Loans and the applicable Seller fails to repurchase such Defective Mortgage Loans within one Business Day ; or

(o) **Investigations.** There shall occur the initiation of any investigation, audit, examination or review of a Seller by (i) an Agency or any Governmental Authority, or (ii) any trade association or consumer advocacy group, in the case of either clause (i) or (ii), relating to the origination, sale or servicing of Mortgage Loans by such Seller or the business operations of such Seller, with the exception of normally scheduled audits or examinations by such Seller’s regulators or applicable Agency, if Buyer reasonably believes that such investigation, audit, examination or review will result in a Material Adverse Effect.

#### SECTION 14. REMEDIES

(a) **If an Event of Default occurs and is continuing, the following rights and remedies are available to Buyer; provided, that an Event of Default shall be deemed to be continuing unless expressly waived by Buyer in writing:**

(i) At the option of Buyer, exercised by written notice to Sellers (which option shall be deemed to have been exercised, even if no notice is given, immediately upon the occurrence of an Insolvency Event of a Seller Party), the Repurchase Date for each Transaction hereunder, if it has not already occurred, shall be deemed immediately to occur. Buyer shall (except upon the occurrence of an Insolvency Event of Seller Party) give notice to Sellers of the exercise of such option as promptly as practicable.

(ii) If Buyer exercises or is deemed to have exercised the option referred to in subsection (a)(i) of this Section,

(A) **Sellers’ obligations in such Transactions to repurchase all Purchased Mortgage Loans, at the Repurchase Price therefor on the Repurchase Date determined in accordance with subsection (a)(i) of this Section, (1) shall thereupon become immediately due and payable and (2) all Income paid after such exercise or deemed exercise shall be retained by Buyer and applied to the aggregate unpaid Repurchase Price and any other amounts owed by Sellers hereunder;**

(B) **to the extent permitted by applicable Requirements of Law, the Repurchase Price with respect to each such Transaction shall be increased by the aggregate amount obtained by daily application of, on a 360 day per year basis for the actual number of days during the period from and including the date of the exercise or deemed exercise of such option to but excluding the date of payment of the Repurchase Price as so increased, (x) the Post-Default Rate in effect following an Event of Default that is continuing to (y) the Repurchase Price for such Transaction as of the Repurchase Date as determined pursuant to subsection (a)(i) of this Section (decreased as of any day by (i) any amounts actually in the possession of Buyer pursuant to clause (C) of this subsection, and (ii) any proceeds from the sale of Purchased Mortgage Loans applied to the Repurchase Price pursuant to subsection (a)(iv) of this Section); and**

(C) **all Income actually received by Buyer pursuant to Section 5 shall be applied to the aggregate unpaid Obligations owed by Seller Parties.**

(iii) Upon the occurrence of one or more Events of Default, Buyer shall have the right to obtain physical possession of all files of Sellers relating to the Purchased Mortgage Loans and the Repurchase Assets and all documents relating to the Purchased Mortgage Loans which are then or may thereafter come into the possession of Sellers or any third party acting for Sellers and Sellers shall deliver to Buyer such assignments as Buyer shall request. Buyer shall be entitled to specific performance of all agreements of Sellers contained in the Facility Documents.

(iv) At any time on the Business Day following notice to Sellers (which notice may be the notice given under subsection (a)(i) of this Section), in the event Sellers have not repurchased all Purchased Mortgage Loans, Buyer may (A) immediately sell, without demand or further notice of any kind, at a public or private sale and at such price or prices as Buyer may deem satisfactory any or all Purchased Mortgage Loans and the Repurchase Assets subject to a

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such Transactions hereunder and apply the proceeds thereof to the aggregate unpaid Repurchase Prices and any other amounts owing by Sellers hereunder or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Mortgage Loans, to give Sellers credit for such Purchased Mortgage Loans and the Repurchase Assets in an amount equal to the Market Value of the Purchased Mortgage Loans against the aggregate unpaid Repurchase Price and any other amounts owing by Sellers hereunder. The proceeds of any disposition of Purchased Mortgage Loans and the Repurchase Assets shall be applied as determined by Buyer in its sole discretion.

(v) Sellers shall be liable to Buyer for (i) the amount of all reasonable legal or other expenses (including, without limitation, all costs and expenses of Buyer in connection with the enforcement of this Agreement or any other agreement evidencing a Transaction, whether in action, suit or litigation or bankruptcy, insolvency or other similar proceeding affecting creditors' rights generally, further including, without limitation, the reasonable fees and expenses of counsel (including the costs of internal counsel of Buyer) incurred in connection with or as a result of an Event of Default, (ii) damages in an amount equal to the cost (including all fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge transactions in connection with or as a result of an Event of Default, and (iii) any other loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default in respect of a Transaction.

(vi) Whether or not Buyer has exercised any one or more of its other rights and remedies, Buyer may, at its option, elect to increase the Pricing Rate to equal the Post-Default Rate.

(vii) Buyer shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable Requirements of Law.

(b) Buyer may exercise one or more of the remedies available hereunder immediately upon the occurrence and during the continuance of an Event of Default and at any time thereafter without notice to Sellers except as otherwise provided herein. All rights and remedies arising under this Agreement as amended from time to time hereunder are cumulative and not exclusive of any other rights or remedies which Buyer may have.

(c) Buyer may enforce its rights and remedies hereunder without prior judicial process or hearing, and each Seller hereby expressly waives to the extent allowed by applicable Requirements of Law any defenses such Seller might otherwise have to require Buyer to enforce its rights by judicial process. Each Seller also waives to the extent allowed by applicable Requirements of Law any defense (other than a defense of payment or performance) such Seller might otherwise have arising from the use of nonjudicial process, enforcement and sale of all or any portion of the Repurchase Assets, or from any other election of remedies. Each Seller recognizes that nonjudicial remedies are consistent with the usages of the trade, are responsive to commercial necessity and are the result of a bargain at arm's length.

(d) To the extent permitted by applicable Requirements of Law, Sellers shall be liable to Buyer for interest on any amounts owing by Sellers hereunder, from the date Sellers become liable for such amounts hereunder until such amounts are (i) paid in full by Sellers or (ii) satisfied in full by the exercise of Buyer's rights hereunder. Interest on any sum payable by Sellers to Buyer under this paragraph 14(d) shall be at a rate equal to the Post-Default Rate.

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(e) Without limiting the rights of Buyer hereto to pursue all other legal and equitable rights available to Buyer for a Seller's failure to perform its obligations under this Agreement, each Seller acknowledges and agree that the remedy at law for any failure to perform obligations hereunder would be inadequate and Buyer shall be entitled to specific performance, injunctive relief, or other equitable remedies in the event of any such failure. The availability of these remedies shall not prohibit Buyer from pursuing any other remedies for such breach, including the recovery of monetary damages.

**SECTION 15. INDEMNIFICATION AND EXPENSES; RECOURSE**

(a) Each Seller agrees to hold Buyer and its Affiliates and their respective officers, directors, employees, agents and advisors (each an "Indemnified Party") harmless from and indemnify any Indemnified Party against all actual out-of-pocket liabilities, losses, damages, judgments, costs and expenses of any kind which may be imposed on, incurred by or asserted against such Indemnified Party (collectively, "Costs"), relating to or arising out of this Agreement, any other Facility Document or any transaction contemplated hereby or thereby, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, any other Facility Document or any transaction contemplated hereby or thereby, that, in each case, results from anything other than an Indemnified Party's failure to comply with Requirements of Law, gross negligence or willful misconduct. Without limiting the generality of the foregoing, each Seller agrees to hold any Indemnified Party harmless from and indemnify such Indemnified Party against all Costs with respect to all Mortgage Loans relating to or arising out of any taxes incurred or assessed in connection with the ownership of the Mortgage Loans, that, in each case, results from anything other than the Indemnified Party's gross negligence or willful misconduct. In any suit, proceeding or action brought by an Indemnified Party in connection with any Mortgage Loan for any sum owing thereunder, or to enforce any provisions of any Mortgage Loan, Sellers will save, indemnify and hold such Indemnified Party harmless from and against all expense, loss or damage suffered by reason of any defense, set off, counterclaim, recoupment or reduction or liability whatsoever of the account debtor or obligor thereunder, arising out of a breach by a Seller of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such account debtor or obligor or its successors from a Seller. Each Seller also agrees to reimburse an Indemnified Party as and when billed by such Indemnified Party for all the Indemnified Party's costs and expenses incurred in connection with the enforcement or the preservation of Buyer's rights under this Agreement, any other Facility Document or any transaction contemplated hereby or thereby, including without limitation the reasonable fees and disbursements of its counsel.

(b) Each Seller agrees to pay as and when billed by Buyer all of the out-of-pocket costs and expenses incurred by Buyer in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement, any other Facility Document or any other documents prepared in connection herewith or therewith (except solely to the extent a Seller is merely accommodating an administrative requirement of Buyer, is not otherwise required by the terms hereof or another Facility Document to agree thereto, and no Default or Event of Default exists). Each Seller agrees to pay as and when billed by Buyer all of the reasonable out-of-pocket costs and expenses incurred in connection with the consummation and administration of the transactions contemplated hereby and thereby including without limitation filing fees and all the reasonable fees, disbursements and expenses of counsel to Buyer which amount

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shall be deducted from the Purchase Price paid for the first Transaction hereunder. Subject to the limitations, if any, set forth in the Pricing Letter with respect to certain initial Due Diligence Costs, each Seller agrees to pay Buyer all the reasonable out of pocket due diligence, inspection, testing and review costs and expenses incurred by Buyer with respect to Mortgage Loans submitted by a Seller for purchase under this Agreement, including, but not limited to, those out of pocket costs and expenses incurred by Buyer pursuant to Sections 15(a) and 17 hereof.

(c) The obligations of the Sellers from time to time to pay the Repurchase Price (including all Price Differential) and all other amounts due under this Agreement shall be full recourse obligations of each Seller, jointly and severally.

**SECTION 16. SERVICING**

(a) As a condition of purchasing a Mortgage Loan, Buyer may require the relevant Seller to service such Mortgage Loan as agent for Buyer for a term of thirty (30) days (the “Servicing Term”), which is renewable as provided in clause (d) below, on the following terms and conditions:

(b) Such Seller shall service and administer the Mortgage Loan on behalf of Buyer in accordance with Accepted Servicing Practices, and in accordance with all applicable requirements of the Agencies, Requirements of Law, the provisions of any applicable servicing agreement, and the requirements of any applicable Takeout Commitment and the Takeout Investor, so that the eligibility of the Mortgage Loan for purchase under such Takeout Commitment is not voided or reduced by such servicing and administration.

(c) If any Mortgage Loan that is proposed to be sold on a Purchase Date is serviced by a servicer other than by a Seller or any of its Affiliates (a “Subservicer”), or if the servicing of any such Mortgage Loan is to be transferred to a Subservicer, Sellers shall provide a copy of the related servicing agreement and a Servicer Notice executed by such Subservicer (collectively, the “Servicing Agreement”) to Buyer prior to such Purchase Date or servicing transfer date, as applicable. Each such Servicing Agreement shall be in form and substance acceptable to Buyer. In addition, such Seller shall have obtained the prior written consent of Buyer for such Subservicer to subservice the Purchased Mortgage Loans, which consent may be withheld in Buyer’s sole discretion. In no event shall a Seller’s use of a Subservicer relieve such Sellers of its obligations hereunder, and such Seller shall remain liable under this Agreement as if Seller was servicing such Mortgage Loans directly.

(d) Each Seller shall deliver the physical and contractual master servicing of each Purchased Mortgage Loan, together with all of the related Records in its possession, to Buyer’s designee upon the earliest of (w) the occurrence of an Event of Default hereunder, (x) the termination of Sellers as servicer by Buyer pursuant to this Agreement, (y) the expiration (and non-renewal) of the Servicing Term, or (z) the transfer of servicing to any entity approved by Buyer and the assumption thereof by such entity. Buyer shall have the right to terminate each Seller as master servicer of any of the Purchased Mortgage Loans, which right shall be exercisable at any time in Buyer’s sole discretion, upon written notice. In addition, each Seller shall deliver the physical and contractual master servicing of each Purchased Mortgage Loan sold by such Seller to Buyer hereunder, together with all of the related Records in its possession to Buyer’s designee, upon expiration of the

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Servicing Term; provided that the Servicing Term and such delivery requirement will be deemed renewed for a like period on the last day of the Servicing Term, and on the last day of each such renewed Servicing Term, in the absence of directions to the contrary from Buyer; provided further that such delivery requirement will no longer apply to any Mortgage Loan, and the relevant Seller shall have no further obligation to service such Mortgage Loan as agent for Buyer, upon receipt by Buyer of the Repurchase Price therefor. Each Seller’s transfer of the Records and the physical and contractual servicing under this Section shall be in accordance with customary standards in the industry and such transfer shall include the transfer of the gross amount of all escrows held for the related mortgages (without reduction for unreimbursed advances or “negative escrows”).

(e) During the period each Seller is servicing Mortgage Loans as agent for Buyer, each Seller agrees that Buyer is the owner of the related Credit Files and Records and Sellers shall at all times maintain and safeguard and cause the Subservicer to maintain and safeguard the Credit File for the Mortgage Loan (including photocopies or images of the documents delivered to Buyer), and accurate and complete records of its servicing of the Mortgage Loan; each Seller’s possession of the Credit Files and Servicing Records being for the sole purpose of master servicing such Mortgage Loans and such retention and possession by the relevant Seller being in a custodial capacity only. Each Seller hereby grants Buyer a security interest in all servicing fees to secure the obligations of Sellers and Subservicer to service in conformity with this Section and any related Servicing Agreement.

(f) At Buyer’s request, each Seller shall promptly deliver to Buyer reports regarding the status of any Mortgage Loan being serviced by such Seller, which reports shall include, but shall not be limited to, a description of any default thereunder for more than thirty (30) days or such other circumstances that could cause a material adverse effect on such Mortgage Loan, Buyer’s title to such Mortgage Loan or the collateral securing such Mortgage Loan; Sellers may be required to deliver such reports until the repurchase of the Mortgage Loan by the relevant Seller. Each Seller shall immediately notify Buyer if it becomes aware of any payment default that occurs under any Purchased Mortgage Loan or any default under any Servicing Agreement that would materially and adversely affect any Purchased Mortgage Loan subject thereto.

(g) Each Seller shall release the custody of the contents of any Credit File or Mortgage File in its custody only (i) in accordance with the written instructions of Buyer, (ii) upon the consent of Buyer when such release is required as incidental to such Seller’s

servicing of the Mortgage Loan, is required to complete the Takeout Commitment or comply with the Takeout Commitment requirements, or (iii) as required by Requirements of Law.

(h) Buyer reserves the right to appoint a successor servicer at any time to service any Mortgage Loan (each a “Successor Servicer”) in its sole discretion. If Buyer elects to make such an appointment due to the occurrence and continuation of an Event of Default, Sellers shall be assessed all costs and expenses incurred by Buyer associated with transferring the Mortgage Loans to the Successor Servicer. In the event of such an appointment, each Seller shall perform all acts and take all action so that any part of the Credit File and related Records held by such Seller, together with all funds in the Custodial Account and other receipts relating to such Mortgage Loan, are promptly delivered to Successor Servicer, and shall otherwise reasonably cooperate with Buyer in effectuating such transfer. Sellers shall have no claim for lost servicing income, lost profits or other damages if Buyer appoints a Successor Servicer hereunder and the servicing fee is reduced or eliminated.

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(i) For the avoidance of doubt, Sellers retain no economic rights to the servicing of the Purchased Mortgage Loans provided that Sellers shall continue to service the Purchased Mortgage Loans hereunder as part of the Obligations hereunder. As such, each Seller expressly acknowledges that the Purchased Mortgage Loans are sold to Buyer on a “servicing released” basis.

#### SECTION 17. DUE DILIGENCE

Each Seller acknowledges that Buyer or any third party designated by Buyer (including Buyer’s regulators) has the right to perform continuing due diligence reviews with respect to the Mortgage Loans and each Seller, for purposes of verifying compliance with the representations, warranties and specifications made hereunder, or otherwise, and each Seller agrees that upon reasonable prior notice unless an Event of Default shall have occurred and be continuing, in which case no notice is required, to such Seller, Buyer or its authorized representatives will be permitted during normal business hours to examine, inspect, and make copies and extracts of, the Mortgage Files and any and all documents, records, agreements, instruments or information relating to such Mortgage Loans in the possession or under the control of such Seller. Each Seller also shall make available to Buyer a knowledgeable financial or accounting officer for the purpose of answering questions respecting the Mortgage Files and the Mortgage Loans. Without limiting the generality of the foregoing, each Seller acknowledges that Buyer may purchase Mortgage Loans from Sellers based solely upon the information provided by Sellers to Buyer in the Purchased Mortgage Loan Schedule and the representations, warranties and covenants contained herein, and that Buyer, at its option, has the right at any time to conduct a partial or complete due diligence review on some or all of the Mortgage Loans purchased in a Transaction, including, without limitation, ordering broker’s price opinions, new credit reports and new appraisals on the related Mortgaged Properties and otherwise re-generating the information used to originate such Mortgage Loan. Buyer may underwrite such Mortgage Loans itself or engage a mutually agreed upon third party underwriter to perform such underwriting. Each Seller agrees to cooperate with Buyer and any third party underwriter in connection with such underwriting, including, but not limited to, providing Buyer and any third party underwriter with access to any and all documents, records, agreements, instruments or information relating to such Mortgage Loans in the possession, or under the control, of either Seller. Each Seller further agrees that such Seller shall pay all out-of-pocket costs and expenses incurred by Buyer in connection with Buyer’s activities pursuant to this Section 17 (“Due Diligence Costs”).

#### SECTION 18. ASSIGNABILITY

The rights and obligations of the parties under this Agreement and under any Transaction shall not be assigned by any Seller without the prior written consent of Buyer. Subject to the foregoing, this Agreement and any Transactions shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Nothing in this Agreement express or implied, shall give to any Person, other than the parties to this Agreement and their successors hereunder, any benefit of any legal or equitable right, power, remedy or claim under this Agreement. Buyer may from time to time assign all or a portion of its rights and obligations under this Agreement and the Facility Documents pursuant to an executed assignment and acceptance by Buyer and assignee (“Assignment and Acceptance”), specifying the percentage or portion of such rights and obligations assigned. Upon such assignment, (a) such assignee shall be a party hereto and to each Facility Document to the extent of the percentage or portion set forth in the Assignment and Acceptance, and shall succeed to the applicable rights and obligations of Buyer hereunder, and (b) Buyer shall, to the extent that such rights and

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obligations have been so assigned by it be released from its obligations hereunder and under the Facility Documents. Unless otherwise stated in the Assignment and Acceptance, Sellers shall continue to take directions solely from Buyer unless otherwise notified by Buyer in writing. Buyer may distribute to any prospective assignee any document or other information delivered to Buyer by a Seller, subject to industry standard confidentiality measures.

Buyer may sell participations to one or more Persons in or to all or a portion of its rights and obligations under this Agreement; provided, however, that (i) Buyer’s obligations under this Agreement shall remain unchanged, (ii) Buyer shall remain solely responsible to the other parties hereto for the performance of such obligations; and (iii) Sellers shall continue to deal solely and directly with Buyer in connection with Buyer’s rights and obligations under this Agreement and the other Facility Documents except as provided in Section 7.

Buyer may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 18, disclose to the assignee or participant or proposed assignee or participant, as the case may be, any information relating to any Seller Party or any of their Subsidiaries or to any aspect of the Transactions that has been furnished to Buyer by or on behalf of any Seller Party or any of their Subsidiaries; provided that such assignee or participant agrees to hold such information subject to the confidentiality provisions of this Agreement.

In the event Buyer assigns all or a portion of its rights and obligations under this Agreement, the parties hereto agree to negotiate in good faith an amendment to this Agreement to add agency provisions similar to those included in Agreements for similar syndicated repurchase facilities.

#### SECTION 19. TRANSFER AND MAINTENANCE OF REGISTER.

(a) Subject to acceptance and recording thereof pursuant to paragraph (b) of this Section 19, from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of Buyer under this Agreement. Any assignment or transfer by Buyer of rights or

obligations under this Agreement that does not comply with this Section 19 shall be treated for purposes of this Agreement as a sale by such Buyer of a participation in such rights and obligations in accordance with Section 19(b) hereof.

(b) Sellers shall maintain a register (the "Register") on which they will record Buyer's rights hereunder, and each Assignment and Acceptance and participation. The Register shall include the names and addresses of Buyer (including all assignees, successors and participants) and the percentage or portion of such rights and obligations assigned. Failure to make any such recordation, or any error in such recordation shall not affect Sellers' obligations in respect of such rights. If Buyer sells a participation in its rights hereunder, it shall provide Sellers, or maintain as agent of Sellers, the information described in this paragraph and permit Sellers to review such information as reasonably needed for Sellers to comply with their obligations under this Agreement or under any applicable Requirement of Law.

#### SECTION 20. HYPOTHECATION OR PLEDGE OF PURCHASED MORTGAGE LOANS

Title to all Purchased Mortgage Loans and Repurchase Assets shall pass to Buyer and Buyer shall have free and unrestricted use of all Purchased Mortgage Loans. Nothing in this Agreement shall preclude Buyer from engaging in repurchase transactions with the Purchased Mortgage Loans or

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otherwise pledging, repledging, transferring, hypothecating, or rehypothecating the Purchased Mortgage Loans to any Person, including, without limitation, the Federal Home Loan Bank. Nothing contained in this Agreement shall obligate Buyer to segregate any Purchased Mortgage Loans delivered to Buyer by a Seller. Nothing in this Section 20 shall relieve Buyer of any of its obligations under this Agreement to allow the relevant Seller to repurchase Purchased Mortgage Loans in accordance with the applicable provisions hereof.

#### SECTION 21. TAX TREATMENT

Each party to this Agreement acknowledges that it is its intent for purposes of U.S. federal, state and local income and franchise taxes, and for GAAP accounting purposes (to the extent GAAP are applicable to such Person), to treat each Transaction as indebtedness of Sellers that is secured by the Purchased Mortgage Loans and that the Purchased Mortgage Loans are owned by the applicable Seller in the absence of a continuing Event of Default by Sellers. All parties to this Agreement agree to such treatment and agree to take no action inconsistent with this treatment, unless required by Requirements of Law.

#### SECTION 22. SET-OFF

In addition to any rights and remedies of Buyer hereunder and by law, Buyer shall have the right, without prior notice to any Seller, any such notice being expressly waived by each Seller, to the extent permitted by applicable law, to set-off and appropriate and apply against any Obligation from any Seller to Buyer any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other obligation (including to return excess margin), credits, indebtedness or claims or cash, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by or due from Buyer to or for the credit or the account of a Seller. Buyer agrees promptly to notify each Seller after any such set off and application made by Buyer; provided that the failure to give such notice shall not affect the validity of such set off and application.

Buyer shall have the right, in each case until such time as Buyer determines otherwise, to retain, to suspend payment or performance of, or to decline to remit, any amount or property that Buyer would otherwise be obligated to pay, remit or deliver to Sellers hereunder if an Event of Default has occurred and is continuing.

#### SECTION 23. TERMINABILITY

Each representation and warranty made or deemed to be made by entering into a Transaction herein or pursuant hereto shall survive the making of such representation and warranty, and Buyer shall not be deemed to have waived any Event of Default that may arise because any such representation or warranty shall have proved to be false or misleading, notwithstanding that Buyer may have had notice or knowledge or reason to believe that such representation or warranty was false or misleading at the time the Transaction was made. Notwithstanding any such termination or the occurrence of an Event of Default, all of the representations and warranties and covenants hereunder shall continue and survive. The obligations of the Sellers under Section 15 hereof shall survive the termination of this Agreement.

#### SECTION 24. NOTICES AND OTHER COMMUNICATIONS

Except as otherwise expressly permitted by this Agreement, all notices, requests and other communications provided for herein (including without limitation any modifications of, or waivers, requests or consents under, this Agreement) shall be given or made in writing (including without

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limitation by teletype or other electronic transmission) delivered to the intended recipient at the "Address for Notices" specified below its name on the signature pages hereof or thereof; or, as to any party, at such other address as shall be designated by such party in a written notice to each other party. In all cases, to the extent that the related individual set forth in the respective "Attention" line is no longer employed by the respective Person, such notice may be given to the attention of a Responsible Officer of the respective Person or to the attention of such individual or individuals as subsequently notified in writing by a Responsible Officer of the respective Person. Except as otherwise provided in this Agreement and except for notices given under Section 3 (which shall be effective only on receipt), all such communications shall be deemed to have been duly given when transmitted during business hours at the recipient's place of business by email (if an e-mail address is provided for such Person) or by teletype (if a teletype number is provided for such Person), or personally delivered (including by a courier or overnight delivery service, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

#### SECTION 25. USE OF THE METLIFE WAREHOUSE ELECTRONIC SYSTEM AND OTHER ELECTRONIC MEDIA



Each Seller acknowledges and agrees that Buyer may require or permit certain transactions with Buyer be conducted electronically using Electronic Records and/or Electronic Signatures. Each Seller consents to the use of Electronic Records and/or Electronic Signatures whenever expressly required or permitted by Buyer and acknowledges and agrees that each Seller shall be bound by its Electronic Signature and by the terms, conditions, requirements, information and/or instructions contained in any such Electronic Records.

Each Seller agrees to adopt as its Electronic Signature its user identification codes, passwords, personal identification numbers, access codes, a facsimile image of a written signature and/or other symbols or processes as provided or required by Buyer from time to time (as a group, any subgroup thereof or individually, hereinafter referred to as a Seller's Electronic Signature). Each Seller acknowledges that Buyer will rely on any and all Electronic Records and on Sellers' Electronic Signatures transmitted or submitted to Buyer.

Buyer shall not be liable for the failure of either its or a Seller's internet service provider, or any other telecommunications company, telephone company, satellite company or cable company to timely, properly and accurately transmit any Electronic Record or fax copy.

Before engaging in Electronic Transactions with a Seller, Buyer may provide such Seller, or require such Seller to create, user identification codes, passwords, personal identification numbers and/or access codes, as applicable, to permit access to Buyer's computer information processing system. Each Person permitted access to the MetLife Warehouse Electronic System must have a separate identification code and password. Each Seller shall be fully responsible for protecting and safeguarding any and all user identification codes, passwords, personal identification numbers and access codes provided or required by Buyer. Each Seller shall adopt and maintain security measures to prevent the loss, theft or unauthorized or improper disclosure or use of any and all user identification codes, passwords, personal identification numbers and/or access codes by Persons other than the individual Person who is authorized to use such information. Each of Buyer and each Seller shall notify the other parties hereto immediately in the event (i) of any loss, theft or unauthorized disclosure or use of any of the user identification codes, passwords, personal identification numbers and/or access codes or (ii) such Seller or Buyer has any reason to believe there has been a breach of security or that access to MetLife Warehouse Electronic System is no longer secure for any reason.

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Each of Buyer and each Seller understands and agrees that it shall be fully responsible for protecting and safeguarding its computer hardware and software from any and all (a) computer "viruses," "time bombs," "trojan horses" or other harmful computer information, commands, codes or programs that may cause or facilitate the destruction, corruption, malfunction or appropriation of, or damage or change to, any of such Seller's or Buyer's computer information processing systems, including without limitation, all hardware, software, Electronic Records, information, data and/or codes and (b) computer "worms," "trap doors" or other harmful computer information, commands, codes or programs that enable unauthorized access to such Seller's and/or Buyer's computer information processing systems, including without limitation, all hardware, software, Electronic Records, information, data and/or codes.

Each Seller agrees that Buyer may, in its sole discretion and from time to time, without limiting Sellers' liability set forth herein, establish minimum security standards that Sellers must, at a minimum, comply with in an effort to (x) protect and safeguard any and all user identification codes, passwords, personal identification numbers and/or access codes from loss, theft or unauthorized disclosure or use; and (y) prevent the infiltration and "infection" of Sellers' hardware and/or software by any and all computer "viruses," "time bombs," "trojan horses," "worms," "trapdoors" or other harmful computer codes or programs.

If Buyer, from time to time, establishes minimum security standards, Sellers shall comply with such minimum security standards within the time period established by Buyer. Buyer shall have the right to confirm Sellers' compliance with any such minimum security standards. Sellers' compliance with such minimum security standards shall not relieve Sellers from any of their liability set forth herein.

Whether or not Buyer establishes minimum security standards, Sellers shall continue to be fully responsible for adopting and maintaining security measures that are consistent with the risks associated with conducting electronic transactions with Buyer. Sellers' failure to adopt and maintain appropriate security measures or to comply with any minimum security standards established by Buyer may result in, among other things, termination of Sellers' access to Buyer's computer information processing systems.

Sellers understand and agree that certain elements or components of the MetLife Warehouse Electronic System may be provided by third party vendors, and hereby covenant not to sue or otherwise assert a claim against Buyer seeking, and release Buyer from, any liabilities, losses, damages, judgments, costs and expenses of any kind which may be imposed on, incurred by or asserted against any Seller Party relating to or arising out of a Seller's use of the MetLife Warehouse System including without limitation, the use or failure of any elements or components provided by third party vendors, but, as to Buyer only, excluding any such liability, loss, damages, judgment, cost and expense that results from Buyer's gross negligence or willful misconduct. Nothing herein shall release, hold harmless, or otherwise exculpate any such third party from any claims that any Seller Party may from time to time have against any such third party vendor.

#### **SECTION 26. ENTIRE AGREEMENT; SEVERABILITY; SINGLE AGREEMENT**

This Agreement, together with the Facility Documents, constitute the entire understanding between Buyer and the Sellers with respect to the subject matter they cover and shall supersede any existing agreements between the parties containing general terms and conditions for repurchase transactions involving Purchased Mortgage Loans. By acceptance of this Agreement, Buyer and the Sellers each acknowledge that they have not made, and are not relying upon, any statements, representations, promises or undertakings not contained in this Agreement. Each provision and agreement herein shall be treated as separate and independent from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

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Buyer and Sellers acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and that each has been entered into in consideration of the other Transactions. Accordingly, each of Buyer and each Seller agrees (i) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, (ii) that Buyer shall be entitled to set off claims and apply property held by it in respect of any Transaction against obligations owing to it in respect of any other Transaction

hereunder, (iii) that payments, deliveries, and other transfers made by either of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries, and other transfers in respect of any other Transactions hereunder, and the obligations to make any such payments, deliveries, and other transfers may be applied against each other and netted, and (iv) to promptly provide notice to the other after any such set off or application.

*SECTION 27. GOVERNING LAW*

**THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE EFFECTIVENESS, VALIDITY AND ENFORCEABILITY OF ELECTRONIC CONTRACTS, OTHER RECORDS, ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES USED IN CONNECTION WITH ANY ELECTRONIC TRANSACTION BETWEEN BUYER AND EACH SELLER SHALL BE GOVERNED BY E-SIGN.**

*SECTION 28. SUBMISSION TO JURISDICTION; WAIVERS*

**BUYER AND EACH SELLER HEREBY IRREVOCABLY AND UNCONDITIONALLY:**

(i) **SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND THE OTHER FACILITY DOCUMENTS, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND APPELLATE COURTS FROM ANY THEREOF;**

(ii) **CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND, TO THE EXTENT PERMITTED BY LAW, WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME;**

(iii) **AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO ITS ADDRESS SET FORTH UNDER ITS SIGNATURE BELOW OR AT SUCH OTHER ADDRESS OF WHICH THE OTHER PARTY SHALL HAVE BEEN NOTIFIED;**

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(iv) **AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION; AND**

(v) **HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER FACILITY DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**

*SECTION 29. NO WAIVERS, ETC.*

No failure on the part of Buyer to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Facility Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Facility Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law. An Event of Default shall be deemed to be continuing unless expressly waived by Buyer in writing.

*SECTION 30. NETTING*

If Buyer and a Seller are “financial institutions” as now or hereinafter defined in Section 4402 of Title 12 of the United States Code (“Section 4402”) and any rules or regulations promulgated thereunder:

(a) **All amounts to be paid or advanced by one party to or on behalf of the other under this Agreement or any Transaction hereunder shall be deemed to be “payment obligations” and all amounts to be received by or on behalf of one party from the other under this Agreement or any Transaction hereunder shall be deemed to be “payment entitlements” within the meaning of Section 4402, and this Agreement shall be deemed to be a “netting contract” as defined in Section 4402; and**

(b) **The payment obligations and the payment entitlements of the parties hereto pursuant to this Agreement and any Transaction hereunder shall be netted as follows. In the event that either party (the “Defaulting Party”) shall fail to honor any payment obligation under this Agreement or any Transaction hereunder, the other party (the “Nondefaulting Party”) shall be entitled to reduce the amount of any payment to be made by the Nondefaulting Party to the Defaulting Party by the amount of the payment obligation that the Defaulting Party failed to honor.**

*SECTION 31. CONFIDENTIALITY*

Buyer and each Seller hereby acknowledge and agree that all written or computer-readable information provided by one party to any other regarding the terms set forth in any of the Facility Documents or the Transactions contemplated thereby (the “Confidential Terms”) shall be kept confidential and shall not be divulged to any party without the prior written consent of such other party except to the extent that (i) it is necessary to do so in working with legal counsel, auditors, taxing authorities or other governmental agencies or regulatory bodies or in order to comply with any applicable

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federal or state laws, (ii) any of the Confidential Terms are in the public domain other than due to a breach of this covenant, or (iii) in the event of a continuing Event of Default Buyer determines such information to be necessary or desirable to disclose in connection with the marketing and sales of the Purchased Mortgage Loans or otherwise to enforce or exercise Buyer's rights hereunder. Notwithstanding the foregoing or anything to the contrary contained herein or in any other Facility Document, the parties hereto may disclose to any and all Persons, without limitation of any kind, the federal, state and local tax treatment of the Transactions, any fact relevant to understanding the federal, state and local tax treatment of the Transactions, and all materials of any kind (including opinions or other tax analyses) relating to such federal, state and local tax treatment and that may be relevant to understanding such tax treatment; provided that except as required by law none of Buyer or any Seller may disclose the name of or identifying information with respect to Buyer or any pricing terms (including, without limitation, the Pricing Rate, Warehouse Fees, Purchase Price Percentage and Purchase Price) or other nonpublic business or financial information (including any financial statements, notices and other information required hereunder or the contents thereof, projections, sublimits and financial covenants) that is unrelated to the federal, state and local tax treatment of the Transactions and is not relevant to understanding the federal, state and local tax treatment of the Transactions, without the prior written consent of the other parties hereto. The provisions set forth in this Section 31 shall survive the termination of this Agreement. The Buyer acknowledges that Sellers' ultimate parent company is a publicly traded company and the disclosure of certain matters to Buyer will mean that Buyer is in possession of material non-public information and as a result will be subject to certain legal obligations and restrictions. The Sellers acknowledge that the Buyer's ultimate parent company is a publicly traded company and the disclosure of certain matters to the Sellers will mean that the Sellers are in possession of material non-public information and as a result will be subject to certain legal obligations and restrictions.

Notwithstanding anything in this Agreement to the contrary, each of Buyer and each Seller shall comply with all applicable local, state and federal laws, including, without limitation, all privacy and data protection law, rules and regulations that are applicable to the Purchased Assets and/or any applicable terms of this Agreement (the "Confidential Information"). Each of Buyer and each Seller understands that the Confidential Information may contain "nonpublic personal information", as that term is defined in Section 509(4) of the Gramm-Leach-Bliley Act (the "GLB Act"), and each of Buyer and each Seller agrees to maintain such nonpublic personal information that it receives hereunder in accordance with the GLB Act and other applicable federal and state privacy laws. Each of Buyer and each Seller shall implement such physical and other security measures as shall be necessary to (a) ensure the security and confidentiality of the "nonpublic personal information" of the "customers" and "consumers" (as those terms are defined in the GLB Act) that Buyer or Seller holds, (b) protect against any threats or hazards to the security and integrity of such nonpublic personal information, and (c) protect against any unauthorized access to or use of such nonpublic personal information. Each of Buyer and each Seller shall, at a minimum establish and maintain such data security program as is necessary to meet the objectives of the Interagency Guidelines Establishing Standards for Safeguarding Customer Information as set forth in the Code of Federal Regulations at 12 C.F.R. Parts 30, 208, 211, 225, 263, 308, 364, 568 and 570. Upon request, each Seller will provide evidence reasonably satisfactory to allow Buyer to confirm that Sellers have satisfied their obligations as required under this Section. Without limitation, this may include review of audits, summaries of test results, and other equivalent evaluations of Sellers. Each party to this Agreement shall notify the other parties hereto immediately following discovery of any breach or compromise of the security, confidentiality, or integrity of any Confidential Information

**SECTION 32. INTENT**

(a) The parties recognize that each Transaction is a "repurchase agreement" as that term is defined in Section 101 of Title 11 of the United States Code, as amended and a "securities contract" as that term is defined in Section 741 of Title 11 of the United States Code, as amended and that all payments hereunder are deemed "margin payments" or "settlement payments" as defined in Title 11 of the United States Code.

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(b) It is understood that either party's right to liquidate Purchased Mortgage Loans delivered to it in connection with Transactions hereunder or to exercise any other remedies pursuant to Section 14 hereof is a contractual right to liquidate such Transaction as described in Sections 555 and 559 of Title 11 of the United States Code, as amended.

(c) The parties agree and acknowledge that if a party hereto is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Transaction hereunder is a "qualified financial contract," a "repurchase agreement" and a "securities contract" as such terms are defined in FDIA and any rules, orders or policy statements thereunder.

(d) It is understood that this Agreement constitutes a "netting contract" as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") and each payment entitlement and payment obligation under any Transaction hereunder shall constitute a "covered contractual payment entitlement" or "covered contractual payment obligation", respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a "financial institution" as that term is defined in FDICIA).

**SECTION 33. DISCLOSURE RELATING TO CERTAIN FEDERAL PROTECTIONS**

The parties acknowledge that they have been advised that:

(a) in the case of Transactions in which one of the parties is a broker or dealer registered with the Securities and Exchange Commission ("SEC") under Section 15 of the Securities Exchange Act of 1934 ("1934 Act"), the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 ("SIPA") do not protect the other party with respect to any Transaction hereunder;

(b) in the case of Transactions in which one of the parties is a government securities broker or a government securities dealer registered with the SEC under Section 15C of the 1934 Act, SIPA will not provide protection to the other party with respect to any Transaction hereunder; and

(c) in the case of Transactions in which one of the parties is a financial institution, funds held by the financial institution pursuant to a Transaction hereunder are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, as applicable.

**SECTION 34. AUTHORIZATIONS**

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SECTION 35. *ACKNOWLEDGEMENT OF ANTI-PREDATORY LENDING POLICIES.*

Buyer has in place internal policies and procedures that expressly prohibit its purchase of any High Cost Mortgage Loan.

SECTION 36. *MISCELLANEOUS*

(a) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart.

(b) **Captions.** The captions and headings appearing herein are for included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

(c) **Acknowledgment.** Each Seller hereby acknowledges that:

(i) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Facility Documents;

(ii) Buyer has no fiduciary relationship to any Seller Party; and

(iii) no joint venture exists between Buyer and any Seller Party.

(d) **Documents Mutually Drafted.** Sellers and Buyer agree that this Agreement each other Facility Document prepared in connection with the Transactions set forth herein have been mutually drafted and negotiated by each party, and consequently such documents shall not be construed against either party as the drafter thereof.

(e) **Amendments.** This Agreement and each other Facility Document (other than MetLife Warehouse Customer Guide) may only be amended by a written instrument signed by Buyer and each Seller affected thereby. The MetLife Warehouse Customer Guide may be amended from time to time, without further consent or assent by any Seller Party and such amendments shall be effective immediately upon notice to Sellers of the change (whether that notice is sent individually or posted to MetLife Warehouse Electronic System) and Mortgage Loans sold to Buyer after the effective date of any such amendment shall be governed by the revised MetLife Warehouse Customer Guide.

SECTION 37. *GENERAL INTERPRETIVE PRINCIPLES*

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

(a) the terms defined in this Agreement have the meanings assigned to them in this Agreement and include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other gender;

(b) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles;

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(c) references herein to “Articles”, “Sections”, “Subsections”, “Paragraphs”, and other subdivisions without reference to a document are to designated Articles, Sections, Subsections, Paragraphs and other subdivisions of this Agreement;

(d) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall also apply to Paragraphs and other subdivisions;

(e) the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular provision;

(f) the term “include” or “including” shall mean without limitation by reason of enumeration;

(g) all times specified herein or in any other Facility Document (unless expressly specified otherwise) are local times in New York, New York unless otherwise stated; and

(h) all references herein or in any Facility Document to “good faith” means good faith as defined in Section 1-201(19) of the Uniform Commercial Code as in effect in the State of New York.

[THIS SPACE INTENTIONALLY LEFT BLANK]

BUYER:

**METLIFE BANK, N.A.,**

By: /s/ Paul Chmielinski  
Name: Paul Chmielinski  
Title: Vice President

Address for Notices:

MetLife Bank, N.A.  
One Financial Center, 20th Floor  
Boston, Massachusetts 02111

Attention: Mr. Paul A. Chmielinski  
Telecopy No.: (617) 758-6852  
Telephone No.: (617) 578-4698

With a Copy to:

MetLife Bank, N.A.  
334 Madison Avenue  
Convent Station, New Jersey 07961

Attention: Legal Department  
Telecopy No.: (973) 254-3265  
Telephone No.: (973) 254-3000

SELLERS:

**EXCEL MORTGAGE SERVICING, INC.**

By: /s/ William Ashmore  
Name: William Ashmore  
Title: Presiden

Signature Page to the Master Repurchase Agreement

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Address for Notices:

Excel Mortgage Servicing, Inc.  
19500 Jamboree Road  
Irvine, California 92162

Attention: Ms. Kathy Hancock  
Telecopy No.: (949) 706-6208  
Telephone No.: (949) 475-3822

**AMERIHOME MORTGAGE CORPORATION**

By: /s/ William Ashmore  
Name: William Ashmore  
Title: President

Address for Notices:

AmeriHome Mortgage Corporation  
19500 Jamboree Road  
Irvine, California 92162

Attention: Ms. Kathy Hancock  
Telecopy No.: (949) 706-6208  
Telephone No.: (949) 475-3822

Signature Page to the Master Repurchase Agreement

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SCHEDULE 1

SCHEDULE OF REPRESENTATIONS AND WARRANTIES REGARDING MORTGAGE LOANS

Sellers represent and warrant to Buyer, with respect to each Mortgage Loan submitted for purchase under the Agreement, that as of the Purchase Date for the purchase of such Mortgage Loans by Buyer from a Seller and as of the date of this Agreement and any Transaction hereunder and at all times while the Facility Documents and any Transaction hereunder is in full force and effect, that the following are true and correct. For purposes of this Schedule 1 and the representations and warranties set forth herein, a breach of a representation or warranty shall be deemed to have been cured with respect to a Mortgage Loan if and when Sellers have taken or caused to be taken action such that the event, circumstance or condition that gave rise to such breach no longer adversely affects such Mortgage Loan. With respect to those representations and warranties which are made to the best of a Seller's knowledge, if it is discovered by a Seller or Buyer that the substance of such representation and warranty is inaccurate, notwithstanding a Seller's lack of knowledge with respect to the substance of such representation and warranty, such inaccuracy shall be deemed a breach of the applicable representation and warranty.

**A. Underwriting Guidelines.** Each Mortgage Loan conforms to the specifications set forth by this Agreement, including, but not limited to, the Underwriting Guidelines, Buyer, Takeout Investor, Agency, and any insurer regulations, rules, guides and handbooks for loans eligible for sale to, insurance by or pooling to back securities issued or guaranteed by, a Takeout Investor, Buyer, an Agency, or insurer. Each Conforming Mortgage Loan is eligible as collateral for Ginnie Mae mortgage backed securities or is eligible for purchase by an Agency.

**B. Mortgage Loans as Described.** The information set forth in the Mortgage Loan Schedule is complete, true and correct.

**C. No Defenses.** The Mortgage Loan, and the Assignment of Proprietary Lease related to each Co-op Loan, is not subject to any right of rescission, set-off, counterclaim or defense, including without limitation the defense of usury, nor will the operation of any of the terms of the Mortgage Note or the Mortgage, or the exercise of any right thereunder, render either the Mortgage Note or the Mortgage unenforceable, in whole or in part, and no such right of rescission, set-off, counterclaim or defense has been asserted with respect thereto, and no Mortgagor was a debtor in any state or federal bankruptcy or insolvency proceeding at, or subsequent to, the time the Mortgage Loan was originated.

**D. Disbursement.** The Mortgage Loan has been closed and the proceeds of the Mortgage Loan have been fully disbursed, there is no requirement for future advances thereunder, any and all requirements as to completion of any on-site or off-site improvements have been complied with, and any disbursements of any escrow funds have been made. All costs, fees and expenses incurred in making, or closing the Mortgage Loan and the recording of the Mortgage were paid to the appropriate parties, the mortgage insurance premium or the VA guarantee fee has been paid as applicable, and the Mortgagor is not entitled to any refund of any amounts paid or due under the Mortgage Note or Mortgage.

**E. Payments and Advances.** The applicable Seller has not, and to the best of the applicable Seller's knowledge no other Person has, advanced funds, or induced, solicited or received any advance of funds by a Person other than the Mortgagor, directly or indirectly, for the payment of any amount required under or to obtain the Mortgage Loan, or any tax, insurance, special assessment, sewer,

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utility or similar payments with respect to the Mortgaged Property. The Mortgagor has made any down payment required in connection with the Mortgage Loan, and has received no concession from a Seller, the seller of the Mortgaged Property or any other third Person, except as clearly disclosed in the Mortgage File and in writing to Buyer. No subordinate financing was used in the Mortgagor's acquisition of the property securing the Mortgage Loan other than subordinate financing acceptable to Buyer, Fannie Mae, Freddie Mac, Ginnie Mae, HUD, VA or applicable Takeout Investor pursuant to their requirements in effect at the time of purchase of the Mortgage Loan by the Buyer.

**F. Compliance with Requirements of Law.** Any and all Requirements of Law, including, but not limited to, usury, truth in lending, real estate settlement procedures, consumer credit protection, equal credit opportunity, disclosure, unfair and deceptive practices laws, securities laws or privacy laws, applicable to the Mortgage Loan have been satisfied and complied with, and the consummation of the transactions contemplated hereby will not involve the violation of any Requirements of Law. The applicable Seller shall maintain in its possession, available for Buyer's inspection, and shall deliver to Buyer upon reasonable demand, evidence of compliance with all Requirements of Law.

**G. Co-op Loan: Compliance with Law.** With respect to each Co-op Loan, the related cooperative corporation that owns title to the related cooperative apartment building is a "cooperative housing corporation" within the meaning of Section 216 of the Code, and is in material compliance with applicable Requirements of Law which, if not complied with, could have a material adverse effect on the Mortgaged Property.

**H. Mortgage Insurance.** There are no defenses, counterclaims, or rights of setoff, or other facts or circumstances affecting the eligibility of the Mortgage Loans for insurance by an insurer, or affecting the validity or enforceability of any mortgage insurance or mortgage guaranty with respect to the Mortgage Loan as a result of any act, error or omission of a Seller or of any other Person including, but not limited to, the FHA insurance if applicable. The related FHA policy calls for the assignment of the Mortgage Loan to FHA as opposed to the co-insurance option. If applicable, the entire amount of the insurance premium has been paid to FHA in accordance with the FHA Regulations and no portion of such premium is shared with or by a Seller or, if the monthly premium option has been chosen for such Mortgage Loan, all such premiums due on or before the related Purchase Date have been duly and timely paid.

**I. Damage; Condemnation.** There is no proceeding pending for the total or partial condemnation of the Mortgaged Property and such Mortgaged Property is undamaged by waste, fire, earthquake or earth movement, windstorm, flood, tornado or other casualty so as to affect adversely the value of the Mortgaged Property as security for the Mortgage Loan, the use for which the Mortgaged Property was intended or the eligibility of the Mortgage Loan for full payment of insurance benefits, and there are no pending or threatened proceedings for total or partial condemnation of the Mortgaged Property. Each Mortgaged Property is in good repair. The applicable Seller has completed any property inspections required by FHA Regulations (if applicable), other Requirements of Law, and such inspections, if any, show no evidence of property damage or deferred maintenance, unless the property damage and deferred maintenance was considered part of the initial Repair Set Aside Account disclosed in the Mortgage File at closing.

**J. Type of Mortgaged Property.** The Mortgaged Property is located in the state identified in the Mortgage File and consists of a single parcel of real property with a detached single-family residence erected thereon, or a two-to-four-family dwelling, a townhouse, or an individual condominium unit in a condominium, or a Co-op Unit, or an individual unit in a planned unit development, or an individual or a manufactured home on owned or leased land; *provided, however*, that any condominium unit, Co-op Project or planned unit development conforms with Takeout Investor and

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insurer requirements with respect to such dwellings, and that no residence or dwelling is a mobile home. If the Mortgaged Property is a condominium unit or a unit in a planned unit development (other than a de minimis planned unit development) or a Co-op Unit such condominium or planned unit development project is (i) acceptable to Fannie Mae or Freddie Mac or (ii) located in a condominium or planned unit development project which has received project approval from Fannie Mae or Freddie Mac. The representations and warranties required by Fannie Mae with respect to such condominium or planned unit development have been satisfied and remain true and correct. No portion of the Mortgaged Property is used for commercial purposes provided, that Mortgaged Properties which contain a home office shall not be considered as being used for commercial purposes as long as the Mortgaged Property has not been altered for commercial purposes and is not storing any chemicals or raw materials other than those commonly used for homeowner repair, maintenance and/or household purposes.

**K. Leaseholds.** If the Mortgage Loan is secured by a long term residential lease, (1) the lessor under the lease holds a fee simple interest in the land; (2) the terms of such lease expressly permit the mortgaging of the leasehold estate, the assignment of the lease without the lessor's consent and the acquisition by the holder of the Mortgage of the rights of the lessee upon foreclosure or assignment in lieu of foreclosure or provide the holder of the Mortgage with substantially similar protections; (3) the terms of such lease do not (a) allow the termination thereof upon the lessee's default without the holder of the Mortgage being entitled to receive written notice of, and opportunity to cure, such default, (b) allow the termination of the lease in the event of damage or destruction as long as the Mortgage is in existence, (c) prohibit the holder of the Mortgage from being insured (or receiving proceeds of insurance) under the hazard insurance policy or policies relating to the Mortgaged Property or (d) permit any increase in rent other than pre-established increases set forth in the lease; (4) the original term of such lease is not less than 15 years; (5) the term of such lease does not terminate earlier than five years after the maturity date of the Mortgage Note; and (6) the Mortgaged Property is located in a jurisdiction in which the use of leasehold estates in transferring ownership in residential properties is a widely accepted practice.

**L. Good Title.** Immediately prior to the transfer and assignment of the Mortgage Loan to the Buyer, the Mortgage Loan is not assigned or pledged, and the applicable Seller has good, indefeasible, and marketable title thereto, and the applicable Seller is the sole owner and holder of the Mortgage Loan and the indebtedness evidenced by each Mortgage Note (and with respect to any Co-op Loan, the sole owner of the related Assignment of Proprietary Lease), free and clear of any and all Liens, of any nature, and there has been no other sale, transfer, or assignment of security interest granted by such Seller to any other party, nor are there any other restrictions limiting the transfer of the Mortgage Loan, and has full right, title and authority, subject to no interest or participation of, agreement with, or approval of, any other Person, to sell, assign and transfer the Mortgage Loan pursuant to this Agreement and following the sale of each Mortgage Loan, the Buyer will own such Mortgage Loan free and clear of any encumbrance, equity, participation interest, Lien, pledge, charge, claim or security interest except for Liens created by the Agreement. The applicable Seller intends to relinquish all rights to possess, control and monitor each Mortgage Loan.

**M. Co-op Loan: No Pledge.** With respect to each Co-op Loan, there is no prohibition against pledging the shares of the cooperative corporation or assigning the Proprietary Lease. With respect to each Co-op Loan, (i) the term of the related Proprietary Lease is longer than the term of the Co-op Loan, (ii) there is no provision in any Proprietary Lease which requires the Mortgagor to offer for sale the Co-op Shares owned by such Mortgagor first to the Co-op Corporation, (iii) there is no prohibition in any Proprietary Lease against pledging the Co-op Shares or assigning the Proprietary Lease and (iv) the Recognition Agreement is on a form of agreement published by Aztech Document Systems, Inc. as of the date hereof or includes provisions which are no less favorable to the lender than those contained in such agreement.

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**N. No Litigation.** There is no pending and no threatened litigation, which may affect in any way, by attachment or otherwise, the title or interest of the Seller in and to the Mortgage Loan, the property securing the Mortgage Loan, or any related note or security instrument.

**O. Mortgage File.** The Mortgage File contains each of the documents and instruments required by applicable Requirements of Law or the related Takeout Investor or insurer requirements, duly executed and in due and proper form and each such document or instrument is genuine and in form acceptable to Takeout Investors and insurers and the information contained therein is true, accurate and complete. The Mortgage Loan was originated in accordance with Takeout Investor and insurer underwriting standards in effect at the time the Mortgage Loan was originated.

**P. Occupancy; Inspection.** As of the Purchase Date, the Mortgaged Property is lawfully occupied under all applicable Requirements of Law. All inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Mortgaged Property and, with respect to the use and occupancy of the same, including but not limited to certificates of occupancy and fire underwriting certificates, have been made or obtained from the appropriate authorities.

**Q. No Outstanding Charges.** There are no defaults in complying with the terms of the Mortgage Loan, and all taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, leasehold payments or ground rents which previously became due and owing have been paid, or an escrow of funds or a tax and insurance set-aside has been established in an amount sufficient to pay for every such item which remains unpaid and which has been assessed but is not yet due and payable.

**R. Original Terms Unmodified.** The terms of the Mortgage Note (and the Proprietary Lease and the Pledge Instruments with respect to each Co-op Loan) and Mortgage have not been impaired, waived, altered or modified in any respect, except by a written instrument: (a) that has been recorded, if necessary to protect the interests of Buyer; and (b) the original of which (or a copy of which, if the original is a recorded document that has not yet been returned to the applicable Seller) has been delivered to the Buyer. The substance of any such waiver, alteration or modification has been approved by the issuer of any related mortgage insurance and the title insurer, to the extent required by the policy, and, as applicable, its terms are reflected on the Mortgage Loan Schedule. No Mortgagor has been released in whole or in part, except in connection with an assumption agreement approved by the issuer of any related private mortgage insurance policy and the title insurer to the extent required by the policy, and which assumption agreement is part of the Mortgage File delivered to the Buyer and the terms of which are reflected in the Mortgage Loan Schedule.



S. **No Satisfaction of Mortgage.** The Mortgage has not been satisfied, canceled, subordinated or rescinded, in whole or in part, and the Mortgaged Property has not been released from the Lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such release, cancellation, subordination or rescission. The applicable Seller has not waived the performance by the Mortgagor of any action, if the Mortgagor's failure to perform such action would cause the Mortgage Loan to be in default, nor has the applicable Seller waived any default resulting from any action or inaction by the Mortgagor.

T. **Valid First Lien.** The Mortgage is a valid, subsisting, enforceable and perfected first Lien on the Mortgaged Property including all buildings on the Mortgaged Property and all installations and mechanical, electrical, plumbing, heating and air conditioning systems located in or annexed to such buildings, and all additions, alterations and replacements made at any time with respect to the foregoing. There is no delinquent tax or assessment Lien against the Mortgaged Property, and the applicable Seller has paid all property tax bills. The Lien of the Mortgage is subject only to:

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- (a) the Lien of current real property taxes and assessments not yet due and payable;
- (b) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording acceptable to prudent mortgage lending institutions generally and specifically referred to in the lender's title insurance policy delivered to the originator of the Mortgage Loan and: (i) referred to or to otherwise considered in the Appraisal relating to the Mortgage Loan; or (ii) that do not adversely affect the Appraised Value of the Mortgaged Property set forth in such Appraisal; and
- (c) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related Mortgaged Property.

Any security agreement, chattel mortgage or equivalent document related to and delivered in connection with the Mortgage Loan establishes and creates a valid, subsisting, enforceable and perfected first priority Lien on the Mortgaged Property described therein and the applicable Seller has full right to sell and assign the same to the Buyer in accordance with the Requirements of Law and any and all contractual obligations. The Mortgaged Property was not, as of the date of origination of the Mortgage Loan, unless otherwise indicated, subject to a mortgage, deed of trust, deed to secure debt or other security instrument creating a Lien subordinate to the Lien of the Mortgage.

U. **Co-op Loan: Valid First Lien.** With respect to each Co-op Loan, the related Mortgage is a valid, enforceable and subsisting first security interest on the related cooperative shares securing the related cooperative note and lease, subject only to (a) liens of the cooperative for unpaid assessments representing the Mortgagor's pro rata share of the cooperative's payments for its blanket mortgage, current and future real property taxes, insurance premiums, maintenance fees and other assessments to which like collateral is commonly subject and (b) other matters to which like collateral is commonly subject which do not materially interfere with the benefits of the security intended to be provided by the security interest. There are no liens against or security interests in the cooperative shares relating to each Co-op Loan (except for unpaid maintenance, assessments and other amounts owed to the related cooperative which individually or in the aggregate will not have a material adverse effect on such Co-op Loan), which have priority equal to or over the applicable Seller's security interest in such Co-op Shares.

V. **No Fraud.** The Mortgage Note and the Mortgage and any other agreement executed and delivered by a Mortgagor in connection with a Mortgage Loan are genuine, and each is the legal, valid and binding obligation of the maker thereof, enforceable in accordance with its terms, except as such enforceability may be limited by (i) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium, or similar Requirements of Law affecting creditors' rights generally, and (ii) general principles of equity. All parties to the Mortgage Note and the Mortgage and any other related agreement had legal capacity to enter into the Mortgage Loan and to execute and deliver the Mortgage Note and the Mortgage and any other related agreement, and the Mortgage Note and the Mortgage and any other such related agreement have been duly and properly executed by such Persons. The documents, instruments and agreements submitted for Mortgage Loan underwriting were not falsified and contain no untrue statement of material fact nor do they omit to state a material fact required to be stated therein or necessary to make the information and statements therein not misleading. No fraud, error, omission, misrepresentation, negligence or similar occurrence was committed in connection with the origination of the Mortgage Loan.

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W. **Title Insurance.** Each Mortgage Loan is covered by an ALTA lender's title insurance policy, or with respect to any Mortgage Loan for which the related Mortgaged Property is located in California, a CLTA lender's title insurance policy, or other generally acceptable form of policy of insurance, issued by a title insurer qualified to do business in the jurisdiction where the Mortgaged Property is located, insuring Seller, its successors and assigns: (a) as to the first priority Lien of the Mortgage; and (b) against any loss by reason of the invalidity or unenforceability of the Lien resulting from the provisions of the Mortgage providing for adjustment in the Mortgage Interest Rate and Monthly Payment with respect to each Adjustable Rate Loan, subject only to the exceptions contained in clauses (a), (b), and (c) of Part T of this Schedule 1. Where required by state Requirements of Law applicable to Seller, the Mortgagor has been given the opportunity to choose the carrier of the required mortgage title insurance. Additionally, such lender's title insurance policy affirmatively insures ingress and egress, and against encroachments by or upon the Mortgaged Property or any interest therein. The applicable Seller, and its successors and assigns, are the sole insured of such lender's title insurance policy, and such lender's title insurance policy is valid and in full force and effect and will be in force and effect upon the consummation of the transactions contemplated by this Agreement. No claims have been made under such lender's title insurance policy, and no prior holder of the Mortgage, including a Seller, has done, by act or omission, anything that would impair the coverage of such lender's title insurance policy. With respect to each manufactured home, a search for filings of financing statements has been made by a company competent to do same and such search has not found anything which would materially and adversely affect the Mortgage Loan secured by a manufactured home including, but not limited to, the priority of the Lien or perfection of the Mortgage Loan secured by a manufactured home.

X. **Hazard Insurance.** For each Mortgage Loan, pursuant to the terms of the Mortgage, all buildings or other improvements upon the Mortgaged Property are insured by an insurer acceptable to the Buyer against loss by fire, hazards of extended coverage and such other hazards as are customary in the area where the Mortgaged Property is located, as are provided for by Fannie Mae or by Freddie Mac, as well as all additional requirements set forth in the Underwriting Guidelines. Mortgagor has obtained coverage in an amount which is at least equal to the full insurable value of the improvements on the Mortgaged Property. The policy either includes provisions for inflation adjustments or guaranteed replacement cost coverage of the Mortgaged Property. In the case of flood insurance, Mortgagor has obtained the maximum amount of insurance that is available under the National Flood

Insurance Act of 1968. If upon origination of the Mortgage Loan, the Mortgaged Property was in an area identified in the Federal Register by the Federal Emergency Management Agency as having special flood hazards (and such flood insurance has been made available), a flood insurance policy meeting the requirements of the current guidelines of the Federal Insurance Administration is in effect which policy conforms to all Requirements of Law and applicable insurer and Takeout Investor requirements. All individual insurance policies contain a standard mortgagee clause naming the applicable Seller and its successors and assigns as mortgagee, and all premiums thereon have been paid. The Mortgage obligates the Mortgagor thereunder to maintain the hazard insurance policy at the Mortgagor's cost and expense, and on the Mortgagor's failure to do so, authorizes the holder of the Mortgage to obtain and maintain such insurance at such Mortgagor's cost and expense, and to seek reimbursement therefor from the Mortgagor, subject to any Requirements of Law. Where required by state Requirements of Law applicable to the applicable Seller, the Mortgagor has been given an opportunity to choose the carrier of the required hazard insurance, provided the policy is not a "master" or "blanket" hazard insurance policy covering the common facilities of a planned unit development. The hazard insurance policy is the valid and binding obligation of the insurer, is in full force and effect, and will be in full force and effect and inure to the benefit of Buyer upon the consummation of the transactions contemplated by this Agreement. The applicable Seller has not engaged in, and has no knowledge of the Mortgagor's or any servicer's having engaged in, any act or omission which would impair the coverage of any such policy, the benefits of the endorsement provided for herein, or the validity and binding effect of either.

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**Y. No Default.** The Mortgage Loan is current and all payments have been made within the month such payments were due, and if the Mortgage Loan is a Co-op Loan, no foreclosure action or private or public sale under the Uniform Commercial Code has ever, to the knowledge of the applicable Seller, been threatened or commenced with respect to the Co-op Loan. There is no default, breach, violation or event of acceleration existing under the Mortgage or the Mortgage Note and no event that, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration, and neither the applicable Seller nor its predecessors have waived any default, breach, violation or event of acceleration. With respect to each Co-op Loan, there is no default in complying with the terms of the Mortgage Note, the Assignment of Proprietary Lease and the Proprietary Lease and all maintenance charges and assessments (including assessments payable in the future installments, which previously became due and owing) have been paid, and the applicable Seller has the right under the terms of the Mortgage Note, Assignment of Proprietary Lease and Recognition Agreement to pay any maintenance charges or assessments owed by the Mortgagor.

**Z. No Mechanics' Liens.** There are no mechanics' or similar Liens or claims that have been filed for work, labor or material (and no rights are outstanding that under the law could give rise to such Liens) affecting the related Mortgaged Property that are or may be Liens prior to, or equal or coordinate with, the Lien of the related Mortgage.

**AA. Location of Improvements.** All improvements that were considered in determining the Appraised Value of the Mortgaged Property lay wholly within the boundaries and building restriction lines of the Mortgaged Property and no improvements on adjoining properties encroach upon the Mortgaged Property. No improvement located on or being part of the Mortgaged Property is in violation of any applicable zoning law or regulation.

**BB. Customary Provisions.** The Mortgage contains customary and enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security provided thereby, including: (a) in the case of a Mortgage designated as a deed of trust, by trustee's sale; and (b) otherwise by judicial foreclosure. Upon default by a Mortgagor on a Mortgage Loan and foreclosure on, or trustee's sale of, the Mortgaged Property pursuant to the proper procedures, the holder of the Mortgage Loan will be able to deliver good and merchantable title to the Mortgaged Property. There is no homestead or other exemption or other right available to a Mortgagor that would interfere with the right to sell the Mortgaged Property at a trustee's sale or the right to foreclose the Mortgage.

**CC. No Additional Collateral.** The Mortgage Note is not and has not been secured by any collateral except the Lien of the corresponding Mortgage and the security interest of any applicable security agreement or chattel mortgage referred to in Parts T and U of this Schedule 1.

**DD. Deeds of Trust.** In the event the Mortgage constitutes a deed of trust, a trustee, duly qualified under the Requirements of Law and Takeout Investor and insurer requirements to serve as such, has been properly designated and currently so serves and is named in the Mortgage, and no fees or expenses are or will become payable by Buyer to the trustee under the deed of trust, except in connection with a trustee's sale after default by the Mortgagor.

**EE. Acceptable Investment.** There are no circumstances or conditions with respect to the Mortgage, the Mortgaged Property, the Mortgagor or the Mortgagor's credit standing that may cause: (a) private institutional investors or a Takeout Investor to regard the Mortgage Loan as an unacceptable investment; or (b) the Mortgage Loan to become a Delinquent Mortgage Loan or adversely affect the value or marketability of the Mortgage Loan.

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**FF. FICO Scores.** Each Mortgage Loan relates to a Mortgagor that has a non zero FICO score.

**GG. Due on Sale.** The Mortgage contains an enforceable provision for the acceleration of the payment of the unpaid principal balance of the Mortgage Loan in the event that the Mortgaged Property is sold or transferred without the prior written consent of the mortgagee thereunder.

**HH. Co-op Loans: Acceleration of Payment.** With respect to each Co-op Loan, each Assignment of Proprietary Lease contains enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization of the material benefits of the security provided thereby. The Assignment of Proprietary Lease contains an enforceable provision for the acceleration of the payment of the unpaid principal balance of the Mortgage Note in the event the Co-op Unit is transferred or sold without the consent of the holder thereof.

**II. Origination and Collection Practices.** The origination, servicing and collection practices used with respect to the Mortgage Loan have been in accordance with Accepted Servicing Practices and the terms of the Mortgage File, the Requirements of Law and any and all contractual obligations of the applicable Seller (including those obligations contained in this Agreement), including to the extent applicable the FHA Regulations relating to loss mitigation, and Takeout Investor or insurer guidelines, and have been in all respects legal, proper and prudent in the mortgage origination and servicing business. All Mortgage Interest Rate adjustments have been made in compliance with applicable state and federal law and the terms of the related Mortgage and Mortgage Note on the related adjustment date. The applicable Seller executed and delivered any and all notices required under applicable law and the terms of the related Mortgage Note and Mortgage regarding the Mortgage Interest Rate and any payment adjustments. All advances required to be made

under the Mortgage Notes have been made within the time frame therein specified and in accordance with the Mortgage File, FHA Regulations (to the extent applicable) and Requirements of Law. Any interest required to be paid pursuant to applicable state, federal and local law has been properly paid and credited. The terms of the Mortgage Loan do not require the owner of the Mortgage Loan to make escrow payments on behalf of the Mortgagor. All escrow deposits and escrow payments, if any, are in the possession of, or under the control of, the applicable Seller or Subservicer and have been collected and handled in full compliance with all Requirements of Law and the provisions of the related Mortgage Note and Mortgage, and there exist no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made. No escrow deposits or escrow payments or other charges or payments due the applicable Seller have been capitalized under the Mortgage Note.

**JJ. Appraisal.** The Mortgage File contains an Appraisal of the related Mortgaged Property signed prior to the approval of the Mortgage Loan application by a qualified appraiser, duly appointed by the applicable Seller, who had no interest, direct or indirect in the Mortgaged Property or in any loan made on the security thereof; and whose compensation is not affected by the approval or disapproval of the Mortgage Loan, and the Appraisal and appraiser both satisfy the requirements of Title XI of the Federal Institutions Reform, Recovery, and Enforcement Act of 1989 and the regulations promulgated thereunder, and all Requirements of Law and Takeout Investor or insurer requirements, each as in effect on the date the Mortgage Loan was originated. The applicable Seller has no knowledge of any circumstances or condition which might indicate that the Appraisal is incomplete or inaccurate. In addition, the Appraisal was prepared in accordance with USPAP Guidelines. The appraiser for the Mortgage Loan was duly licensed or certified under the applicable law where the Mortgage Loan was originated, and for each Government Mortgage Loan was acceptable to the FHA or VA, as applicable, and for each Conventional Mortgage Loan was acceptable to Fannie Mae, Freddie Mac and/or the Takeout Investor, as applicable. The applicable Seller will maintain documentation evidencing each appraiser's qualification and licensing or certification, which will promptly be provided to the Buyer upon request.

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**KK. Servicemembers Civil Relief Act.** The Mortgagor has not notified the applicable Seller, and the applicable Seller has no knowledge of any relief requested or allowed to the Mortgagor under the Servicemembers Civil Relief Act or any similar state statute or regulation.

**LL. Environmental Matters.** There is no pending action or proceeding directly involving the Mortgaged Property in which compliance with any environmental law, rule or regulation is an issue. To the best of the applicable Seller's knowledge, the Mortgaged Property is free from any and all toxic or hazardous substances and there exists no violation of any local, state or federal environmental law, rule or regulation.

**MM. No Denial of Insurance.** No action, inaction, or event has occurred and no state of fact exists or has existed that has resulted or will result in the exclusion from, denial of, or defense to coverage under any applicable pool insurance policy, special hazard insurance policy, private mortgage insurance or other mortgage insurance policy, including, but not limited to FHA mortgage insurance, or bankruptcy bond, irrespective of the cause of such failure of coverage.

**NN. Conversion to Fixed Interest Rate.** With respect to each Adjustable Rate Loan, the Mortgage Note does not contain a provision permitting or requiring conversion to a fixed interest rate Mortgage Loan.

**OO. Tax Service Contract.** The applicable Seller has obtained a life of loan, transferable real estate tax service contract with an Approved Tax Service Contract Provider on each Mortgage Loan and such contract is assignable to Buyer, and its successors and assigns, without cost.

**PP. Flood Certification Contract.** The applicable Seller has obtained a life of loan, transferable flood certification contract for each Mortgage Loan with an Approved Flood Policy Insurer, and such contract is assignable to Buyer, and its successors and assigns, without cost.

**QQ. Origination.** The Mortgage Loan was completely originated, underwritten, closed, funded and packaged by the applicable Seller.

**RR. MERS.** Such Mortgage Loan (a) meets the definition of MERS Designated Loan in the Electronic Tracking Agreement, (b) was properly registered in the MERS System at the time of its origination and has continuously remained so registered, and (c) has MERS as the record mortgagee or beneficiary.

**SS. Repairs and Improvements.** All repairs or improvements which if not made would result in the loss of any insurance coverage, including if applicable FHA insurance, on the related Mortgaged Property have been made to such Mortgaged Property, or set-aside amounts for such repairs or improvements have been included in the related Mortgage and Mortgage Note, all in compliance with the Requirements of Law, including, but not limited to, any applicable requirements of FHA Regulations. Except as otherwise disclosed in writing to Buyer, any repairs for which an advance has been made were completed and passed an inspection in accordance with the FHA Regulations, if applicable.

**TT. Interest Calculation.** Interest on each Mortgage Loan is calculated in accordance with the related Mortgage Note and the Requirements of Law, including, but not limited to, any applicable FHA Regulations. None of the Mortgage Loans provide for simple interest calculation.

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**UU. Construction or Rehabilitation of Mortgaged Property.** Either (i) the Mortgage Loan was not made in connection with the construction or rehabilitation of a Mortgaged Property or facilitating the trade-in or exchange of a Mortgaged Property or (ii) the Mortgaged Property has a certificate of completion if such Mortgage Loan was made in connection with the construction or rehabilitation of the related Mortgaged Property.

**VV. Qualified Mortgage.** The Mortgage Loan is a "qualified mortgage" within the meaning of Section 860G(a)(3) of the Internal Revenue Code of 1986, as amended.

**WW. FEMA Designations.** Except as otherwise disclosed in writing to Buyer, no Mortgaged Property (i) is in a zip code declared by the Federal Emergency Management Agency or any successor agency ("FEMA") as a federal disaster area and (ii) has been declared by FEMA as being an "Individual Assistance" property or "Category 1" property (or such similar term(s) or classification(s) that may be used by FEMA from time to time).

**XX. Credit Information.** As to each consumer report (as defined in the Fair Credit Reporting Act, Public Law 91-508) or other credit information furnished by the Seller to the Buyer in connection with a Mortgage Loan, the applicable Seller has full right and authority and is not precluded by

law or contract from furnishing such information to the Buyer and, to the best of the applicable Seller's knowledge, the Buyer is not precluded from furnishing the same to any subsequent or prospective purchaser of such Mortgage Loan.

**YY. Predatory Lending Regulations.** No Mortgage Loan is a High Cost Mortgage Loan. No predatory or deceptive lending practices, including, without limitation, the extension of credit without regard to the ability of the Mortgagor to repay and the extension of credit which has no apparent benefit to the Mortgagor, were employed in the origination of the Mortgage Loan.

**ZZ. Compliance with Anti-Money Laundering Laws.** The applicable Seller has complied with all applicable anti-money laundering laws and regulations, including without limitation the USA Patriot Act of 2001 (collectively, the "Anti-Money Laundering Laws") with respect to the Mortgage Loans; Sellers have established an anti-money laundering compliance program to the extent required by the Anti-Money Laundering Laws, has conducted the requisite due diligence in connection with the origination of each Mortgage Loan for purposes of the Anti-Money Laundering Laws as applicable as of the origination date, including with respect to the legitimacy of the applicable Mortgagor and the origin of the assets used by the said Mortgagor to purchase the property in question, and maintains, and will maintain, sufficient information to identify the applicable Mortgagor for purposes of the Anti-Money Laundering Laws.

**AAA. Purchase of Insurance.** No Mortgagor was required to purchase any credit life, disability, accident or health insurance product as a condition of obtaining the extension of credit. No Mortgagor obtained a prepaid single-premium credit life, disability, accident or health insurance policy in connection with the origination of the Mortgage Loan. No proceeds from any Mortgage Loan were used to purchase single premium credit insurance policies as part of the origination of, or as a condition to closing, such Mortgage Loan.

**BBB. Governmental Requirements.** Each Government Mortgage Loan conforms with all applicable FHA or VA underwriting, lending, selling and servicing requirements and with all Ginnie Mae requirements for the inclusion of the Mortgage Loan in a Ginnie Mae mortgage-backed security pool, and the Seller will comply with all documentation requirements of the Buyer and the document custodian within the time limitations described in the Facility Documents. If a Takeout Commitment requires the Mortgage Loan to be FHA-insured, the Mortgage Loan is fully eligible for

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FHA insurance and is, or within 60 days after disbursement of the proceeds by the Seller will be, fully insured by the FHA. If a Takeout Commitment requires the Mortgage Loan to be guaranteed by VA, the Mortgage Loan is fully-eligible for VA guaranty, and is, or within 60 days after disbursement of the proceeds by the Seller will be, fully guaranteed by VA.

**CCC. Conventional Mortgage Loan Requirements.** Each Conventional Mortgage Loan conforms with all applicable requirements of the Buyer, Agencies or applicable Takeout Investor, including, but not limited to, all requirements for the inclusion of such Conventional Mortgage Loans in any pool of loans or private security as designated by the Buyer, Freddie Mac and Fannie Mae, and each Conventional Mortgage Loan conforms with all pooling requirements of the Agency or Takeout Investor. If a Takeout Commitment requires the Mortgage Loan to be insured by a policy of private mortgage insurance, the Mortgage Loan is fully eligible and qualified to be insured by such policy of private mortgage insurance, such policy is in full force and effect, and no event or condition exists which could give rise to or result in a revocation of or defense to the policy.

**DDD. No Buydown Provisions; No Graduated Payments or Contingent Interests.** The Mortgage Loan does not contain provisions pursuant to which Monthly Payments are paid or partially paid with funds deposited in any separate account established by the applicable Seller, the Mortgagor, or anyone on behalf of the Mortgagor, or paid by any source other than the Mortgagor nor does it contain any other similar provisions which may constitute a "buydown" provision. The Mortgage Loan is not a graduated payment mortgage loan and the Mortgage Loan does not have a shared appreciation or other contingent interest feature.

**EEE. Regarding the Mortgagor.** The Mortgagor is one or more natural persons and/or trustees for an Illinois land trust or a trustee under a "living trust" and such "living trust" is in compliance with Fannie Mae guidelines for such trusts. The Mortgagor is not, and is not a Relative of or the Relative of a spouse of, an owner (other than a less than 1% shareholder of a publicly-held Affiliate), officer, director, or employee of a Seller Party or an Affiliate of a Seller Party.

**FFF. High Interest Rate Credit/Lending Transactions.** No Mortgage Loan is subject to Section 226.32 of Regulation Z or any similar state Requirements of Law (relating to high interest rate credit/ lending transactions).

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EXHIBIT A

FORM OF OPINIONS [to be split between in-house and outside counsel, subject to Buyer's approval]

MetLife Bank, N.A.

[ ]  
[ ]

Attention:

Dear Sirs and Mesdames:

You have requested our opinion as counsel to [ ], a [ ] organized and existing under the laws of [ ] (the "Seller"), [and to [ ], a [ ] organized and existing under the laws of [ ] (the "Guarantor"), with respect to certain matters in connection with that certain (i) Master Repurchase Agreement governing purchases and sales of certain Mortgage Loans, dated [ ], 20 [ ] (the "Repurchase Agreement"), by and among Seller, [Guarantor (together with the Seller, the "Seller Parties")], and MetLife Bank, N.A. (the "Buyer"), (ii) Pricing Letter, dated [ ], 20 [ ] by and [among] [between] Seller[,] [and Buyer,], (the "Pricing Letter"), [and (iii) Guaranty dated [ ], 20 [ ] by and between Buyer, Seller and [ ]. ] [ ], 2011, made by the Guarantors in favor of Buyer (the "Guaranty"). The Repurchase

Agreement [and the Guaranty] are hereinafter collectively referred to as the “Governing Agreements.” Capitalized terms not otherwise defined herein have the meanings set forth in the Repurchase Agreement.

[We] [I] have examined the following documents:

1. the Governing Agreements;
2. unfiled copies of each financing statements listed on Schedule 1 (collectively, the “Financing Statements”) naming Seller as Debtor and Buyer as Secured Party and describing the Repurchase Assets as to which security interests may be perfected by filing under the Uniform Commercial Code of the States listed on Schedule 1 (the “Filing Collateral”), which [we] [I] understand will be filed in the filing offices listed on Schedule 1 (the “Filing Offices”);
3. the reports listed on Schedule 2 as to UCC financing statements (collectively, the “UCC Search Report”);
4. such other documents, records and papers as we have deemed necessary and relevant as a basis for this opinion.

To the extent [we] [I] have deemed necessary and proper, [we] [I] have relied upon the representations and warranties of Seller contained in the Repurchase Agreement. [We] [I] have assumed the authenticity of all documents submitted to me [us] as originals, the genuineness of all signatures, the legal capacity of natural persons and the conformity to the originals of all documents.

Exh. A-1

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Based upon the foregoing, it is [our] [my] opinion that:

1. Seller is a [ ] duly organized, validly existing and in good standing under the laws of the [State of ] and is qualified to transact business in, and is in good standing under, the laws of the [State of ]. [GUARANTOR] is a [ ], duly organized, validly existing and in good standing under the laws of the [State of ] and is qualified to transact business in, and is in good standing under, the laws of the [State of ].
2. The execution, delivery and performance by Seller Parties of the Governing Agreements to which it is a party, and the sales by Seller and the pledge of the Repurchase Assets under the Repurchase Agreement have been duly authorized by all necessary corporate action on the part of Seller Parties. Each of the Governing Agreements have been executed and delivered by Seller Parties, and are legal, valid and binding agreements enforceable in accordance with their respective terms against Seller Parties, subject to bankruptcy laws and other similar laws of general application affecting rights of creditors and subject to the application of the rules of equity, including those respecting the availability of specific performance, none of which will materially interfere with the realization of the benefits provided thereunder or with Buyer’s purchase of the Purchased Mortgage Loans and other Repurchase Assets and/or security interest in the Purchased Mortgage Loans and other Repurchase Assets.
3. No consent, approval, authorization or order of, and no filing or registration with, any court or governmental agency or regulatory body is required on the part of Seller Parties for the execution, delivery or performance by such party of the Governing Agreements to which it is a party or for the sales by Seller under the Repurchase Agreement or the sale of the Repurchase Assets to Buyer and/or granting of a security interest to Buyer in the Repurchase Assets, pursuant to the Repurchase Agreement.
4. The execution, delivery and performance by Seller Parties of, and the consummation of the transactions contemplated by the Governing Agreements to which it is a party do not and will not (a) violate any provision of Seller Parties’ charter or by laws, (b) violate any applicable law, rule or regulation, (c) violate any order, writ, injunction or decree of any court or governmental authority or agency or any arbitral award applicable to Seller Parties of which [I] [we] have knowledge (after due inquiry) or (d) result in a breach of, constitute a default under, require any consent under, or result in the acceleration or required prepayment of any indebtedness pursuant to the terms of, any agreement or instrument of which [I][we] have knowledge (after due inquiry) to which either Seller Party is a party or by which it is bound or to which it is subject, or (except for the Liens created pursuant to the Repurchase Agreement) result in the creation or imposition of any Lien upon any Property of such party pursuant to the terms of any such agreement or instrument.
5. There is no action, suit, proceeding or investigation pending or, to the best of [our] [my] knowledge, threatened against either Seller Party which, in [our] [my] judgment, either in any one instance or in the aggregate, would be reasonably likely to result in any material adverse change in the properties, business or financial condition, or prospects of such party or in any material impairment of the right or ability of such party to carry on its business substantially as now conducted or in any material liability on the part of such party or which would draw into question the validity of the Governing Agreements to which it is a party or the Mortgage Loans or of any action taken or to be taken in connection with the transactions contemplated thereby, or which would be reasonably likely to impair materially the ability of such party to perform under the terms of the Governing Agreements to which it is a party or the Mortgage Loans.

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6. The Repurchase Agreement is effective to create, in favor of Buyer, a valid “security interest” as defined in Section 1-201(37) of the Uniform Commercial Code in all of the right, title and interest of Seller in, to and under the Repurchase Assets, except that (a) such security interests will continue in Repurchase Assets after its sale, exchange or other disposition only to the extent provided in Section 9-315 of the Uniform Commercial Code, (b) the security interests in Repurchase Assets in which Seller acquires rights after the commencement of a case under the Bankruptcy Code in respect of Seller may be limited by Section 552 of the Bankruptcy Code.

7. When the Purchased Mortgage Loans are delivered to Buyer, the security interest referred to in Section 6 above in the Repurchase Assets will constitute a fully perfected first priority security interest in all right, title and interest of Seller therein.

8. (a) Upon the filing of financing statements on Form UCC-1 with respect to Seller naming Buyer as “Secured Party” and Seller as a “Debtor”, and describing the Repurchase Assets, in the jurisdictions and recording offices listed on Schedule 1 attached hereto, the security interests referred to in Section 6 above will constitute fully perfected security interests under the Uniform Commercial Code in all right, title and interest of Seller in,

to and under such Repurchase Assets, which can be perfected by filing under the Uniform Commercial Code, or, will demonstrate a completion of the sale of the Mortgage Loans to Buyer.

(b) The UCC Search Report sets forth the proper filing offices and the proper debtors necessary to identify those Persons who have on file in the jurisdictions listed on Schedule 1 financing statements covering the Repurchase Assets as of the dates and times specified on Schedule 2. The UCC Search Report identifies no Person who has filed in any Filing Office a financing statement describing the Repurchase Assets prior to the effective dates of the UCC Search Report.

9. [Neither ]Seller [nor Guarantor] [is][ ] an "investment company", or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

Very truly yours,

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EXHIBIT B

FORM OF SERVICER NOTICE

[Date]

[ ], as Servicer  
[ADDRESS]  
Attention:

Re: Master Repurchase Agreement, dated as of [ ], 20[ ](the "Agreement"), by and among [ ](the "Seller"), and MetLife Bank, N.A. (the "Buyer").

Ladies and Gentlemen:

[ ] (the "Servicer") is servicing certain mortgage loans for Seller pursuant to that certain Servicing Agreement between the Servicer and Seller. Pursuant to the Agreement between Buyer and Seller, the Servicer is hereby notified that Seller has sold and pledged to Buyer certain mortgage loans which are serviced by Servicer.

Upon receipt of a Notice of Event of Default from Buyer in which Buyer shall identify the mortgage loans which are then pledged to Buyer under the Agreement (the "Mortgage Loans"), the Servicer shall segregate all amounts collected on account of such Mortgage Loans, hold them in trust for the sole and exclusive benefit of Buyer, and remit such collections in accordance with Buyer's written instructions. Following such Notice of Event of Default, Servicer shall follow the instructions of Buyer with respect to the Mortgage Loans, and shall deliver to Buyer any information with respect to the Mortgage Loans reasonably requested by Buyer.

In addition, Buyer may terminate the Servicing Agreement, as pertaining to the Mortgage Loans, without payment of any penalty or termination fee, in which event the Servicer shall cooperate, at no cost to Buyer, in transferring the servicing of the Mortgage Loans to a successor servicer appointed by Buyer in its sole and absolute discretion.

Notwithstanding any contrary information which may be delivered to the Servicer by Seller, the Servicer may conclusively rely on any information or Notice of Event of Default delivered by Buyer, and Seller shall indemnify and hold the Servicer harmless for any and all claims asserted against it for any actions taken in good faith by the Servicer in connection with the delivery of such information or Notice of Event of Default.

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Please acknowledge receipt of this instruction letter by signing in the signature block below and forwarding an executed copy to Buyer promptly upon receipt. Any notices to Buyer should be delivered to the following addresses: MetLife Bank, N.A., [ ], [ ], Attention: [ ]; Telephone: ( ) - ; Facsimile: ( ) - .

Very truly yours,

[ ]

By:

Name:  
Title:

ACKNOWLEDGED:

[ ],  
as Servicer

Exh. B-2

[FORM OF BAILEE LETTER]

METLIFE BANK, N.A.

[ ]  
 [ ]

[Date]

[INVESTOR]

[NAME]

[ADDRESS]

Attn:

[BAILEE]

[NAME]

[ADDRESS]

Attn:

Purchase of Mortgage Loans from [SELLER] (the "Seller") by [INVESTOR] (the "Investor")

Ladies and Gentlemen:

Pursuant to the terms and conditions set forth below, MetLife Bank, N.A., as Buyer (the "Buyer"), hereby delivers to [[INVESTOR] (also referred to herein as the "Bailee")] [[BAILEE], as [INVESTOR'S] agent (the "Bailee")], with this letter, the original executed promissory note(s) and other documentation, all as set forth on the schedule attached hereto (the "Mortgage Loan Documentation") evidencing the mortgage loan(s) described on the schedule attached hereto (the "Mortgage Loan(s)"). The Buyer is the owner of, or has a perfected first lien security interest in, the Mortgage Loan(s) pursuant to the Master Repurchase Agreement dated [ ], 201 (the "Repurchase Agreement") [between][among] the Buyer [and][,] the Seller [and [GUARANTOR(S)], and expressly retains and reserves all of its rights in the Mortgage Loan(s), the Mortgage Loan Documentation and all related security instruments, files, and documents (the "Loan Documents") until the Investor has paid the Buyer the Purchase Amount (as hereinafter defined) for the Mortgage Loan(s) in accordance with this letter.

By taking physical possession of this letter, the Mortgage Loan Documentation and the other Loan Documents, the Investor and the Bailee each hereby agrees: (i) that the Bailee shall hold in trust, as bailee for the Buyer, the Mortgage Loan Documentation and all Loan Documents that it receives related to the Mortgage Loan(s), until its status as bailee is terminated as set forth herein; (ii) that the Bailee shall not release or deliver, and the Bailee and the Seller shall not authorize the release or delivery of any of the Mortgage Loan Documentation or any other Loan Documentation to the Seller or any other person or take any other action with respect to the Mortgage Loan Documentation or any Loan Document which release, delivery or other action could cause the interest of the Buyer to become unperfected or which could otherwise jeopardize the interest of the Buyer in the Mortgage Loan(s); (iii) that the Seller shall deliver, or to cause to be delivered, the Purchase Amount (as defined below) only to the account set forth below pursuant to the terms set forth below, and to honor a change in such terms only upon receipt of written instruction by the Buyer; (iv) that the Bailee shall return the Mortgage Loan Documentation

Exh. C-1

immediately to the Buyer, to the address specified below (A) upon receipt of a written request by the Buyer, (B) in the event that the Investor elects not to purchase the Mortgage Loan(s), (C) in the event that the Mortgage Loan Documentation requires completion and/or correction; or (D) within thirty (30) days following receipt of the Mortgage Loan Documentation if the Investor has failed to purchase the Mortgage Loan(s) by such time and (v) that the Seller shall remit the Purchase Amount to the account set forth below or in accordance with the written instructions of the Buyer.

If required, return Mortgage Loan Documentation to: MetLife Bank, N.A., Custodial Services, Attention: Donna Jones, 1555 Walnut Hill Lane, Irving, TX 75038.

Please note that should the Investor remit the Purchase Amount to any other entity or Person, the Buyer will not consider the Purchase Amount to have been paid and will not release its interest or terminate the responsibilities of the Bailee as bailee for the Buyer until the Purchase Amount has been properly remitted to the account set forth herein.

The Buyer agrees that its interest in the Mortgage Loan(s) shall be fully released and the responsibilities of the Investor and the Bailee shall terminate upon the Investor's irrevocable payment to the Buyer of an amount (the "Purchase Amount") equal to the greater of (1) the purchase price for the Mortgage Loan(s) agreed to by the Investor and the Seller and (2) the Repurchase Price in respect of the Mortgage Loan(s). If the Buyer consents to, or otherwise accepts, the payment of a Purchase Amount for the Mortgage Loan(s) that is less than the amount of the outstanding Transactions with respect to the Mortgage Loan(s), as set forth in clause (2) of the preceding sentence, the Buyer shall release its interest in the Mortgage Loan(s) only upon full payment of the remaining outstanding Transactions (as defined in the Repurchase Agreement) with respect to such Mortgage Loan(s). All payments by the Investor shall be remitted via federal funds pursuant to the following wire transfer instructions:

[BANK]  
 ABA#  
 A/C#  
 Account #

By acceptance of the Mortgage Loan Documentation on behalf of the Investor, the Bailee and the Investor each agrees to be bound by the terms of this letter (regardless of whether the Bailee or the Investor has executed same). In the event of any inconsistency between the provisions of this letter and the provisions of any other instrument or document delivered by the Buyer to the Bailee or Investor with this letter or in connection with the Mortgage Loan(s), including, without limitation, any "release" or similar document, the provisions of this letter shall control.

Sincerely,

METLIFE BANK, N.A.,  
as Buyer

By: \_\_\_\_\_  
Name:  
Title:

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IRREVOCABLY ACKNOWLEDGED AND AGREED TO:

[INVESTOR]

BY: \_\_\_\_\_

TITLE:

DATE:

IRREVOCABLY ACKNOWLEDGED AND AGREED TO:

[BAILEE]

BY: \_\_\_\_\_

TITLE:

DATE:

Exh. C-3

EXHIBIT D

FORM OF SECTION 7 CERTIFICATE

Reference is hereby made to the Master Repurchase Agreement dated as of [ ], 20[ ] (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement"), among [ ] (the "Seller") and MetLife Bank, N.A. (the "Buyer"). Pursuant to the provisions of Section 7 of the Agreement, the undersigned hereby certifies that:

1. It is a natural individual person, treated as a corporation for U.S. federal income tax purposes, disregarded for federal income tax purposes (in which case a copy of this Section 7 Certificate is attached in respect of its sole beneficial owner), or treated as a partnership for U.S. federal income tax purposes (one must be checked).
2. It is the beneficial owner of amounts received pursuant to the Agreement.
3. It is not a bank, as such term is used in section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the "Code"), or the Agreement is not, with respect to the undersigned, a loan agreement entered into in the ordinary course of its trade or business, within the meaning of such section.
4. It is not a 10 percent shareholder of Seller within the meaning of section 871(h)(3) or 881(c)(3)(B) of the Code.
5. It is not a controlled foreign corporation that is related to Seller within the meaning of section 881(c)(3)(C) of the Code.
6. Amounts paid to it under the Facility Documents are not effectively connected with its conduct of a trade or business in the United States.

[NAME OF UNDERSIGNED]

By: \_\_\_\_\_  
Name:  
Title: \_\_\_\_\_

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

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POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that Seller hereby irrevocably constitutes and appoints Buyer and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Seller and in the name of Seller or in its own name, from time to time in Buyer’s discretion:

- (a) to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due with respect to any assets (the “Repurchase Assets”) conveyed to Buyer under the Master Repurchase Agreement dated as of \_\_\_\_\_, between [SELLER] (the “Seller”), MetLife Bank, N.A. (the “Buyer”), [GUARANTOR, IF ANY], and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Buyer for the purpose of collecting any and all such moneys due with respect to any other Repurchase Assets whenever payable;
- (b) to pay or discharge taxes and Liens levied or placed on or threatened against the Repurchase Assets;
- (c) to direct any party liable for any payment under any Repurchase Assets to make payment of any and all moneys due or to become due thereunder directly to Buyer or as Buyer shall direct;
- (d) to ask or demand for, collect, receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Repurchase Assets;
- (e) to sign and endorse any invoices, assignments, verifications, notices and other documents in connection with any Repurchase Assets;
- (f) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Repurchase Assets or any proceeds thereof and to enforce any other right in respect of any Repurchase Assets;
- (g) to defend any suit, action or proceeding brought against Seller with respect to any Repurchase Assets;
- (h) to settle, compromise or adjust any suit, action or proceeding described in clause (g) above and, in connection therewith, to give such discharges or releases as Buyer may deem appropriate; and
- (i) generally, to sell, transfer, pledge and make any agreement with respect to or otherwise deal with any Repurchase Assets as fully and completely as though Buyer were the absolute owner thereof for all purposes, and to do, at Buyer’s option and Seller’s expense, at any time, and from time to time, all acts and things which Buyer deems necessary to protect, preserve or realize upon the Repurchase Assets and Buyer’s Liens thereon and to effect the intent of this Agreement, all as fully and effectively as Seller might do; to effectuate a transfer of servicing with respect to the Repurchase Assets; and for the purpose of carrying out the transfer of servicing with respect to the Repurchase Assets and Mortgage Loans from Seller to a successor servicer appointed by Buyer in its sole discretion and to take

Exh. E-1

any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish such transfer of servicing, and, without limiting the generality of the foregoing, Seller hereby gives Buyer the power and right, on behalf of Seller, without assent by Seller, to, in the name of Seller or its own name, or otherwise, prepare and send or cause to be sent “good-bye” letters to all mortgagors under the Repurchase Assets and Mortgage Loans, transferring the servicing of the Repurchase Assets and Mortgage Loans to a successor servicer appointed by Buyer in its sole discretion.

Seller hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

Any capitalized term used but not defined herein shall have the meaning assigned to such term in the Agreement.

TO INDUCE ANY THIRD PARTY TO ACT HEREUNDER, SELLER HEREBY AGREES THAT ANY THIRD PARTY RECEIVING A DULY EXECUTED COPY OR FACSIMILE OF THIS INSTRUMENT MAY ACT HEREUNDER, AND THAT REVOCATION OR TERMINATION HEREOF SHALL BE INEFFECTIVE AS TO SUCH THIRD PARTY UNLESS AND UNTIL ACTUAL NOTICE OR KNOWLEDGE OF SUCH REVOCATION OR TERMINATION SHALL HAVE BEEN RECEIVED BY SUCH THIRD PARTY, AND BUYER ON ITS OWN BEHALF AND ON BEHALF OF BUYER’S ASSIGNS, HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS ANY SUCH THIRD PARTY FROM AND AGAINST ANY AND ALL CLAIMS THAT MAY ARISE AGAINST SUCH THIRD PARTY BY REASON OF SUCH THIRD PARTY HAVING RELIED ON THE PROVISIONS OF THIS INSTRUMENT.

Exh. E-2

IN WITNESS WHEREOF Seller has caused this Power of Attorney to be executed and Seller’s seal to be affixed this \_\_\_\_\_ day of [ ], 20[ ].

[SELLER]



Agreement of Amendmentdated as ofSeptember 22, 2011

In accordance with Section 11.02 of the Master Repurchase Agreement (the "MR Agreement") dated as of March 30, 2011, between Excel Mortgage Servicing, Inc. as the Seller and Alliance Bank of Arizona, a Division of Western Alliance Bank as the Buyer, the following amendments to the MR Agreement shall take effect upon execution of this Agreement of Amendment by both the Seller and the Buyer (the "Amendment").

Section 1. Amendments.

(a) Article II, Section 2.01, DEFINITIONS, is hereby amended by deleting the definition of "Seller's Concentration Limit" in its entirety and inserting the following definition in lieu thereof:

"Seller's Concentration Limit" means \$30,000,000.00 at any one time."

(b) Article III, Section 3.01, REQUEST FOR PURCHASE OF MORTGAGE LOANS, is hereby amended by deleting clause (b) thereof in its entirety and inserting the following in lieu thereof:

"(b) the aggregate outstanding balance of Purchased Loans with original Mortgage Notes not in the Buyer's possession equals or exceeds an amount equal to TWELVE MILLION DOLLARS (\$12,000,000.00),"

(c) The Pricing Schedule, Schedule 3, is hereby amended by deleting the Pricing Schedule with the Effective Date of 3/7/11 in its entirety and inserting the attached Amended Pricing Schedule, Schedule 3, with the Effective Date of 9/22/11.

Section 2. Waiver/No Default.

The Buyer hereby waives compliance as of March 30, 2011 with the Financial Covenants, Schedule 4, Section 5 (Minimum Profitability) for the fiscal quarters ended March 31, 2011 and June 30, 2011. On the effective date of this Amendment, no Default or Event of Default shall have occurred and be continuing under the MR Agreement and each of the representations and warranties of Seller made in the MR Agreement shall be true and correct.

Section 3. Limited Effect.

Except as expressly amended, waived and modified by this Amendment, the MR Agreement shall continue to be, and shall remain, in full force and effect in accordance with its terms. The

execution of this Amendment by the Buyer shall not operate as a waiver of any of its rights, powers or privileges under the MR Agreement or any related document.

Section 4. Counterparts.

This Amendment may be executed by each of the parties hereto on any number of separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart signature page to this Amendment in Portable Document Format (PDF) or by facsimile transmission shall be as effective as delivery of a manually executed original counterpart thereof.

Section 5. GOVERNING LAW.

THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF ARIZONA.

**SELLER**

Excel Mortgage Servicing, Inc.

**BUYER**

ALLIANCE BANK OF ARIZONA, A DIVISION OF WESTERN ALLIANCE BANK

By: /s/ Todd Taylor  
 Name: Todd Taylor  
 Title: CFO  
 Date: 9/22/11

By: /s/ Stephen R. Curley  
 Name: Stephen R. Curley  
 Title: Senior Vice President  
 Date: 9/22/11

**SELLER**

Excel Mortgage Servicing, Inc.

By: /s/ William Ashmore  
 Name: William Ashmore  
 Title: President  
 Date: 9/22/11



## CERTIFICATION

I, Joseph R. Tomkinson, certify that:

1. I have reviewed this report on Form 10-Q of Impac Mortgage Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
  - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ JOSEPH R. TOMKINSON

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Joseph R. Tomkinson  
Chief Executive Officer  
November 14, 2011

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## CERTIFICATION

I, Todd R. Taylor, certify that:

1. I have reviewed this report on Form 10-Q of Impac Mortgage Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
  - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ TODD R. TAYLOR

Todd R. Taylor

Chief Financial Officer

November 14, 2011

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**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the report of Impac Mortgage Holdings, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2011 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned, in the capacities and on the dates indicated below, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ JOSEPH R. TOMKINSON

\_\_\_\_\_  
Joseph R. Tomkinson  
*Chief Executive Officer*  
November 14, 2011

/s/ TODD R. TAYLOR

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Todd R. Taylor  
*Chief Financial Officer*  
November 14, 2011

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