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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

**Current Report**

**Pursuant To Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

**Date of Report (date of earliest event reported): June 24, 2003**

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**IMPAC MORTGAGE HOLDINGS, INC.**

(Exact name of registrant as specified in its charter)

**Maryland**  
(State or Other Jurisdiction  
of Incorporation)

**1-14100**  
(Commission File Number)

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

**1401 Dove Street**  
**Newport Beach, CA, 92660**  
(Address of principal executive offices including zip code)

**(949) 475-3600**  
(Registrant's Telephone Number, Including Area Code)

**Not Applicable**  
(Former Name or Former Address, if Changed Since Last Report)

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## ITEM 5. Other Events

### Purchase of Common Stock of Impac Funding Corporation

On July 1, 2003, Impac Mortgage Holdings, Inc. ("IMH") entered into a Stock Purchase Agreement with Joseph R. Tomkinson, William S. Ashmore and the Johnson Revocable Living Trust, of which Richard J. Johnson is trustee, whereby IMH purchased all of the outstanding shares of voting common stock of Impac Funding Corporation ("IFC"), IMH's mortgage operations, for aggregate consideration of \$750,000. The common stock of IFC represents 1% of the economic interest in IFC. IMH currently owns all of the outstanding non-voting preferred stock of IFC, which represents 99% of the economic interest in IFC. Joseph R. Tomkinson is IMH's Chairman and Chief Executive Officer, William S. Ashmore is IMH's Chief Operating Officer, President and a director, and Richard J. Johnson is IMH's Executive Vice President and Chief Financial Officer. Each of Messers. Tomkinson and Ashmore and the Johnson Revocable Living Trust owned one-third of the outstanding common stock of IFC. Mr. Tomkinson elected to receive \$125,000 worth of his consideration for the sale of his IFC shares of common stock in the form 7,687 shares of IMH common stock. The remainder of the consideration was paid in cash. As a result of acquiring 100% of IFC's common stock, IMH will begin to consolidate IFC's financial results in the third quarter of 2003.

### New Employment Agreements

On December 31, 2002, the then-existing employment agreements of Joseph R. Tomkinson, William S. Ashmore and Richard J. Johnson (each an "Officer" and collectively, the "Officers") expired. The existing employment agreements were extended until new employment agreements with each Officer had become effective. On April 1, 2003, new employment agreements with IFC became effective.

*Guaranty.* Since IMH will receive direct and indirect benefits from the performance of the Officers under each of the employment agreements, IMH executed a Guaranty in favor of each of the Officers. Under the terms of each Guaranty, IMH promises to pay any and all obligations owed to the Officers in the event of default by IFC.

*Term of Agreements.* Each employment agreement, unless terminated earlier pursuant to the terms of such agreement, will expire on December 31, 2007.

*Base and Other Compensation.* Pursuant to the terms of the employment agreements, Joseph R. Tomkinson will receive an annual base salary of \$600,000, William S. Ashmore will receive an annual base salary of \$500,000, and Richard J. Johnson will receive an annual base salary of \$250,000. In exchange for increased base salaries, Mr. Tomkinson and Mr. Ashmore will no longer receive commissions on loan acquisitions and originations at IFC, which were provided for in their previous employment agreements. Each Officer's base salary will not be subject to any annual adjustment. The Officers will receive other benefits, such as a car allowance, health benefits and accrued vacation. The Officers will be prohibited, without the prior approval of the board of directors, from receiving compensation, directly or indirectly, from companies with whom IMH or its affiliates has any financial, business or affiliated relationship.

*Incentive Compensation.* Each Officer will also receive incentive compensation (the "Incentive Compensation"), which will be paid to each executive officer in an amount equal to IMH's Excess Income, which is the greater of zero or net income minus the product of (i) the Ten

Year U.S. Treasury Rate plus 200 basis points and (ii) the Average Net Worth multiplied by the number of days in the quarter and divided by 365, multiplied by 4.0875% in the case of Joseph Tomkinson, 4.25% in the case of William Ashmore, and 3.0% in the case of Richard Johnson. Net Income is determined in accordance with the then-current tax law before the total Incentive Compensation is paid to the Officers, the deduction for dividends paid and any net operating loss deductions arising from prior periods. The Ten Year U.S. Treasury Rate is generally the arithmetic average of the weekly per annum Ten Year Average Yields published by the Federal Reserve Board during the quarter. Average Net Worth is, for any quarter, IMH's accumulated net worth of \$514.8 million at December 31, 2002 plus, subsequent to December 31, 2002, the weighted average daily sum of the gross proceeds from any sale of IMH's equity securities, before deducting any underwriting discounts and commissions and the other expenses; plus the average balance for the quarter of IMH's retained earnings; less the weighted average daily sum of the gross proceeds used to repurchase IMH's stock; less the average balance for the quarter of the cumulative dividends declared; plus an amount equal to Prior Period Losses.

The Incentive Compensation will generally be calculated and reviewed by IMH's Compensation Committee within 30 days after each quarter. The Incentive Compensation will be paid in cash, and the Officers may elect to defer any component of their compensation in an approved, company sponsored deferred compensation plan.

The material terms of the Incentive Compensation were approved for Section 162(m) purposes by IMH's stockholders at its annual meeting of stockholders held on June 24, 2003. As a result, amounts paid pursuant to the Incentive Compensation are intended to be deductible by IMH for tax purposes and not subject to the \$1.0 million per year per executive deduction limitation of Section 162(m) of the Internal Revenue Code.

*Severance Compensation.* If an Officer's employment is terminated for any reason, other than without cause or good reason (as such terms are to be defined in the agreement), the Officer will receive his base compensation, benefits, and pro rata incentive compensation through the termination date. In addition, if the Officer is terminated without cause or if the executive resigns with good reason, the Officer will receive the following:

- (i) an additional 30 months of his base salary of which 12 month's worth of base salary will be paid within eight days after the Officer executes and delivers a Waiver and Release Agreement and the other 18 month's worth of base salary will be paid on the normal salary payment dates over that period;
- (ii) benefits paid over the 30 month period following the termination date, provided certain conditions are met; and
- (iii) Incentive Compensation payments determined and paid as follows:
  - a. on the termination date, the Officer will be paid an amount equal to the prior three quarters' worth of Incentive Compensation;
  - b. 30 days after the quarter in which the termination date occurs, the Incentive Compensation for that quarter that the Officer would have been entitled to receive had the Officer not been terminated; and
  - c. for the six quarters after the quarter in which the termination date occurs, the Officer

will be paid his Incentive Compensation at the time such compensation would have been paid had the executive officer not been terminated; provided that the Officer's Incentive Compensation for each quarter will not be less than 50% nor more than 100% of the average quarterly Incentive Compensation for the four quarters immediately preceding the termination date.

Each Officer has agreed not to compete with IMH and its subsidiaries and affiliates during the 30 months that severance payments are made to the Officer, provided that the agreement not to compete will be waived if the Officer forgoes the severance compensation.

**ITEM 7. Exhibits**

(c) Exhibits

- 10.1 Employment Agreement, made as of April 1, 2003, between Impac Funding Corporation and Joseph R. Tomkinson
- 10.2 Employment Agreement, made as of April 1, 2003, between Impac Funding Corporation and William S. Ashmore
- 10.3 Employment Agreement, made as of April 1, 2003, between Impac Funding Corporation and Richard J. Johnson
- 10.4 Guaranty, dated April 1, 2003, granted by Impac Mortgage Holdings, Inc. in favor of Joseph R. Tomkinson
- 10.5 Guaranty, dated April 1, 2003, granted by Impac Mortgage Holdings, Inc. in favor of William S. Ashmore
- 10.6 Guaranty, dated April 1, 2003, granted by Impac Mortgage Holdings, Inc. in favor of Richard J. Johnson
- 10.7 Stock Purchase Agreement, dated July 1, 2003, among Impac Mortgage Holdings, Inc, Joseph R. Tomkinson, William S. Ashmore, and Johnson Revocable Living Trust

SIGNATURES

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

IMPAC MORTGAGE HOLDINGS, INC.

By:                     /s/ Ronald M. Morrison

Ronald M. Morrison  
General Counsel and Secretary

Date: July 15, 2003

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**EXHIBIT INDEX**

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**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT is made as of April 1, 2003, by and between Impac Funding Corporation, a California corporation ("Employer"), and Joseph R. Tomkinson, an individual ("Employee"); provided that the Incentive Compensation that may be paid pursuant to this Agreement is subject to approval by a majority of the shareholders of Impac Mortgage Holdings, Inc., a Maryland corporation ("IMH"), and if such shareholder approval is not obtained on or before the earlier of (i) the date of the next annual meeting of the shareholders of IMH and (ii), August 31, 2003, then this Agreement shall terminate as of the earlier of such dates and be of no further force or effect.

**RECITALS**

WHEREAS, Employee is knowledgeable of and skillful in the business of Employer and IMH, which includes acquiring for investment and sale non-conforming residential mortgage loans and mortgage backed securities and performing mortgage operations for affiliates or related entities of Employer (the "Business");

WHEREAS, Employer believes that Employee is an integral part of its management and currently is and will become more knowledgeable of and be in part responsible for developing the Business;

WHEREAS, Employee possesses extensive management experience and knowledge regarding the Business, including confidential information concerning service marketing plans and strategy, business plans and projections and the formulas and models pertaining thereto, customer needs and peculiarities, finances, operations, billing methods and customer lists;

WHEREAS, Employer desires that Employee continue his employment as Chief Executive Officer of Employer; and

WHEREAS, Employee is willing to be employed by Employer and provide services to Employer and any affiliates or related entities of Employer (as more fully described in Exhibit A attached hereto) under the terms and conditions herein stated.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, it is hereby agreed by and between the parties hereto as follows:

**1. Employment, Services and Duties.**

1.1 Employer hereby employs Employee and Employee hereby accepts such employment full-time (subject to those exceptions, if any, set forth below) as Chief Executive

Officer of Employer to perform the duties and functions set forth in Exhibit A attached hereto and, Subject to Section 2.2(i), to perform such other duties or functions as are reasonably required or as may be prescribed from time to time or as otherwise agreed. Employee shall render his services by and subject to the instructions and under the direction of Employer's Board of Directors to whom Employee shall directly report.

1.2 Employee acknowledges and agrees that Employee may be required by Employer to devote a portion of his working time to perform functions for Employer's affiliates or related entities (as set forth in Exhibit A attached hereto) and that such services are to be performed pursuant to and consistent with Employer's duties and obligations under this Agreement.

1.3 Employee will at all times faithfully, industriously and to the best of his ability, experience and talents perform all of the duties required of and from him pursuant to the terms of this Agreement. Employee will devote his full business energies and abilities and all of his business time to the performance of his duties hereunder and will not, without Employer's prior written consent, render to others any service of any kind (whether or not for compensation) that would interfere with the full performance of Employee's duties hereunder, and in no event will engage in any activities that compete with the Business or that could create a reasonably foreseeable conflict of interest or the appearance of a reasonably foreseeable conflict of interest; provided that nothing contained in this Section 1.3 shall preclude Employee from engaging in or managing Employee's outside investments.

## **2. Term and Termination.**

2.1 The term of this Agreement shall be through December 31, 2007, unless extended by the mutual written agreement of Employer and Employee.

2.2 Employee's employment shall terminate prior to the expiration of the term set forth in Section 2.1 upon the happening of any of the following events:

(a) Voluntary termination by Employee other than for Good Reason (as defined below); provided that Employee shall be required to provide Employer with at least 30 days prior written notice of such voluntary termination;

(b) Death of Employee;

(c) Employer may terminate Employee under this Agreement for "cause" if any of the following occurs (any determination of "cause" as used in this Agreement shall be made only by an affirmative majority vote of the Board of Directors (not including Employee in the deliberations or vote on the same, if a director) of Employer):

(i) Employee is convicted of (or pleads nolo contendere to) (A) a crime of dishonesty or breach of trust, including such a crime involving either the property of Employer IMH (or any affiliate or related entity of Employer or IMH) or the property entrusted to Employer or IMH (or any affiliate or related entity of Employer or IMH) by its clients, including fraud, or



embezzlement or other misappropriation of funds belonging to Employer or IMH (or any affiliate or related entity of Employer or IMH) or any of their respective clients, or (B) a felony leading to incarceration of more than 90 days or the payment of a penalty or fine of \$100,000 or more;

(ii) Employee materially and substantially fails to perform Employee's job duties properly assigned to Employee after being provided 30 days prior written notification by the Board of Directors of Employer setting forth those duties that are not being performed by Employee; provided that Employee shall have a reasonable time to correct any such failures to the extent that such failures are correctable and Employer may not terminate Employee for "cause" on the basis on any such failure that is cured within a reasonable time.

(iii) Employee has engaged in willful misconduct or gross negligence in connection with his service to Employer or IMH (or any affiliate or related entity of Employer or IMH) that has caused or is causing material harm to Employer or IMH (or any affiliate or related entity of Employer or IMH); or

(iv) Employee's material breach of any of the terms of this Agreement or any other obligation that Employee owes to Employer or IMH (or any affiliate or related entity of Employer or IMH), including a material breach of trust or fiduciary duty or a material breach of any proprietary rights and inventions or confidentiality agreement between Employer and Employee or between IMH and Employee (or between Employee and any affiliate or related entity of Employer or IMH)(as such agreements may be adopted or amended from time to time by Employer and Employee).

(d) By mutual agreement between Employer and Employee;

(e) The date when Employee is declared legally incompetent under the laws of the State of California, or if Employee has a mental or physical condition that can reasonably be expected to prevent Employee from carrying out his essential duties and obligations under this Agreement for a period of greater than six months (any such condition an "Incapacitating Condition"), notwithstanding Employer's reasonable accommodations (to the extent required by law);

(f) Employer may terminate Employee under this Agreement at will (and without cause) upon written notice at any time. Unless otherwise provided in such notice, such termination shall be effective immediately upon providing written notice to Employee; or

(g) Employee may terminate his employment under this Agreement for Good Reason upon providing Employer at least 30 days prior written notice of such termination stating the basis on which Employee has determined that he has Good Reason to terminate his employment; provided that Employer shall have a reasonable time after receiving such notice to cure any event that would constitute Good Reason for Employee to terminate his employment (provided such event is curable) and Employee

may not terminate his employment for Good Reason on the basis of any such event that is cured within a reasonable time. Notwithstanding the foregoing portion of this Section 2.02(g), the aforementioned 30-day notice and reasonable cure period shall not apply to Section 2.02(g)(iv). "Good Reason" shall mean:

- (i) the assignment to Employee of duties materially inconsistent with, or a substantial reduction or alteration in, the authority, duties or responsibilities of Employee as set forth in this Agreement, without Employee's prior written consent;
- (ii) the principal place of the performance of Employee's responsibilities and duties is changed to a location more than 65 miles from the location of such place as of the date of this Agreement, without Employee's prior written consent;
- (iii) a material breach by Employer of this Agreement, including a reduction by Employer of Employee's Base Salary, without Employee's prior written consent; or
- (iv) a failure by Employer to obtain from any acquirer of Employer, before any Acquisition (as defined below) takes place, an agreement to assume and perform this Agreement.

Good Reason does not include the expiration of the term of this Agreement on December 31, 2007.

2.3 Except as set forth in Section 4, in the event that Employee's employment is terminated pursuant to Section 2.2(a), 2.2(b), 2.2(c), 2.2(d) or 2.2(e) herein, neither Employer nor Employee shall have any remaining duties or obligations under this Agreement, except that Employer shall pay to Employee, or his legal representatives, on the date of termination of employment (the "Termination Date") or, with respect to any Incentive Compensation payments or reimbursement for expenses, as promptly as practical after the Termination Date, the following:

- (a) Such compensation as is due pursuant to Sections 3.1(a) and 3.1(b), prorated through the Termination Date;
- (b) Any expense reimbursements due and owing to Employee for reasonable and necessary business and entertainment expenses of Employer incurred by Employee prior to the Termination Date; and
- (c) The dollar value of all accrued and unused paid time off that Employee is entitled to through the Termination Date.

2.4 Except as set forth in Section 4, in the event that Employee's employment is terminated pursuant to Section 2.2(f) or 2.2(g), neither Employer nor Employee shall have any remaining duties or obligations under this Agreement, except that Employer shall pay to Employee, or his representatives, the amounts set forth in Section 2.3 at the times set forth in

Section 2.3 and the following (provided that payments for health insurance coverage shall be made to an insurance provider):

(a) An additional 30 month's worth of Base Salary to be paid as follows:

(i) 12 month's worth of Base Salary paid eight days after Employee signs and delivers to Employer the Waiver and Release Agreement required pursuant to Section 2.5; and

(ii) 18 month's worth of Base Salary paid over the 18-month period succeeding the Termination Date (paid at the times set forth in Section 3.1(a)).

(b) Premiums for continuation of Employee's health insurance benefits under Employer's group health insurance plan, pursuant to COBRA, for the 30 month period succeeding the Termination Date (with such health insurance coverage to be at a level and quality equivalent to the health insurance coverage provided by Employer to Employee immediately prior to the Termination Date, "Equivalent Coverage"); provided that Employer shall pay such premiums only so long as (during said 30 month period) Employee remains eligible for such Equivalent Coverage under COBRA;

(c) Incentive Compensation to be determined and paid as follows:

(i) On the Termination Date, Employee will be paid an amount, if any, equal to the total Incentive Compensation paid to Employee for the three quarters immediately prior to the Termination Date for which Incentive Compensation had already been paid to Employee;

(ii) Within 30 days after the end of the quarter in which the Termination Date occurs, Employee's Incentive Compensation for that quarter will be calculated and Employee will be paid an amount equal to the Incentive Compensation that Employee otherwise would have been paid (as if Employee was still employed by Employer) for that quarter pursuant to Section 3.1(b); and

(iii) For the six quarters after the quarter in which the Termination Date occurs, Employee shall be paid the Incentive Compensation that Employee otherwise would have been paid (as if Employee was still employed by Employer) for those quarters pursuant to Section 3.1 (b) (with such Incentive Compensation payments to be paid at the times they would have been paid had Employee's employment not terminated); provided that each quarterly Incentive Compensation payment during this six quarter period shall not be less than 50% nor more than 100% of the average of the four quarterly Incentive Compensation amounts paid to Employee for the four quarters immediately preceding the Termination Date.

(d) The payments set forth in Sections 2.4(a), (b) and (c) above are referred to herein collectively as the “Severance Payments” and each as a “Severance Payment.”

2.5 As a condition precedent of Employee or his estate receiving any Severance Payment from Employer, whether in a lump sum payment or a string of payments or in the form of payment of benefits, Employee or his estate shall, in consideration for payment of such amount or benefit, sign and deliver to Employer (against the execution and delivery of the same by the other parties thereto) the form of Waiver and Release Agreement attached hereto as Exhibit B. Such Waiver and Release Agreement will- not be construed to include any release of any indemnification rights Employee may have against Employer pursuant to Employer’s Articles of Incorporation or bylaws, any indemnification agreement or California Labor Code Section 2800.

2.6 This Agreement shall not be terminated by Employer merging with or otherwise being acquired by another entity, whether or not Employer is the surviving entity, or by Employer transferring of all or substantially all of its assets (any such event, an “Acquisition”).

2.7 In the event of any Acquisition, the surviving entity or transferee, as the case may be, shall be bound by and shall have the benefits of this Agreement, and Employer shall not enter into any Acquisition unless the surviving entity or transferee, as the case may be, agrees to be bound by the provisions of this Agreement.

### **3. Compensation.**

3.1 As the total consideration for Employee’s services rendered hereunder, Employee shall be entitled to the following during the period that Employee is employed hereunder:

(a) A base salary of \$600,000 per year (“Base Salary”), payable in equal installments bi-weekly on those days when Employer normally pays its employees;

(b) “Incentive Compensation” in an amount equal to 4.0875% of IMH’s Excess Income (as “Excess Income” is defined in Exhibit C attached hereto). Within 20 days after the end of each quarter for which Incentive Compensation for Employee is to be determined, IMH’s Chief Financial Officer (the “CFO”) will prepare and present a report (the “Incentive Compensation Report”) to the Chairman of IMH’s Compensation Committee (the “Compensation Committee”) containing the calculation of Employee’s Incentive Compensation for such quarter and information supporting such calculation in reasonable detail. IMH will instruct its independent auditors (the “Auditors”) to examine the Incentive Compensation Report and advise the Chairman of the Compensation Committee on whether it agrees with the calculations and conclusions set forth in that report and to provide its report within 25 days after the end of each quarter for which Incentive Compensation for Employee is to be determined. Within 30 days after the end of each quarter for which Incentive Compensation for Employee is to be determined provided that the Incentive Compensation Report for that quarter has been

timely presented to the Compensation Committee, the Compensation Committee will review the Incentive Compensation Report and determine any Incentive Compensation to be paid to Employee for that quarter and will direct the Employer to pay such amount. Within 7 days after Employee's Incentive Compensation for a particular quarter is determined, Employer will pay such Incentive Compensation to Employee in cash. Incentive Compensation and Excess Income shall be calculated by the CFO of IMH and otherwise determined hereunder in accordance with Exhibit C attached hereto. If the Incentive Compensation Report or the Auditor's agreement with that report is not timely delivered to the Chairman of the Compensation Committee, then for each day that such report or agreement is delayed, the payment of the Incentive Compensation to Employee shall be delayed by one day;

(c) Employee shall accrue paid time off during the period he is employed hereunder at the rate of five weeks per calendar year, subject to any vacation benefit accrual cap established by Employer (i.e., once the cap has been reached, further accrual shall cease until Employee uses some or all of his accrued time to fall below the accrual cap). The timing of Employee's vacation shall be governed by Employer's usual policies applicable to all employees;

(d) Employee is entitled to participate in any policies or plans regarding benefits of employment, including pension, profit sharing, group health, disability insurance and other employee welfare benefit plans now existing or hereafter established to the extent that Employee is eligible under the terms of such plans. Despite the foregoing, Employee is entitled to participate in any such plan or program only if the executive officers of Employer generally are eligible to participate in such plan or program. Employer may, in its sole discretion and from time to time, establish additional senior management benefit programs as it deems them appropriate. Employee understands that any such plans may be modified or eliminated in Employer's sole discretion in accordance with applicable law; and

(e) Such other benefits as the Board of Directors of Employer, in its sole discretion, may from time to time provide.

3.2 During the period that Employee is employed hereunder, Employer shall reimburse Employee for reasonable and necessary business and entertainment expenses incurred by Employee on behalf of Employer in connection with the performance of Employee's duties hereunder.

3.3 IMH shall instruct the CFO, any other employees of IMH who assist in preparing any Incentive Compensation Report (or any information on which any Incentive Compensation Report is based) and the Auditors that if any such party at any time determines that one or more Incentive Compensation Reports was inaccurate in any way, then any and all such parties who make such a determination shall promptly notify the Compensation Committee of any and all such inaccuracies and the reasons supporting such determination. If the Compensation Committee at any time prior to the end of the 12 month period after the filing of the annual tax return for IMH (or any consolidated annual tax return including IMH) covering the period for which the Incentive Compensation payment in question relates (said 12 month

period, the "Determination Period") determines that the Incentive Compensation payment in question was calculated incorrectly and underpaid, its shall immediately so notify the Employer and Employer shall, within 15 days after such determination by the Compensation Committee, pay the amount owed to Employee due to such underpayment. If the Compensation Committee at any time during the Determination Period determines that the Incentive Compensation payment in question was calculated incorrectly and overpaid, it shall so notify the Employer and Employer shall offset such overpayment against the next Incentive Compensation payments) to Employee until any and all such overpayments are offset in their entirety; provided that (a) if no Incentive Compensation payments are paid to Employee within 180 days after the Compensation Committee determined that any such overpayment was made, then Employer may, in its discretion, require Employee to repay (and in which case Employee shall repay) the overpayment to Employer at any repayment schedule and rate determined by Employer and (b) if the Compensation Committee makes such an overpayment determination after Employee's employment is terminated, then Employee shall repay any and all such overpayments to Employer at any repayment schedule and rate determined by Employer. Notwithstanding the foregoing, the Compensation Committee shall have no obligation to independently investigate the accuracy of any Incentive Compensation Report or any calculation or conclusion contained in any such report.

3.4 Employee may elect to defer any portion of his Base Salary or Incentive Compensation into an approved, Employer sponsored deferred compensation plan; provided that Employer has no obligation to provide such a deferred compensation plan. All Base Salary and Incentive Compensation, whether or not deferred, shall be deemed to be earned and immediately vested upon distribution to Employee or deferral into a deferred compensation plan.

3.5 There shall be no inflation or any other automatic adjustments to any of the compensation paid to Employee under this Agreement.

3.6 Employer shall have the right to deduct from the compensation due to Employee hereunder any and all sums required for social security and withholding taxes and for any other federal, state, or local tax or charge which may be in effect or hereafter enacted or required as a charge on the compensation of Employee.

3.7 During the period that Employee is employed hereunder, Employer shall pay to Employee an automobile allowance in the amount of \$1,200 per month (prorated for any partial month during the employment period).

#### **4. Non-Competition.**

4.1 At all times during Employee's employment hereunder, and, if Employee's employment is terminated pursuant to Section 2.2(f) or 2.2(g), during the 30 month period of time after such termination (the "Post-Termination Payment Period") and in consideration for any and all payments and benefits provided to Employee pursuant to this Agreement, during the Post-Termination Payment Period, Employee shall not, directly or indirectly, engage or participate in, prepare or set up, assist or have any interest in any person, partnership, corporation, limited liability company, firm, association, or other business organization, entity or enterprise (whether as an employee, officer, director, member, agent,

security holder, creditor, consultant or otherwise) that engages in any activity in those geographic areas where Employer conducts the Business, which activity is the same as, similar to, or competitive with any activity now engaged in by Employer or its affiliates or related entities or in any way relating to the Business. Notwithstanding the foregoing, Employee may elect at any point during the Post-Termination Payment Period to forego any future remaining payments or benefits payable under Section 2.4, in which case the limitations set forth in this Section 4.1 shall terminate at the time of such election.

4.2 Nothing contained in Section 4.1 shall be deemed to preclude Employee from purchasing or owning, directly or beneficially, as a passive investment, less than five percent of any class of publicly traded securities of any entity so long as Employee does not actively participate in or control, directly or indirectly, any investment or other decisions with respect to such entity.

**5. No Compensation from Related Entities.** Without prior written approval from Employer's Board of Directors, Employee shall not directly or indirectly receive compensation from any company with whom Employer or any of its affiliates (as "affiliate" is defined in Rule 405 promulgated under the Securities Act of 1933) has any financial, business or affiliated relationship.

**6. Confidentiality; Non-Solicitation and Proprietary Rights.** Concurrently with signing this Agreement, Employee and Employer will sign a Proprietary Rights and Inventions Agreement in the form attached hereto as Exhibit D (the "Proprietary Rights and Inventions Agreement").

**7. Copies of Agreement.** Employee authorizes Employer to send a copy of the Proprietary Rights and Inventions Agreement to any and all future employers which Employee may have, and to any and all persons, firms, and corporations, with whom Employee may become affiliated in a business or commercial enterprise, and to inform any and all such employers, persons, firms or corporations that Employer intends to exercise its legal rights should Employee breach the terms of the Proprietary Rights and Inventions Agreement or should another party induce a breach of that agreement on Employee's part.

**8. Severable Provisions.** The provisions of this Agreement are severable and if any one or more provisions is determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provisions to the extent enforceable, shall nevertheless be binding and enforceable.

**9. Arbitration.** To the fullest extent allowed by law, any controversy, claim or dispute between Employee and Employer (or any of its stockholders, directors, officers, employees, affiliates, agents, successors or assigns) relating to or arising out of Employee's employment or the cessation of that employment will be submitted to final and binding arbitration in Orange County, California for determination in accordance with the American Arbitration Association's ("AAA") National Rules for the Resolution of Employment Disputes, as the exclusive remedy for such controversy, claim or dispute. In any such arbitration, the parties may conduct discovery to the same extent as would be permitted in a court of law. The arbitrator shall issue a written decision, and shall have full authority to award all remedies which

would be available in court. The arbitrator shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. Employer shall pay the arbitrator's fees and any AAA administrative expenses. In the event Employee files a claim to collect unpaid payments or benefits payable under Section 2.4, the prevailing party shall be awarded reasonable attorneys fees and costs. Any judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Possible disputes covered by the above include unpaid wages, breach of contract, torts, violation of public policy, discrimination, harassment, or any other employment-related claims under laws including Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the California Fair Employment and Housing Act, the California Labor Code, and any other federal or state constitutional provisions, statutes or laws relating to an employee's relationship with his employer. However, claims for workers' compensation benefits and unemployment insurance (or any other claims where mandatory arbitration is prohibited by law) are not covered by this arbitration agreement, and such claims may be presented to the appropriate court or government agency. BY AGREEING TO THIS MUTUAL AND BINDING ARBITRATION PROVISION, BOTH EMPLOYEE AND EMPLOYER GIVE UP ALL RIGHTS TO TRIAL BY JURY. This arbitration policy is to be construed as broadly as is permissible under relevant law. EMPLOYER AND EMPLOYEE, HAVE READ THIS SECTION 9 AND IRREVOCABLY AGREE TO ARBITRATE ANY DISPUTE IDENTIFIED ABOVE.

/s/ RM

\_\_\_\_\_  
Employer's Initials

/s/ JRT

\_\_\_\_\_  
Employee's Initials

**10. Injunctive Relief.** The parties hereto agree that any breach or threatened breach of Section 4 of this Agreement or the Proprietary Rights and Inventions Agreement will cause substantial and irreparable damage to Employer in an amount and of a character difficult to ascertain. Accordingly, to prevent any such breach or threatened breach, and in addition to any other relief to which Employer may otherwise be entitled, Employer will be entitled to immediate temporary, preliminary and permanent injunctive relief through appropriate legal proceedings in any arbitration, without proof of actual damages that have been incurred or may be incurred by Employer with respect to such breach or threatened breach. Employee expressly agrees that Employer will not be required to post any bond or other security as a condition to obtaining any injunctive relief pursuant to this Section 10, and Employee expressly waives any right to the contrary. Employee agrees that this Section 10 is without prejudice to the rights of the parties to compel arbitration pursuant to Section 9.

**11. Entire Agreement.** This Agreement and the Exhibits attached hereto contain the entire agreement of the parties relating to the subject matter hereof, and the parties hereto have made no agreements, representations or warranties relating to the subject matter of this Agreement that are not set forth otherwise herein or the Exhibits attached hereto. This Agreement supersedes any and all prior agreements, written or oral, with Employer relating to Employees employment with Employer and any other subject matter of this Agreement. Any such prior agreements are hereby terminated and of no further effect and Employee, by the execution hereof, agrees that any compensation provided for under any such prior agreement is specifically superseded and replaced by the provision of this Agreement; subject to the following: (i) any and all compensation previously deferred under any pre-existing deferred



compensation plan shall immediately be paid to Employee without condition or limitation; and (ii) this Agreement is not intended to supercede, cancel or replace any stock option or dividend equivalent right payments that Employee may have or otherwise be entitled to receive. The parties hereto agree that in no event shall an oral modification of this Agreement be enforceable or valid.

**12. Governing Law.** This Agreement is and shall be governed and construed in accordance with the laws of the State of California, regardless of any laws on choice of law or conflicts of law of any jurisdiction.

**13. Notice.** All notices hereunder must be in writing and shall be sufficiently given for all purposes hereunder if properly addressed and delivered personally by documented overnight delivery service, by certified or registered mail, return receipt requested, or by facsimile or other electronic transmission service at the address or facsimile number, as the case may be, set forth below. Any notice given personally or by documented overnight delivery service is effective upon receipt. Any notice given by registered mail is effective upon receipt, to the extent such receipt is confirmed by return receipt. Any notice given by facsimile, transmission is effective upon receipt, to the extent that receipt is confirmed, either verbally or in writing by the recipient. Any notice which is refused, unclaimed or undeliverable because of an act or omission of the party to be notified, if such notice was correctly addressed to the party to be notified, shall be deemed communicated as of the first date that said notice was refused, unclaimed or deemed undeliverable by the postal authorities, or overnight delivery service.

If to Employer:

Impac Funding Corporation  
1401 Dove Street  
Newport Beach, California 92660  
Telephone: (949) 475-3600  
Facsimile: (949) 475-3969  
Attention: Ronald Morrison, Esq.  
General Counsel

With a copy to:

Greg T. Williams, Esq.  
Allen Matkins Leck Gamble & Mallory LLP  
1900 Main Street, Fifth Floor  
Irvine, California 92614  
Telephone: (949) 553-1313  
Facsimile: (949) 553-8354

If to Employee:

Joseph R. Tomkinson  
40 Smithcliffs  
Laguna Beach, California 92651

With a copy to:

Ernest W. Klatte, III, Esq.  
Rutan & Tucker, L.L.P.  
611 Anton Blvd., 14<sup>th</sup> Floor  
Costa Mesa, California 92626  
Telephone: (714) 641-5100  
Facsimile: (714) 546-90351

**14. Amendments And Waivers.** This Agreement may not be amended, modified, superseded, canceled, or any terms waived, except by written instrument signed by both parties, or in the case of waiver, by the party to be charged.

**15. Successor and Assigns.** This Agreement is not assignable by Employee, nor by Employer except to an affiliated or successor entity. This Agreement is binding on the parties' heirs, executors, administrators, other legal representatives, successors, and, to the extent assignable, their assigns.

**16. Representations.** The person executing this Agreement on behalf of Employer hereby represents and warrants on behalf of himself and Employer that he is authorized to represent and bind Employer. Employee specifically represents and warrants to Employer that he is not now under any contractual or quasi-contractual obligations that is inconsistent or in conflict with this Agreement or that would prevent, limit or impair Employee's performance of his obligations under this Agreement, (b) he has had the opportunity to be represented by legal counsel of his choosing in preparing, negotiating, executing and delivering this Agreement; and (c) fully understands the terms and provisions of this Agreement.

**17. Counterparts; Facsimile Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes. This Agreement may be executed by a party's signature transmitted by facsimile ("fax"), and copies of this Agreement executed and delivered by means of faxed signatures shall have the same; force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed signatures as if such signatures were originals. Any party executing and delivering this Agreement by fax shall promptly thereafter deliver a counterpart signature page of this Agreement containing said party's original signature. All parties hereto agree that a faxed signature page may be introduced into evidence in any proceeding arising out of or related to this Agreement as if it were an original signature page.

**18. Rules of Construction.** This Agreement has been negotiated by the parties and is to be interpreted according to its fair meaning as if the parties had prepared it together and not strictly for or against any party. References in this Agreement to "Sections" refer to Sections of this Agreement, unless the context expressly indicates otherwise. References to "provisions" of this Agreement refer to the terms, conditions, restrictions and promises contained in this Agreement. References in this Agreement to laws and regulations refer to such laws and regulations as in effect on this date and to the corresponding provisions, if any, of any successor law or regulation. At each place in this Agreement where the context so requires, the masculine,

feminine or neuter gender includes the others and the singular or plural number includes the other. Forms of the verb “including” mean “including without limitation” unless the context expressly indicates otherwise. “Or” is inclusive and includes “and” unless the context expressly indicates otherwise. The introductory headings at the beginning of Sections of this Agreement are solely for the convenience of the parties and do not affect any provision of this Agreement.

[SIGNATURE PAGE FOLLOWS THIS PAGE]

IN WITNESS WHEREOF, this Agreement is executed as of the day and year first above written.

“EMPLOYER”

IMPAC FUNDING CORPORATION,  
a California corporation

By: /s/ RONALD MORRISON

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**Name: Ronald Morrison**  
**Title: General Counsel**

“EMPLOYEE”

/s/ JOSEPH R. TOMKINSON

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**JOSEPH R. TOMKINSON**

**EXHIBIT A**

**JOB DESCRIPTION AND RELATED ENTITIES**

Manage and direct the Organization toward its primary objectives, based on profit and return on capital, by performing the following duties through direct reports. For purposes of this Exhibit A, "Organization" means Employer and any affiliates or related entities of Employer for whom Employee is requested to provide services pursuant to the Employment Agreement by and between Employer and Employee dated as of April 1, 2003 (the "Agreement"). Implement policies and procedures established by the Board of Directors of Employer and the Board of Directors of other entities within the Organization, and oversee adherence to those policies and procedures. Establish current and long-range strategies, plans and policies. Establish and maintain the necessary corporate environment to carry out major plans and procedures, consistent with established policies and approval by the Board of Directors of Employer and, as the case may be, approval by the Board of Directors of other entities within the Organization. Responsible for maintaining the overall adequacy and soundness of the Organization's financial structure. Review operating results of the Organization, compare them to established objectives, and take steps to ensure that appropriate measures are taken to correct unsatisfactory results. Establish and maintain an effective system of communications throughout the Organization. Represent the Organization with major customers, shareholders, the financial community and the public.

Employee acknowledges, understands and agrees that Employee will be requested by Employer to devote some or all of Employee's time and effort during the term of employment pursuant to the Agreement (and consistent with the above job descriptions) to the businesses of Employer's affiliates or related entities pursuant to certain agreements between and among Employer and such affiliates or related entities. Such affiliates and related entities include, but are not limited to, the following: Impac Mortgage Holdings, Inc., Impac Mortgage Capital Corp., Impac Warehouse Lending Group, IMH Assets Corp., Novelle Financial Services, Inc., Impac Lending Group, Impac Secured Assets Corp., Impac Mortgage Acceptance Corp., Impac Multifamily Capital Corp. and Impac Foundation.

Employee further understands and acknowledges that, pursuant to the Agreement; Employee may be directed by Employer to provide services consistent with the above job descriptions to additional real estate investment trusts or other entities which Employer establishes or with which Employer affiliates or becomes related and for which there exists an agreement with Employer or any of the above entities to provide such services.

Employee understands and acknowledges that Employee's obligations under the Agreement, including Employee's duties under Section 4 thereof and the Proprietary Rights and Inventions Agreement entered into pursuant to Section 6 thereof, shall apply and extend to Employee's knowledge of the business of Employer's affiliates or related entities and any trade secret or other confidential or proprietary information relating to same.

EXHIBIT A

**EXHIBIT B**

**WAIVER AND RELEASE AGREEMENT**

For full and valuable consideration, including, but not limited to, severance payments made and to be made by Impac Funding Corporation and any affiliate or related entity of Impac Funding Corporation (collectively, "Employer") to Joseph R. Tomkinson ("Employee") and guaranteed by Impac Mortgage Holdings, Inc. ("Guarantor") pursuant to the Employment Agreement between Employer and Employee dated as of April 1, 2003 (the "Employment Agreement"), Employee, on the one part, and Employer and Guarantor on the other part, hereby enter into this Waiver and Release Agreement ("Waiver"), and each agrees to waive and release the other and, as the case may be, the other's stockholders, directors, officers, employees, affiliates, agents, successors and assigns, if any, from all known and unknown claims, agreements or complaints related to or arising under Employee's employment with Employer, including, but not limited to, any claim arising out of Employee's termination, any express or implied agreement between Employee and Employer (other than each party's respective rights and obligations under Sections 2.3, 2.4 and 4.1 of the Employment Agreement, the Guaranty and the Proprietary Rights and Inventions Agreement), and any other federal or state constitutional provisions, statutes or laws relating to an employee's relationship with his employer, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act, the Age Discrimination in Employment Act, the Americans With Disabilities Act, the California Fair Employment and Housing Act, and the California Labor Code.

This Waiver shall not include a waiver of any of the following: (i) any right to defense and/or indemnification that Employee may have under California Labor Code section 2802, or under any defense and indemnification policy or agreement; (ii) any claim for breach of any pension, 401k, deferred compensation or stock option plan of Employer; or (iii) any claim that Employee may have against any officer, director, employee, or agent of Employer or Guarantor for defamation or intentional interference with prospective employment or business advantage.

This Waiver includes a waiver of any rights the parties may have under Section 1542 of the California Civil Code, which states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Employee's Waiver is conditioned upon Employer and Guarantor's performance of all of their severance obligations pursuant to Sections 2.3 and 2.4 of the Employment Agreement and pursuant the Guaranty. In the event that either Employer or Guarantor materially breaches its severance obligations under the Employment Agreement or Guaranty, then Employee shall be entitled to pursue any claims as though this Waiver did not exist, and the statute of limitations for any such claims shall be deemed to have been tolled during the period from the date of Employee's termination through the date Employer or Guarantor breached it obligations.

Employer's Waiver is conditioned upon Employee's performance of all of his obligations pursuant to Section 4.1 of the Employment Agreement. In the event that Employee materially

EXHIBIT B

breaches his noncompete obligations under the Employment Agreement, then Employer and Guarantor shall be entitled to pursue any claims as though this Waiver did not exist, and the statute of limitations for any such claims shall be deemed to have been tolled during the period from the date of Employee's termination through the date Employee breached his obligations. The parties to this Waiver each acknowledge that each may hereafter discover facts different from or in addition to those now known or believed to be true with respect to the claims, suits, rights, actions, complaints, agreements, contracts, causes of action, and liabilities of any nature whatsoever that are the subject of the above release, and the parties expressly agree that this Waiver shall be and remain effective in all respects regardless of such additional or different facts.

Employee is advised as follows: (i) Employee should consult an attorney regarding this, Waiver before executing it; (ii) Employee has 21 days in which to consider this Waiver and whether Employee will enter into it; (iii) this Waiver does not waive rights or claims that may arise after it is executed; and (iv) at anytime within seven days after executing this Waiver, Employee may revoke this Waiver. This Waiver shall not become effective or enforceable until the seven day revocation period set forth herein has passed.

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Employment Agreement.

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

\_\_\_\_\_  
JOSEPH R. TOMKINSON

IMPAC FUNDING CORPORATION

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

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

IMPAC MORTGAGE HOLDINGS, INC.

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

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT B

EXHIBIT C

INCENTIVE COMPENSATION

**Excess Income:** Excess Income equals the greater of zero or Net Income minus the product of ((the Ten Year U.S. Treasury Rate plus 200 basis points) x ((Average Net Worth x number of days in quarter) divided by 365)).

**Net Income:** The definition for "Net Income" is at any date of determination, the net income of IMH determined in accordance with then current tax law before the total Incentive Compensation paid to Joseph R. Tomkinson, William Ashmore and Richard Johnson (collectively, the "Executives") pursuant to their respective employment agreements, the deduction for dividends paid and any net operating loss deductions arising from losses in prior periods. Upon filing IMH's actual tax return, any variance from prior period estimates shall be an adjustment to the then current period Incentive Compensation calculation.

**Average Net Worth:** The definition of "Average Net Worth" for any quarter is IMH's accumulated net worth of \$514,795,766 at December 31, 2002 plus subsequent to December 31, 2002, the weighted average daily sum of the gross proceeds from any sale of IMH's equity securities, before deducting any underwriting discounts and commissions and other expenses; plus the average balance quarter-to-date on IMH's General Ledger of the retained earnings for the quarter (general ledger account number 317500); less the weighted average daily sum of the gross proceeds used to repurchase IMH's stock; less the average balance quarter-to-date on IMH's General Ledger of the cumulative dividends declared (general ledger account number 317510); plus an amount equal to Prior Period Losses. Prior Period Losses equal the lower of (a) zero, or (b) the sum of any losses incurred by IMH after December 31, 2003 and prior to the quarter of the determination of Incentive Compensation less any Net Income for quarters subsequent to the quarter of the loss plus any losses incurred for quarters subsequent to the quarter of the loss.

**Ten Year U.S. Treasury Rate:** The definition for "Ten Year U.S. Treasury Rate" for a quarterly period is the arithmetic average of the weekly per annum Ten Year Average Yields published by the Federal Reserve Board during such quarter. In the event that the Federal Reserve Board does not publish a weekly per annum Ten Year Average Yield during any week in a quarter, then the Ten Year U.S. Treasury Rate for such week shall be the weekly per annum Ten Year Average Yields published by any Federal Reserve Bank or by any U.S. Government department or agency selected by Employer for such week. In the event that Employer determines in good faith that for any reason Employer cannot determine the Ten Year U.S. Treasury Rate for any quarter as provided above, then the Ten Year U.S. Treasury Rate for such quarter shall be the arithmetic average of the per annum average yields to maturity based upon the daily closing bids during such quarter for each of the issues of actively traded marketable U.S. Treasury fixed interest rate securities (other than securities which can, at the option of the holder, be surrendered at face value in payment of any federal estate tax) with the final maturity date not less than eight nor more than twelve years from the date of each such quotation, for each business day in New York City (or less frequently if daily quotations shall not be generally available) in each such quarterly period as chosen by at least three recognized dealers in U.S. Government securities selected by Employer.

EXHIBIT C



**EXHIBIT D**

**PROPRIETARY RIGHTS AND INVENTIONS AGREEMENT**

In consideration of my employment by Impac Funding Corporation, a California corporation (the "Company"), and the compensation I receive from the Company, I agree to certain restrictions placed by the Company on my use and development of information and technology, as more fully set out below.

1. **Proprietary Information.** I understand that the Company possesses and will possess Proprietary Information which is important to its business. For purposes of this Agreement, "Proprietary Information" is information that was or will be developed, created, or discovered by or on behalf of the Company or any of its affiliates or related entities, or which became or will become known by, or was or is conveyed to the Company, which has commercial value in the Company's business or the business of any of the Company's affiliates or related entities, unless (i) the information is or becomes publicly known through lawful means; (ii) the information was rightfully in my possession or part of my general knowledge prior to my employment by the Company as specifically identified and disclosed by me in Exhibit A, attached hereto; or (iii) the information is disclosed to me without confidential or proprietary restriction by a third party who rightfully possesses the information (without confidential or proprietary restriction) and who did not learn of it directly from the Company or any of its affiliates or related entities.

Proprietary Information includes information (whether conveyed orally or in writing) relating to (i) client/customer lists, vendor lists or other lists or compilations containing client, customer or vendor information; (ii) information about investment techniques or strategies, investment research or analysis, business techniques or strategies, processes, costs, profits, markets, marketing plans, forecasts, sales or commissions; (iii) plans for new investment: techniques and strategies; (iv) the compensation, performance and terms of employment of other employees; (v) all other information that has been or will be given to me in confidence by the Company (or any affiliate or related entity of the Company); (vi) software in various stages of development, and any designs, drawings, schematics, specifications, techniques, models, data, source code, algorithms, object code, documentation, diagrams, flow charts, research development, processes and procedures relating to any software; (vii) any documents, books, papers, drawings, schematics, models, sketches, computer programs, databases or other data, including electronic data recorded or retrieved by any means, that contain any Proprietary Information; and (viii) any information described above which the Company or any of its affiliates or related entities obtains from another party and which the Company or any of its affiliates or related entities treats as proprietary or designates as Proprietary Information.

2. **Company Materials.** I understand that the Company and its affiliates and related entities possess or will possess "Company Materials" which are important to their respective businesses. For purposes of this Agreement, "Company Materials" are documents or other media or tangible items that contain or embody Proprietary Information or any other information concerning the business, operations or plans of the Company or any of its affiliates or related entities, whether such documents have been prepared by me or by others. "Company Materials" include charts, graphs, notebooks, customer lists, computer software, media or printouts, sound

EXHIBIT D

recordings and other printed, typewritten or handwritten documents, as well as financial models and the like.

### 3. Intellectual Property.

3.1 All Proprietary Information and all right, title and interest in and to any patents, patent rights, copyrights, trademark rights, mask work rights, trade secret rights, and all other intellectual and industrial property and proprietary rights that currently exist or may exist in the future anywhere in the world (collectively "Rights") in connection therewith shall be the sole property of the Company or its affiliates or related entities, as the case may be. I hereby assign to the Company any Rights I may have or acquire in such Proprietary Information. At all times, both during my employment with the Company and after its termination, I will keep in confidence and trust and will not use or disclose any Proprietary Information or anything relating to it without the prior written consent of an officer of the Company except as may be necessary and appropriate in the ordinary course of performing my duties to the Company. The disclosure restrictions of this Agreement shall not apply to any information that I can document is generally known to the public through no fault of mine. Nothing contained herein will prohibit me from disclosing to anyone the amount my wages.

3.2 All Company Materials shall be the sole property of the Company. I agree that during my employment with the Company, I will not remove any Company Materials from the business premises of the Company or deliver any Company Materials to any person or entity outside the Company, except as I am required to do in connection with performing the duties of my employment. I further agree that, immediately upon the termination of my employment by me or by the Company for any reason, or for no reason, or during my employment if so requested by the Company, I will return all Company Materials, apparatus, equipment and other physical property, and any reproduction of such property, excepting only (i) my personal copies of records relating to my compensation and (ii) my copy of this Agreement.

3.3 I agree that all "Inventions" (which term includes patentable or non-patentable inventions, original works of authorship, derivative works, trade secrets, trademarks, copyrights, service marks, discoveries, patents, technology, algorithms, computer software, application programming interfaces, protocols, formulas, compositions, ideas, designs, processes, techniques, know-how, data and all improvements, rights and claims related to the foregoing), which I make, conceive, reduce to practice or develop (in whole or in part, either alone or jointly with others) during my employment, shall be the sole property of the Company to the maximum extent permitted by Section 2870 of the California Labor Code. I hereby assign, without further consideration, all such Inventions to the Company (free and clear of all liens and encumbrances), and the Company shall be the sole owner of all Rights in connection therewith. No assignment in this Agreement shall extend to Inventions, the assignment of which is prohibited by Labor Code Section 2870, which states:

Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

EXHIBIT D

1. Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer.
2. Result from any work performed by the employee for the employer.

I acknowledge that all original works of authorship which are made by me (in whole or in part, either alone or jointly with others) within the scope of my employment and which are protectable by copyright are "works made for hire," as defined in the United States Copyright Act (17 USCA, Section 101). I will not disclose Inventions covered by this Section 3.3 to any person outside the Company, unless I am requested to do so by management personnel of the Company.

3.4 I agree to disclose promptly to the Company all Inventions and relevant records, which records will remain the sole property of the Company. I further agree that all information and records pertaining to any idea, process, trademark, service mark, invention, technology, computer program, original work or authorship, design, formula, discovery, patent, or copyright that I do not believe to be an Invention, but is conceived, developed, or reduced to practice by me (in whole or in part, either alone or jointly with others) during my employment, shall be promptly disclosed to the Company (such disclosure to be received in confidence). I will also disclose to the Company all Inventions conceived, reduced to practice, used, sold, exploited or developed by me (in whole or in part, either alone or jointly with others) within one (1) year of the termination of my employment with the Company ("Presumed Inventions"); such disclosures shall be received by the Company in confidence, to the extent they are not assigned to the Company in Section 3.3, and do not extend such assignment. Because of the difficulty of establishing when any Presumed Invention is first conceived or developed by me, or whether it results from access to Proprietary Information or the Company's equipment, facilities, and data, I agree that all Presumed Inventions and all Rights associated therewith shall be presumed to be Inventions subject to assignment under Section 3.3. I can rebut this presumption if I prove that a Presumed Invention is not an Invention subject to assignment under Section 3.3.

3.5 I agree to perform, during and after my employment, all acts deemed necessary or desirable by the Company to permit and assist it, at the Company's expense, in evidencing, perfecting, obtaining, maintaining, defending and enforcing Rights or my assignment with respect to such Inventions in any and all countries. Should the Company be unable to secure my signature on any document necessary to apply for, prosecute, obtain, enforce or defend any Rights relating to any assigned Invention, whether due to my mental or physical incapacity or any other cause, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents, as my agents and attorneys-in-fact, with full power of substitution, to act for and in my behalf and instead of me, to execute and file any documents and to do all other lawfully permitted acts to further the above purposes with the same legal force and effect as if executed by me.

3.6 Any assignment of copyright hereunder (and any ownership of a copyright as a work made for hire) includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "Moral Rights"). To the extent such Moral Rights cannot be assigned under applicable law and to the

EXHIBIT D

extent the following is allowed by the laws in the various countries where Moral Rights exist, I hereby waive such Moral Rights and consent to any action of the Company that would violate such Moral Rights in the absence of such waiver and consent. I will confirm any such waivers and consents from time to time as requested by the Company.

3.7 Attached hereto as Exhibit A is a complete list of all existing Inventions to which I claim personal ownership of as of the date of this Agreement and that I desire to specifically clarify are not subject to this Agreement, and I acknowledge and agree that such list is complete. If no such list is attached to this Agreement, I represent that I have no such Inventions at the time of signing this Agreement.

3.8 I understand that nothing in this Agreement is intended to expand the scope of protection provided me by Sections 2870 through 2872 of the California Labor Code.

4. Prior Actions and Knowledge. I represent and warrant that from the time of my first contact or communication with the Company, I have held in strict confidence all Proprietary Information and have not (i) disclosed any Proprietary Information or delivered any Company Materials to anyone outside of the Company or any affiliate or related entity of the Company, or (ii) used, copied, published, or summarized any Proprietary Information or removed any Company Materials from the business premises of the Company, except to the extent necessary to carry out my responsibilities as an employee of the Company.

5. Non-Solicitation of Employees. I agree that for a period of twelve months following the termination of my employment with the Company, I will not, on behalf of myself or any other person or entity, solicit the services of any person who was employed by the Company or any affiliate or related entity of the Company on the date of my termination of employment or at any time during the six month period prior to the termination of my employment.

6. No Conflict with Obligations to Third Parties. I represent that my performance of all the terms of this Agreement will not breach any agreement to keep in confidence proprietary or confidential information acquired by me in confidence or in trust prior to my employment with the Company. I have not entered into, and I agree I will not enter into, any agreement either written or oral in conflict herewith or in conflict with my employment with the Company.

7. Remedies. I recognize that nothing in this Agreement is intended to limit any remedy of the Company under the California Uniform Trade Secrets Act. I recognize that my violation of this Agreement could cause the Company irreparable harm, the amount of which may be extremely difficult to estimate, making any remedy at law or in damages inadequate. Therefore, I agree that the Company shall have the right to apply to any court of competent jurisdiction for an order restraining any breach or threatened breach of this Agreement and for any other relief the Company deems appropriate. This right shall be in addition to any other remedy available to the Company.

8. Survival. I agree that my obligations under Sections 3.1 through 3.6, 5 and 6 shall continue in effect after termination of my employment, regardless of the reason or reasons for termination, and whether such termination is voluntary or involuntary on my part, and that the

EXHIBIT D

Company is entitled to communicate my obligations under this Agreement to any future employer or potential employer of mine.

9. Controlling Law. This Agreement is and shall be governed and construed in accordance with the laws of the State of California, regardless of any laws on choice of law or conflicts of law of any jurisdiction.

10. Severable Provisions. The provisions of this Agreement are severable and if any one or more provisions is determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provisions to the extent enforceable, shall nevertheless be binding and enforceable.

11. Successors and Assigns. This Agreement shall be effective as of the date I execute this Agreement and shall be binding upon me, my heirs, executors, assigns, and administrators and shall inure to the benefit of the Company, its subsidiaries, successors and assigns.

12. Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes. This Agreement may be executed by a party's signature transmitted by facsimile ("fax"), and copies of this Agreement executed and delivered by means of faxed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed signatures as if such signatures were originals. Any party executing and delivering this Agreement by fax shall promptly thereafter deliver a counterpart signature page of this Agreement containing said party's original signature. All parties hereto agree that a faxed signature page may be introduced into evidence in any proceeding arising out of or related to this Agreement as if it were an original signature page.

13. Rules of Construction. This Agreement has been negotiated by the parties and is to be interpreted according to its fair meaning as if the parties had prepared it together and not strictly for or against any party. References in this Agreement to "Sections" refer to Sections of this Agreement, unless the context expressly indicates otherwise. References to "provisions" of this Agreement refer to the terms, conditions, restrictions and promises contained in this Agreement. References in this Agreement to laws and regulations refer to such laws and regulations as in effect on this date and to the corresponding provisions, if any, of any successor law or regulation. At each place in this Agreement where the context so requires, the masculine, feminine or neuter gender includes the others and the singular or plural number includes the other. Forms of the verb "including" mean "including without limitation" unless the context expressly indicates otherwise. "Or" is inclusive and includes "and" unless the context expressly indicates otherwise. The introductory headings at the beginning of Sections of this Agreement are solely for the convenience of the parties and do not affect any provision of this Agreement.

14. Amendments and Waivers. This Agreement may not be amended, modified, superseded, canceled, or any terms waived, except by written instrument signed by both parties, or in the case of waiver, by the party to be charged.

EXHIBIT D

I HAVE READ THIS AGREEMENT CAREFULLY AND I UNDERSTAND AND ACCEPT THE OBLIGATIONS WHICH IT IMPOSES UPON ME WITHOUT RESERVATION. NO PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO ME TO INDUCE ME TO SIGN THIS AGREEMENT OTHER THAN THE PROMISES AND REPRESENTATIONS EXPRESSLY STATED IN THIS AGREEMENT AND IN THE EMPLOYMENT AGREEMENT ENTERED INTO BETWEEN ME AND THE COMPANY CONCURRENTLY HEREWITH. I HAVE COMPLETELY NOTED ON EXHIBIT A TO THIS AGREEMENT ANY PROPRIETARY INFORMATION AND INVENTIONS THAT I DESIRE TO EXCLUDE FROM THIS AGREEMENT.

/s/ Joseph R. Tomkinson

Dated as of: April 1, 2003

\_\_\_\_\_  
JOSEPH R. TOMKINSON

Accepted and Agreed to:

IMPAC FUNDING CORPORATION,  
a California corporation

By: \_\_\_\_\_ /s/ Ronald Morrison

Name: Ronald Morrison  
Title: General Counsel

EXHIBIT D

6

**EXHIBIT A**

**EMPLOYEE'S DISCLOSURE**

Gentlemen:

1. Except for the information and ideas listed below that rightfully became part of my general knowledge prior to my first contact or communication with the Company or any of its affiliates or related entities, I represent that I am not in the possession of and have no knowledge of any information that can be considered the Proprietary Information of Impac Funding Corporation, a California corporation (the "Company"), other than information disclosed by Company or any of its affiliates or related entities during my employment negotiations or my prior employment with the Company or any of its affiliates or related entities, which I understand and agree is the Proprietary Information of Company or its affiliates or related entities, as the case may be.

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2. Except for the complete list of Inventions set forth below, I represent that I (in whole or in part, either alone or jointly with others) have not made, conceived, developed or first reduced to practice any Inventions relevant to the subject matter of my employment with the Company prior to my employment with the Company or any of its affiliates or related entities.

No Inventions

See below:

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Additional sheets attached

/s/ JOSEPH R. TOMKINSON

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JOSEPH R. TOMKINSON

**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT is made as of April 1, 2003, by and between Impac Funding Corporation, a California corporation ("Employer"), and William S. Ashmore, an individual ("Employee"); provided that the Incentive Compensation that may be paid pursuant to this Agreement is subject to approval by a majority of the shareholders of Impac Mortgage Holdings, Inc., a Maryland corporation ("IMH"), and if such shareholder approval is not obtained on or before the earlier of (i) the date of the next annual meeting of the shareholders of IMH and (ii) August 31, 2003, then this Agreement shall terminate as of the earlier of such dates and be of no further force or effect.

**RECITALS**

WHEREAS, Employee is knowledgeable of and skillful in the business of Employer and IMH, which includes acquiring for investment and sale non-conforming residential mortgage loans and mortgage backed securities and performing mortgage operations for affiliates or related entities of Employer (the "Business");

WHEREAS, Employer believes that Employee is an integral part of its management and currently is and will become more knowledgeable of and be in part responsible for developing the Business;

WHEREAS, Employee possesses extensive management experience and knowledge regarding the Business, including confidential information concerning service marketing plans and strategy, business plans and projections and the formulas and models pertaining thereto, customer needs and peculiarities, finances, operations, billing methods and customer lists;

WHEREAS, Employer desires that Employee continue his employment as President and Chief Operating Officer of Employer; and

WHEREAS, Employee is willing to be employed by Employer and provide services to Employer and any affiliates or related entities of Employer (as more fully described in Exhibit A attached hereto) under the terms and conditions herein stated.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, it is hereby agreed by and between the parties hereto as follows:

**1. Employment, Services and Duties.**

1.1 Employer hereby employs Employee and Employee hereby accepts such employment full-time (subject to those exceptions, if any, set forth below) as President and Chief Operating Officer of Employer to perform the duties and functions set forth in Exhibit A.



attached hereto and, Subject to Section 2.2(i), to perform such other duties or functions as are reasonably required or as may be prescribed from time to time or as otherwise agreed. Employee shall render his services by and subject to the instructions and under the direction of Employer's Chief Executive Officer to whom Employee shall directly report.

1.2 Employee acknowledges and agrees that Employee may be required by Employer to devote a portion of his working time to perform functions for Employer's affiliates or related entities (as set forth in Exhibit A attached hereto) and that such services are to be performed pursuant to and consistent with Employer's duties and obligations under this Agreement.

1.3 Employee will at all times faithfully, industriously and to the best of his ability, experience and talents perform all of the duties required of and from him pursuant to the terms of this Agreement. Employee will devote his full business energies and abilities and all of his business time to the performance of his duties hereunder and will not, without Employer's prior written consent, render to others any service of any kind (whether or not for compensation) that would interfere with the full performance of Employee's duties hereunder, and in no event will engage in any activities that compete with the Business or that could create a reasonably foreseeable conflict of interest or the appearance of a reasonably foreseeable conflict of interest; provided that nothing contained in this Section 1.3 shall preclude Employee from engaging in or managing Employee's outside investments.

## **2. Term and Termination.**

2.1 The term of this Agreement shall be through December 31, 2001, unless extended by the mutual written agreement of Employer and Employee.

2.2 Employee's employment shall terminate prior to the expiration of the term set forth in Section 2.1 upon the happening of any of the following events:

(a) Voluntary termination by Employee other than for Good Reason (as defined below); provided that Employee shall be required to provide Employer with at least 30 days prior written notice of such voluntary termination;

(b) Death of Employee;

(c) Employer may terminate Employee under this Agreement for "cause" if any of the following occurs (any determination of "cause" as used in this Agreement shall be made only by an affirmative majority vote of the Board of Directors (not including Employee in the deliberations or vote on the same, if a director) of Employer):

(i) Employee is convicted of (or pleads nolo contendere to) (A) a crime of dishonesty or breach of trust, including such a crime involving either the property of Employer IMH (or any affiliate or related entity of Employer or IMH) or the property entrusted to Employer or IMH (or any affiliate or related entity of Employer or IMH) by its clients, including fraud, or embezzlement or other misappropriation of funds belonging to Employer or IMH

(or any affiliate or related entity of Employer or IMH) or any of their respective clients, or (B) a felony leading to incarceration of more than 90 days or the payment of a penalty or fine of \$100,000 or more;

(ii) Employee materially and substantially fails to perform Employee's job duties properly assigned to Employee after being provided 30 days prior written notification by the Board of Directors of Employer setting forth those duties that are not being performed by Employee; provided that Employee shall have a reasonable time to correct any such failures to the extent that such failures are correctable and Employer may not terminate Employee for "cause" on the basis on any such failure that is cured within a reasonable time.

(iii) Employee has engaged in willful misconduct or gross negligence in connection with his service to Employer or IMH (or any affiliate or related entity of Employer or IMH) that has caused or is causing material harm to Employer or IMH (or any affiliate or related entity of Employer or IMH); or

(iv) Employee's material breach of any of the terms of this Agreement or any other obligation that Employee owes to Employer or IMH (or any affiliate or related entity of Employer or IMH), including a material breach of trust or fiduciary duty or a material breach of any proprietary rights and inventions or confidentiality agreement between Employer and Employee or between IMH and Employee (or between Employee and any affiliate or related entity of Employer or IMH) (as such agreements may be adopted or amended from time to time by Employer and Employee).

(d) By mutual agreement between Employer and Employee;

(e) The date when Employee is declared legally incompetent under the laws of the State of California, or if Employee has a mental or physical condition that can reasonably be expected to prevent Employee from carrying out his essential duties and obligations under this Agreement for a period of greater than six months (any such condition an "Incapacitating Condition"), notwithstanding Employer's reasonable accommodations (to the extent required by law);

(f) Employer may terminate Employee under this Agreement at will (and without cause) upon written notice at any time. Unless otherwise provided in such notice, such termination shall be effective immediately upon providing written notice to Employee; or

(g) Employee may terminate his employment under this Agreement for Good Reason upon providing Employer at least 30 days prior written notice of such termination stating the basis on which Employee has determined that he has Good Reason to terminate his employment; provided that Employer shall have a reasonable time after receiving such notice to cure any event that would constitute Good Reason for Employee to terminate his employment (provided such event is curable) and Employee may not terminate his employment for Good Reason on the basis of any such event that is

cured within a reasonable time. Notwithstanding the foregoing portion of this Section 2.02(g), the aforementioned 30-day notice and reasonable cure period shall not apply to Section 2.02(g)(iv). "Good Reason" shall mean:

- (i) the assignment to Employee of duties materially inconsistent with, or a substantial reduction or alteration in, the authority, duties or responsibilities of Employee as set forth in this Agreement, without Employee's prior written consent;
- (ii) the principal place of the performance of Employee's responsibilities and duties is changed to a location more than 65 miles from the location of such place as of the date of this Agreement, without Employee's prior written consent;
- (iii) a material breach by Employer of this Agreement, including a reduction by Employer of Employee's Base Salary, without Employee's prior written consent; or
- (iv) a failure by Employer to obtain from any acquirer of Employer, before any Acquisition (as defined below) takes place, an agreement to assume and perform this Agreement.

Good Reason does not include the expiration of the term of this Agreement on December 31, 2007.

2.3 Except as set forth in Section 4, in the event that Employee's employment is terminated pursuant to Section 2.2(a), 2.2(b), 2.2(c), 2.2(d) or 2.2(e) herein, neither Employer nor Employee shall have any remaining duties or obligations under this Agreement, except that Employer shall pay to Employee, or his legal representatives, on the date of termination of employment (the "Termination Date") or, with respect to any Incentive Compensation payments or reimbursement for expenses, as promptly as practical after the Termination Date, the following:

- (a) Such compensation as is due pursuant to Sections 3.1(a) and 3.1(b), prorated through the Termination Date;
- (b) Any expense reimbursements due and owing to Employee for reasonable and necessary business and entertainment expenses of Employer incurred by Employee prior to the Termination Date; and
- (c) The dollar value of all accrued and unused paid time off that Employee is entitled to through the Termination Date.

2.4 Except as set forth in Section 4, in the event that Employee's employment is terminated pursuant to Section 2.2(f) or 2.2(g), neither Employer nor Employee shall have any remaining duties or obligations under this Agreement, except that Employer shall pay to Employee, or his representatives, the amounts set forth in Section 2.3 at the times set forth in

Section 2.3 and the following (provided that payments for health insurance coverage shall be made to an insurance provider):

(a) An additional 30 month's worth of Base Salary to be paid as follows:

(i) 12 month's worth of Base Salary paid eight days after Employee signs and delivers to Employer the Waiver and Release Agreement required pursuant to Section 2.5; and

(ii) 18 month's worth of Base Salary paid over the 18-month period succeeding the Termination Date (paid at the times set forth in Section 3.1(a)).

(b) Premiums for continuation of Employee's health insurance benefits under Employer's group health insurance plan, pursuant to COBRA, for the 30 month period succeeding the Termination Date (with such health insurance coverage to be at a level and quality equivalent to the health insurance coverage provided by Employer to Employee immediately prior to the Termination Date, "Equivalent Coverage"); provided that Employer shall pay such premiums only so long as (during said 30 month period) Employee remains eligible for such Equivalent Coverage under COBRA;

(c) Incentive Compensation to be determined and paid as follows:

(i) On the Termination Date, Employee will be paid an amount, if any, equal to the total Incentive Compensation paid to Employee for the three quarters immediately prior to the Termination Date for which Incentive Compensation had already been paid to Employee;

(ii) Within 30 days after the end of the quarter in which the Termination Date occurs, Employee's Incentive Compensation for that quarter will be calculated and Employee will be paid an amount equal to the Incentive Compensation that Employee otherwise would have been paid (as if Employee was still employed by Employer) for that quarter pursuant to Section 3.1(b); and

(iii) For the six quarters after the quarter in which the Termination Date occurs, Employee shall be paid the Incentive Compensation that Employee otherwise would have been paid (as if Employee was still employed by Employer) for those quarters pursuant to Section 3.1(b) (with such Incentive Compensation payments to be paid at the times they would have been paid had Employee's employment not terminated); provided that each quarterly Incentive Compensation payment during this six quarter period shall not be less than 50% nor more than 100% of the average of the four quarterly Incentive Compensation amounts paid to Employee for the four quarters immediately preceding the Termination Date.

(d) The payments set forth in Sections 2.4(a), (b) and (c) above are referred to herein collectively as the “Severance Payments” and each as a “Severance Payment.”

2.5 As a condition precedent of Employee or his estate receiving any Severance Payment from Employer, whether in a lump sum payment or a string of payments or in the form of payment of benefits, Employee or his estate shall, in consideration for payment of such amount or benefit, sign and deliver to Employer (against the execution and delivery of the same by the other parties thereto) the form of Waiver and Release Agreement attached hereto as Exhibit B. Such Waiver and Release Agreement will not be construed to include any release of any indemnification rights Employee may have against Employer pursuant to Employer’s Articles of Incorporation or bylaws, any indemnification agreement or California Labor Code Section 2800.

2.6 This Agreement shall not be terminated by Employer merging with or otherwise being acquired by another entity, whether or not Employer is the surviving entity, or by Employer transferring of all or substantially all of its assets (any such event, an “Acquisition”).

2.7 In the event of any Acquisition, the surviving entity or transferee, as the case may be, shall be bound by and shall have the benefits of this Agreement, and Employer shall not enter into any Acquisition unless the surviving entity or transferee, as the case may be, agrees to be bound by the provisions of this Agreement.

### **3. Compensation.**

3.1 As the total consideration for Employee’s services rendered hereunder, Employee shall be entitled to the following during the period that Employee is employed hereunder:

(a) A base salary of \$500,000 per year (“Base Salary”), payable in equal installments bi-weekly on those days when Employer normally pays its employees;

(b) “Incentive Compensation” in an amount equal to 4.250% of IMH’s Excess Income (as “Excess Income” is defined in Exhibit C attached hereto). Within 20 days after the end of each quarter for which Incentive Compensation for Employee is to be determined, IMH’s Chief Financial Officer (the “CFO”) will prepare and present a report (the “Incentive Compensation Report”) to the Chairman of IMH’s Compensation Committee (the “Compensation Committee”) containing the calculation of Employee’s Incentive Compensation for such quarter and information supporting such calculation in reasonable detail. IMH will instruct its independent auditors (the “Auditors”) to examine the Incentive Compensation Report and advise the Chairman of the Compensation Committee on whether it agrees with the calculations and conclusions set forth in that report and to provide its report within 25 days after the end of each quarter for which Incentive Compensation for Employee is to be determined. Within 30 days after the end of each quarter for which Incentive Compensation for Employee is to be determined provided that the Incentive Compensation Report for that quarter has been

timely presented to the Compensation Committee, the Compensation Committee will review the Incentive Compensation Report and determine any Incentive Compensation to be paid to Employee for that quarter and will direct the Employer to pay such amount. Within 7 days after Employee's Incentive Compensation for a particular quarter is determined, Employer will pay such Incentive Compensation to Employee in cash. Incentive Compensation and Excess Income shall be calculated by the CFO of IMH and otherwise determined hereunder in accordance with Exhibit C attached hereto. If the Incentive Compensation Report or the Auditor's agreement with that report is not timely delivered to the Chairman of the Compensation Committee, then for each day that such report or agreement is delayed, the payment of the Incentive Compensation to Employee shall be delayed by one day;

(c) Employee shall accrue paid time off during the period he is employed hereunder at the rate of five weeks per calendar year, subject to any vacation benefit accrual cap established by Employer (i.e., once the cap has been reached, further accrual shall cease until Employee uses some or all of his accrued time to fall below the accrual cap). The timing of Employee's vacation shall be governed by Employer's usual policies applicable to all employees;

(d) Employee is entitled to participate in any policies or plans regarding benefits of employment, including pension, profit sharing, group health, disability insurance and other employee welfare benefit plans now existing or hereafter established to the extent that Employee is eligible under the terms of such plans. Despite the foregoing, Employee is entitled to participate in any such plan or program only if the executive officers of Employer generally are eligible to participate in such plan or program. Employer may, in its sole discretion and from time to time, establish additional senior management benefit programs as it deems them appropriate. Employee understands that any such plans may be modified or eliminated in Employer's sole discretion in accordance with applicable law; and

(e) Such other benefits as the Board of Directors of Employer, in its sole discretion, may from time to time provide.

3.2 During the period that Employee is employed hereunder, Employer shall reimburse Employee for reasonable and necessary business and entertainment expenses incurred by Employee on behalf of Employer in connection with the performance of Employee's duties hereunder.

3.3 IMH shall instruct the CFO, any other employees of IMH who assist in preparing any Incentive Compensation Report (or any information on which any Incentive Compensation Report is based) and the Auditors that if any such party at any time determines that one or more Incentive Compensation Reports was inaccurate in any way, then any and all such parties who make such a determination shall promptly notify the Compensation Committee of any and all such inaccuracies and the reasons supporting such determination. If the Compensation Committee at any time prior to the end of the 12 month period after the filing of the annual tax return for IMH (or any consolidated annual tax return including IMH) covering the period for which the Incentive Compensation payment in question relates (said 12 month

period, the "Determination Period") determines that the Incentive Compensation payment in question was calculated incorrectly and underpaid, it shall immediately so notify the Employer and Employer shall, within 15 days after such determination by the Compensation Committee, pay the amount owed to Employee due to such underpayment. If the Compensation Committee at any time during the Determination Period determines that the Incentive Compensation payment in question was calculated incorrectly and overpaid, it shall so notify the Employer and Employer shall offset such overpayment against the next Incentive Compensation payment(s) to Employee until any and all such overpayments are offset in their entirety; provided that (a) if no Incentive Compensation payments are paid to Employee within 180 days after the Compensation Committee determined that any such overpayment was made, then Employer may, in its discretion, require Employee to repay (and in which case Employee shall repay) the overpayment to Employer at any repayment schedule and rate determined by Employer and (b) if the Compensation Committee makes such an overpayment determination after Employee's employment is terminated, then Employee shall repay any and all such overpayments to Employer at any repayment schedule and rate determined by Employer. Notwithstanding the foregoing, the Compensation Committee shall have no obligation to independently investigate the accuracy of any Incentive Compensation Report or any calculation or conclusion contained in any such report.

3.4 Employee may elect to defer any portion of his Base Salary or Incentive Compensation into an approved, Employer sponsored deferred compensation plan; provided that Employer has no obligation to provide such a deferred compensation plan. All Base Salary and Incentive Compensation, whether or not deferred, shall be deemed to be earned and immediately vested upon distribution to Employee or deferral into a deferred compensation plan.

3.5 There shall be no inflation or any other automatic adjustments to any of the compensation paid to Employee under this Agreement.

3.6 Employer shall have the right to deduct from the compensation due to Employee hereunder any and all sums required for social security and withholding taxes and for any other federal, state, or local tax or charge which may be in effect or hereafter enacted or required as a charge on the compensation of Employee.

3.7 During the period that Employee is employed hereunder, Employer shall pay to Employee an automobile allowance in the amount of \$500 per month (prorated for any partial month during the employment period).

#### **4. Non-Competition.**

4.1 At all times during Employee's employment hereunder, and, if Employee's employment is terminated pursuant to Section 2.2(f) or 2.2(g), during the 30 month period of time after such termination (the "Post-Termination Payment Period") and in consideration for any and all payments and benefits provided to Employee pursuant to this Agreement, during the Post-Termination Payment Period, Employee shall not, directly or indirectly, engage or participate in, prepare or set up, assist or have any interest in any person, partnership, corporation, limited liability company, firm, association, or other business organization, entity or enterprise (whether as an employee, officer, director, member, agent,

security holder, creditor, consultant or otherwise) that engages in any activity in those geographic areas where Employer conducts the Business, which activity is the same as, similar to, or competitive with any activity now engaged in by Employer or its affiliates or related entities or in any way relating to the Business. Notwithstanding the foregoing, Employee may elect at any point during the Post-Termination Payment Period to forego any future remaining payments or benefits payable under Section 2.4, in which case the limitations set forth in this Section 4.1 shall terminate at the time of such election.

4.2 Nothing contained in Section 4.1 shall be deemed to preclude Employee from purchasing or owning, directly or beneficially, as a passive investment, less than five percent of any class of publicly traded securities of any entity so long as Employee does not actively participate in or control, directly or indirectly, any investment or other decisions with respect to such entity.

5. **No Compensation from Related Entities.** Without prior written approval from Employer's Board of Directors, Employee shall not directly or indirectly receive compensation from any company with whom Employer or any of its affiliates (as "affiliate" is defined in Rule 405 promulgated under the Securities Act of 1933) has any financial, business or affiliated relationship.

6. **Confidentiality; Non-Solicitation and Proprietary Rights.** Concurrently with signing this Agreement, Employee and Employer will sign a Proprietary Rights and Inventions Agreement in the form attached hereto as Exhibit D (the "Proprietary Rights and Inventions Agreement").

7. **Copies of Agreement.** Employee authorizes Employer to send a copy of the Proprietary Rights and Inventions Agreement to any and all future employers which Employee may have, and to any and all persons, firms, and corporations, with whom Employee may become affiliated in a business or commercial enterprise, and to inform any and all such employers, persons, firms or corporations that Employer intends to exercise its legal rights should Employee breach the terms of the Proprietary Rights and Inventions Agreement or should another party induce a breach of that agreement on Employee's part.

8. **Severable Provisions.** The provisions of this Agreement are severable and if any one or more provisions is determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provisions to the extent enforceable, shall nevertheless be binding and enforceable.

9. **Arbitration.** To the fullest extent allowed by law, any controversy, claim or dispute between Employee and Employer (or any of its stockholders, directors, officers, employees, affiliates, agents, successors or assigns) relating to or arising out of Employee's employment or the cessation of that employment will be submitted to final and binding arbitration in Orange County, California for determination in accordance with the American Arbitration Association's ("AAA") National Rules for the Resolution of Employment Disputes, as the exclusive remedy for such controversy, claim or dispute. In any such arbitration, the parties may conduct discovery to the same extent as would be permitted in a court of law. The arbitrator shall issue a written decision, and shall have full authority to award all remedies which



would be available in court. The arbitrator shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. Employer shall pay the arbitrator's fees and any AAA administrative expenses. In the event Employee files a claim to collect unpaid payments or benefits payable under Section 2.4, the prevailing party shall be awarded reasonable attorneys fees and costs. Any judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Possible disputes covered by the above include unpaid wages, breach of contract, torts, violation of public policy, discrimination, harassment, or any other employment-related claims under laws including Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the California Fair Employment and Housing Act, the California Labor Code, and any other federal or state constitutional provisions, statutes or laws relating to an employee's relationship with his employer. However, claims for workers' compensation benefits and unemployment insurance (or any other claims where mandatory arbitration is prohibited by law) are not covered by this arbitration agreement, and such claims may be presented to the appropriate court or government agency. BY AGREEING TO THIS MUTUAL AND BINDING ARBITRATION PROVISION, BOTH EMPLOYEE AND EMPLOYER GIVE UP ALL RIGHTS TO TRIAL BY JURY. This arbitration policy is to be construed as broadly as is permissible under relevant law. EMPLOYER AND EMPLOYEE HAVE READ THIS SECTION 9 AND IRREVOCABLY AGREE TO ARBITRATE ANY DISPUTE IDENTIFIED ABOVE.

/s/ RM

/s/ WSA

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Employer's Initials

\_\_\_\_\_  
Employee's Initials

**10. Injunctive Relief.** The parties hereto agree that any breach or threatened breach of Section 4 of this Agreement or the Proprietary Rights and Inventions Agreement will cause substantial and irreparable damage to Employer in an amount and of a character difficult to ascertain. Accordingly, to prevent any such breach or threatened breach, and in addition to any other relief to which Employer may otherwise be entitled, Employer will be entitled to immediate temporary, preliminary and permanent injunctive relief through appropriate legal proceedings in any arbitration, without proof of actual damages that have been incurred or may be incurred by Employer with respect to such breach or threatened breach. Employee expressly agrees that Employer will not be required to post any bond or other security as a condition to obtaining any injunctive relief pursuant to this Section 10, and Employee expressly waives any right to the contrary. Employee agrees that this Section 10 is without prejudice to the rights of the parties to compel arbitration pursuant to Section 9.

**11. Entire Agreement.** This Agreement and the Exhibits attached hereto contain the entire agreement of the parties relating to the subject matter hereof, and the parties hereto have made no agreements, representations or warranties relating to the subject matter of this Agreement that are not set forth otherwise herein or the Exhibits attached hereto. This Agreement supersedes any and all prior agreements, written or oral, with Employer relating to Employees employment with Employer and any other subject matter of this Agreement. Any such prior agreements are hereby terminated and of no further effect and Employee, by the execution hereof, agrees that any compensation provided for under any such prior agreement is specifically superseded and replaced by the provision of this Agreement; subject to the

following: (i) any and all compensation previously deferred under any pre-existing deferred compensation plan shall immediately be paid to Employee without condition or limitation; and (ii) this Agreement is not intended to supercede, cancel or replace any stock option or dividend equivalent right payments that Employee may have or otherwise be entitled to receive. The parties hereto agree that in no event shall an oral modification of this Agreement be enforceable or valid.

**12. Governing Law.** This Agreement is and shall be governed and construed in accordance with the laws of the State of California, regardless of any laws on choice of law or conflicts of law of any jurisdiction.

**13. Notice.** All notices hereunder must be in writing and shall be sufficiently given for all purposes hereunder if properly addressed and delivered personally by documented overnight delivery service, by certified or registered mail, return receipt requested, or by facsimile or other electronic transmission service at the address or facsimile number, as the case may be, set forth below. Any notice given personally or by documented overnight delivery service is effective upon receipt. Any notice given by registered mail is effective upon receipt, to the extent such receipt is confirmed by return receipt. Any notice given by facsimile transmission is effective upon receipt, to the extent that receipt is confirmed, either verbally or in writing by the recipient. Any notice which is refused, unclaimed or undeliverable because of an act or omission of the party to be notified, if such notice was correctly addressed to the party to be notified, shall be deemed communicated as of the first date that said notice was refused, unclaimed or deemed undeliverable by the postal authorities, or overnight delivery service.

If to Employer:

Impac Funding Corporation  
1401 Dove Street  
Newport Beach, California 92660  
Telephone: (949) 475-3600  
Facsimile: (949) 475-3969  
Attention: Ronald Morrison, Esq.  
General Counsel

With a copy to:

Greg T. Williams, Esq.  
Allen Matkins Leck Gamble & Mallory LLP  
1900 Main Street, Fifth Floor  
Irvine, California 92614  
Telephone: (949) 553-1313  
Facsimile: (949) 553-8354

If to Employee:

William S. Ashmore  
8 Fern Canyon  
Laguna Niguel, California 92677

With a copy to:

Ernest W. Klatte, III, Esq.  
Rutan & Tucker, L.L.P.  
611 Anton Blvd., 14th Floor  
Costa Mesa, California 92626  
Telephone: (714) 641-5100  
Facsimile: (714) 546-9035

**14. Amendments And Waivers.** This Agreement may not be amended, modified, superseded, canceled, or any terms waived, except by written instrument signed by both parties, or in the case of waiver, by the party to be charged.

**15. Successor and Assigns.** This Agreement is not assignable by Employee, nor by Employer except to an affiliated or successor entity. This Agreement is binding on the parties' heirs, executors, administrators, other legal representatives, successors, and, to the extent assignable, their assigns.

**16. Representations.** The person executing this Agreement on behalf of Employer hereby represents and warrants on behalf of himself and Employer that he is authorized to represent and bind Employer. Employee specifically represents and warrants to Employer that he is not now under any contractual or quasi-contractual obligations that is inconsistent or in conflict with this Agreement or that would prevent, limit or impair Employee's performance of his obligations under this Agreement, (b) he has had the opportunity to be represented by legal counsel of his choosing in preparing, negotiating, executing and delivering this Agreement; and (c) fully understands the terms and provisions of this Agreement.

**17. Counterparts; Facsimile Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes. This Agreement may be executed by a party's signature transmitted by facsimile ("fax"), and copies of this Agreement executed and delivered by means of faxed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed signatures as if such signatures were originals. Any party executing and delivering this Agreement by fax shall promptly thereafter deliver a counterpart signature page of this Agreement containing said party's original signature. All parties hereto agree that a faxed signature page may be introduced into evidence in any proceeding arising out of or related to this Agreement as if it were an original signature page.

**18. Rules of Construction.** This Agreement has been negotiated by the parties and is to be interpreted according to its fair meaning as if the parties had prepared it together and not strictly for or against any party. References in this Agreement to "Sections" refer to Sections of

this Agreement, unless the context expressly indicates otherwise. References to “provisions” of this Agreement refer to the terms, conditions, restrictions and promises contained in this Agreement. References in this Agreement to laws and regulations refer to such laws and regulations as in effect on this date and to the corresponding provisions, if any, of any successor law or regulation. At each place in this Agreement where the context so requires, the masculine, feminine or neuter gender includes the others and the singular or plural number includes the other. Forms of the verb “including” mean “including without limitation” unless the context expressly indicates otherwise. “Or” is inclusive and includes “and” unless the context expressly indicates otherwise. The introductory headings at the beginning of Sections of this Agreement are solely for the convenience of the parties and do not affect any provision of this Agreement.

[SIGNATURE PAGE FOLLOWS THIS PAGE]

IN WITNESS WHEREOF, this Agreement is executed as of the day and year first above written.

“EMPLOYER”

IMPAC FUNDING CORPORATION,  
a California corporation

By: \_\_\_\_\_ /s/ RONALD MORRISON

**Name: Ronald Morrison**  
**Title: General Counsel**

“EMPLOYEE”

By: \_\_\_\_\_ /s/ WILLIAM S. ASHMORE

**WILLIAM S. ASHMORE**

**EXHIBIT A**

**JOB DESCRIPTION AND RELATED ENTITIES**

Oversee the day to day operations of the Organization in support of policies, goals and objectives established by the Chief Executive Officer and the Board of Directors of Employer. Serve on the Executive Committee and the Asset Liability Committee of Impac Mortgage Holdings, Inc. For purposes of this Exhibit A, "Organization" means Employer and any affiliates or related entities of Employer for whom Employee is requested to provide services pursuant to the Employment Agreement by and between Employer and Employee dated as of April 1, 2003 (the "Agreement"). Manage and supervise the Organization's senior management in the following areas: credit, sales, legal (and human resources through legal), finance, secondary marketing, asset liability, and operations.

In consultation and coordination with the Chief Executive Officer and the Board of Directors of Employer and, as the case may be, the Chief Executive Officer and the Board of Directors of other entities within the Organization, the COO's responsibilities include participating in the oversight, management and administration of the following areas for the Organization, either directly or through supervision of senior managers charged with primary responsibility for such areas: finance; personnel; organization and administration; legal compliance; development, promotion and delivery of the Organization's products and services; planning and budgeting; policy development; evaluate and report on the Organization's performance.

Employee acknowledges, understands and agrees that Employee will be requested by Employer to devote some or all of Employee's time and effort during the term of employment pursuant to the Agreement (and consistent with the above job descriptions) to the businesses of Employer's affiliates or related entities pursuant to certain agreements and relationships between and among Employer and such affiliates or related entities. Such affiliates and related entities include, but are not limited to, the following: Impac Mortgage Holdings, Inc., Impac Mortgage Capital Corp., Impac Warehouse Lending Group, IMH Assets Corp., Novelle Financial Services, Inc., Impac Lending Group, Impac Secured Assets Corp., Impac Mortgage Acceptance Corp., Impac Multifamily Capital Corp. and Impac Foundation.

Employee further understands and acknowledges that, pursuant to the Agreement, Employee may be directed by Employer to provide services consistent with the above job descriptions to additional real estate investment trusts or other entities which Employer establishes or with which Employer affiliates or becomes related and for which there exists an agreement with Employer or any of the above entities to provide such services.

Employee understands and acknowledges that Employee's obligations under the Agreement, including Employee's duties under Section 4 thereof and the Proprietary Rights and Inventions Agreement entered into pursuant to Section 6 thereof, shall apply and extend to Employee's knowledge of the business of Employer's affiliates or related entities and any trade secret or other confidential or proprietary information relating to same.

EXHIBIT A

**EXHIBIT B**

**WAIVER AND RELEASE AGREEMENT**

For full and valuable consideration, including, but not limited to, severance payments made and to be made by Impac Funding Corporation and any affiliate or related entity of Impac Funding Corporation (collectively, "Employer") to William S. Ashmore ("Employee") and guaranteed by Impac Mortgage Holdings, Inc. ("Guarantor") pursuant to the Employment Agreement between Employer and Employee dated as of April 1, 2003 (the "Employment Agreement"), Employee, on the one part, and Employer and Guarantor on the other part, hereby enter into this Waiver and Release Agreement ("Waiver"), and each agrees to waive and release the other and, as the case may be, the other's stockholders, directors, officers, employees, affiliates, agents, successors and assigns, if any, from all known and unknown claims, agreements or complaints related to or arising under Employee's employment with Employer, including, but not limited to, any claim arising out of Employee's termination, any express or implied agreement between Employee and Employer (other than each party's respective rights and obligations under Sections 2.3, 2.4 and 4.1 of the Employment Agreement, the Guaranty and the Proprietary Rights and Inventions Agreement), and any other federal or state constitutional provisions, statutes or laws relating to an employee's relationship with his employer, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act, the Age Discrimination in Employment Act, the Americans With Disabilities Act, the California Fair Employment and Housing Act, and the California Labor Code.

This Waiver shall not include a waiver of any of the following: (i) any right to defense and/or indemnification that Employee may have under California Labor Code section 2802, or under any defense and indemnification policy or agreement; (ii) any claim for breach of any pension, 401 k, deferred compensation or stock option plan of Employer; or (iii) any claim that Employee may have against any officer, director, employee, or agent of Employer or Guarantor for defamation or intentional interference with prospective employment or business advantage.

This Waiver includes a waiver of any rights the parties may have under Section 1542 of the California Civil Code, which states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Employee's Waiver is conditioned upon Employer and Guarantor's performance of all of their severance obligations pursuant to Sections 2.3 and 2.4 of the Employment Agreement and pursuant the Guaranty. In the event that either Employer or Guarantor materially breaches its severance obligations under the Employment Agreement or Guaranty, then Employee shall be entitled to pursue any claims as though this Waiver did not exist, and the statute of limitations for any such claims shall be deemed to have been tolled during the period from the date of Employee's termination through the date Employer or Guarantor breached its obligations.

EXHIBIT B

Employer's Waiver is conditioned upon Employee's performance of all of his obligations pursuant to Section 4.1 of the Employment Agreement. In the event that Employee materially breaches his noncompete obligations under the Employment Agreement, then Employer and Guarantor shall be entitled to pursue any claims as though this Waiver did not exist, and the statute of limitations for any such claims shall be deemed to have been tolled during the period from the date of Employee's termination through the date Employee breached his obligations. The parties to this Waiver each acknowledge that each may hereafter discover facts different from or in addition to those now known or believed to be true with respect to the claims, suits, rights, actions, complaints, agreements, contracts, causes of action, and liabilities of any nature whatsoever that are the subject of the above release, and the parties expressly agree that this Waiver shall be and remain effective in all respects regardless of such additional or different facts.

Employee is advised as follows: (i) Employee should consult an attorney regarding this Waiver before executing it; (ii) Employee has 21 days in which to consider this Waiver and whether Employee will enter into it; (iii) this Waiver does not waive rights or claims that may arise after it is executed; and (iv) at anytime within seven days after executing this Waiver, Employee may revoke this Waiver. This Waiver shall not become effective or enforceable until the seven day revocation period set forth herein has passed.

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Employment Agreement.

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

\_\_\_\_\_  
WILLIAM S. ASHMORE

IMPAC FUNDING CORPORATION

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

IMPAC MORTGAGE HOLDINGS, INC.

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT B



EXHIBIT C

INCENTIVE COMPENSATION

**Excess Income:** Excess Income equals the greater of zero or Net Income minus the product of ((the Ten Year U.S. Treasury Rate plus 200 basis points) x ((Average Net Worth x number of days in quarter) divided by 365)).

**Net Income:** The definition for "Net Income" is at any date of determination, the net income of IMH determined in accordance with then current tax law before the total Incentive Compensation paid to Joseph R. Tomkinson, William Ashmore and Richard Johnson (collectively, the "Executives") pursuant to their respective employment agreements, the deduction for dividends paid and any net operating loss deductions arising from losses in prior periods. Upon filing IMH's actual tax return, any variance from prior period estimates shall be an adjustment to the then current period Incentive Compensation calculation.

**Average Net Worth:** The definition of "Average Net Worth" for any quarter is IMH's accumulated net worth of \$514,795,766 at December 31, 2002 plus subsequent to December 31, 2002, the weighted average daily sum of the gross proceeds from any sale of IMH's equity securities, before deducting any underwriting discounts and commissions and other expenses; plus the average balance quarter-to-date on IMH's General Ledger of the retained earnings for the quarter (general ledger account number 317500); less the weighted average daily sum of the gross proceeds used to repurchase IMH's stock; less the average balance quarter-to-date on IMH's General Ledger of the cumulative dividends declared (general ledger account number 317510); plus an amount equal to Prior Period Losses. Prior Period Losses equal the lower of (a) zero, or (b) the sum of any losses incurred by IMH after December 31, 2003 and prior to the quarter of the determination of Incentive Compensation less any Net Income for quarters subsequent to the quarter of the loss plus any losses incurred for quarters subsequent to the quarter of the loss.

**Ten Year U.S. Treasury Rate:** The definition for "Ten Year U.S. Treasury Rate" for a quarterly period is the arithmetic average of the weekly per annum Ten Year Average Yields published by the Federal Reserve Board during such quarter. In the event that the Federal Reserve Board does not publish a weekly per annum Ten Year Average Yield during any week in a quarter, then the Ten Year U.S. Treasury Rate for such week shall be the weekly per annum Ten Year Average Yields published by any Federal Reserve Bank or by any U.S. Government department or agency selected by Employer for such week. In the event that Employer determines in good faith that for any reason Employer cannot determine the Ten Year U.S. Treasury Rate for any quarter as provided above, then the Ten Year U.S. Treasury Rate for such quarter shall be the arithmetic average of the per annum average yields to maturity based upon the daily closing bids during such quarter for each of the issues of actively traded marketable U.S. Treasury fixed interest rate securities (other than securities which can, at the option of the holder, be surrendered at face value in payment of any federal estate tax) with the final maturity date not less than eight nor more than twelve years from the date of each such quotation, for each

EXHIBIT C

business day in New York City (or less frequently if daily quotations shall not be generally available) in each such quarterly period as chosen by at least three recognized dealers in U.S. Government securities selected by Employer.

EXHIBIT C

**EXHIBIT D**

**PROPRIETARY RIGHTS AND INVENTIONS AGREEMENT**

In consideration of my employment by Impac Funding Corporation, a California corporation (the "Company"), and the compensation I receive from the Company, I agree to certain restrictions placed by the Company on my use and development of information and technology, as more fully set out below.

1. **Proprietary Information.** I understand that the Company possesses and will possess Proprietary Information which is important to its business. For purposes of this Agreement, "Proprietary Information" is information that was or will be developed, created, or discovered by or on behalf of the Company or any of its affiliates or related entities, or which became or will become known by, or was or is conveyed to the Company, which has commercial value in the Company's business or the business of any of the Company's affiliates or related entities, unless (i) the information is or becomes publicly known through lawful means; (ii) the information was rightfully in my possession or part of my general knowledge prior to my employment by the Company as specifically identified and disclosed by me in Exhibit A attached hereto; or (iii) the information is disclosed to me without confidential or proprietary restriction by a third party who rightfully possesses the information (without confidential or proprietary restriction) and who did not learn of it directly from the Company or any of its affiliates or related entities.

Proprietary Information includes information (whether conveyed orally or in writing) relating to (i) client/customer lists, vendor lists or other lists or compilations containing client, customer or vendor information; (ii) information about investment techniques or strategies, investment research or analysis, business techniques or strategies, processes, costs, profits, markets, marketing plans, forecasts, sales or commissions; (iii) plans for new investment techniques and strategies; (iv) the compensation, performance and terms of employment of other employees; (v) all other information that has been or will be given to me in confidence by the Company (or any affiliate or related entity of the Company); (vi) software in various stages of development, and any designs, drawings, schematics, specifications, techniques, models, data, source code, algorithms, object code, documentation, diagrams, flow charts, research development, processes and procedures relating to any software; (vii) any documents, books, papers, drawings, schematics, models, sketches, computer programs, databases or other data, including electronic data recorded or retrieved by any means, that contain any Proprietary Information; and (viii) any information described above which the Company or any of its affiliates or related entities obtains from another party and which the Company or any of its affiliates or related entities treats as proprietary or designates as Proprietary Information.

2. **Company Materials.** I understand that the Company and its affiliates and related entities possess or will possess "Company Materials" which are important to their respective businesses. For purposes of this Agreement, "Company Materials" are documents or other media or tangible items that contain or embody Proprietary Information or any other information concerning the business, operations or plans of the Company or any of its affiliates or related entities, whether such documents have been prepared by me or by others. "Company Materials" include charts,

EXHIBIT D

graphs, notebooks, customer lists, computer software, media or printouts, sound recordings and other printed, typewritten or handwritten documents, as well as financial models and the like.

### 3. Intellectual Property.

3.1 All Proprietary Information and all right, title and interest in and to any patents, patent rights, copyrights, trademark rights, mask work rights, trade secret rights, and all other intellectual and industrial property and proprietary rights that currently exist or may exist in the future anywhere in the world (collectively "Rights") in connection therewith shall be the sole property of the Company or its affiliates or related entities, as the case may be. I hereby assign to the Company any Rights I may have or acquire in such Proprietary Information. At all times, both during my employment with the Company and after its termination, I will keep in confidence and trust and will not use or disclose any Proprietary Information or anything relating to it without the prior written consent of an officer of the Company except as may be necessary and appropriate in the ordinary course of performing my duties to the Company. The disclosure restrictions of this Agreement shall not apply to any information that I can document is generally known to the public through no fault of mine. Nothing contained herein will prohibit me from disclosing to anyone the amount my wages.

3.2 All Company Materials shall be the sole property of the Company. I agree that during my employment with the Company, I will not remove any Company Materials from the business premises of the Company or deliver any Company Materials to any person or entity outside the Company, except as I am required to do in connection with performing the duties of my employment. I further agree that, immediately upon the termination of my employment by me or by the Company for any reason, or for no reason, or during my employment if so requested by the Company, I will return all Company Materials, apparatus, equipment and other physical property, and any reproduction of such property, excepting only (i) my personal copies of records relating to my compensation and (ii) my copy of this Agreement.

3.3 I agree that all "Inventions" (which term includes patentable or non-patentable inventions, original works of authorship, derivative works, trade secrets, trademarks, copyrights, service marks, discoveries, patents, technology, algorithms, computer software, application programming interfaces, protocols, formulas, compositions, ideas, designs, processes, techniques, know-how, data and all improvements, rights and claims related to the foregoing), which I make, conceive, reduce to practice or develop (in whole or in part, either alone or jointly with others) during my employment, shall be the sole property of the Company to the maximum extent permitted by Section 2870 of the California Labor Code. I hereby assign, without further consideration, all such Inventions to the Company (free and clear of all liens and encumbrances), and the Company shall be the sole owner of all Rights in connection therewith. No assignment in this Agreement shall extend to Inventions, the assignment of which is prohibited by Labor Code Section 2870, which states:

EXHIBIT D

Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

1. Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer.
2. Result from any work performed by the employee for the employer.

I acknowledge that all original works of authorship which are made by me (in whole or in part, either alone or jointly with others) within the scope of my employment and which are protectable by copyright are "works made for hire," as defined in the United States Copyright Act (17 USCA, Section 101). I will not disclose Inventions covered by this Section 3.3 to any person outside the Company, unless I am requested to do so by management personnel of the Company.

3.4. I agree to disclose promptly to the Company all Inventions and relevant records, which records will remain the sole property of the Company. I further agree that all information and records pertaining to any idea, process, trademark, service mark, invention, technology, computer program, original work or authorship, design, formula, discovery, patent, or copyright that I do not believe to be an Invention, but is conceived, developed, or reduced to practice by me (in whole or in part, either alone or jointly with others) during my employment, shall be promptly disclosed to the Company (such disclosure to be received in confidence). I will also disclose to the Company all Inventions conceived, reduced to practice, used, sold, exploited or developed by me (in whole or in part, either alone or jointly with others) within one (1) year of the termination of my employment with the Company ("Presumed Inventions"); such disclosures shall be received by the Company in confidence, to the extent they are not assigned to the Company in Section 3.3, and do not extend such assignment. Because of the difficulty of establishing when any Presumed Invention is first conceived or developed by me, or whether it results from access to Proprietary Information or the Company's equipment, facilities, and data, I agree that all Presumed Inventions and all Rights associated therewith shall be presumed to be Inventions subject to assignment under Section 3.3. I can rebut this presumption if I prove that a Presumed Invention is not an Invention subject to assignment under Section 3.3.

3.5 I agree to perform, during and after my employment, all acts deemed necessary or desirable by the Company to permit and assist it, at the Company's expense, in evidencing, perfecting, obtaining, maintaining, defending and enforcing Rights or my assignment with respect to such Inventions in any and all countries. Should the Company be unable to secure my signature on any document necessary to apply for, prosecute, obtain, enforce or defend any Rights relating to any assigned Invention, whether due to my mental or physical incapacity or any other cause, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents, as my agents and attorneys-in-fact, with full power of substitution, to act for and in my behalf and instead of me, to execute and file any documents and

EXHIBIT D

to do all other lawfully permitted acts to further the above purposes with the same legal force and effect as if executed by me.

3.6 Any assignment of copyright hereunder (and any ownership of a copyright as a work made for hire) includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as “moral rights” (collectively “Moral Rights”). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, I hereby waive such Moral Rights and consent to any action of the Company that would violate such Moral Rights in the absence of such waiver and consent. I will confine any such waivers and consents from time to time as requested by the Company.

3.7 Attached hereto as Exhibit A is a complete list of all existing Inventions to which I claim personal ownership of as of the date of this Agreement and that I desire to specifically clarify are not subject to this Agreement, and I acknowledge and agree that such list is complete. If no such list is attached to this Agreement, I represent that I have no such Inventions at the time of signing this Agreement.

3.8 I understand that nothing in this Agreement is intended to expand the scope of protection provided me by Sections 2870 through 2872 of the California Labor Code.

4. Prior Actions and Knowledge. I represent and warrant that from the time of my first contact or communication with the Company, I have held in strict confidence all Proprietary Information and have not (i) disclosed any Proprietary Information or delivered any Company Materials to anyone outside of the Company or any affiliate or related entity of the Company, or (ii) used, copied, published, or summarized any Proprietary Information or removed any Company Materials from the business premises of the Company, except to the extent necessary to carry out my responsibilities as an employee of the Company.

5. Non-Solicitation of Employees. I agree that for a period of twelve months following the termination of my employment with the Company, I will not, on behalf of myself or any other person or entity, solicit the services of any person who was employed by the Company or any affiliate or related entity of the Company on the date of my termination of employment or at any time during the six month period prior to the termination of my employment.

6. No Conflict with Obligations to Third Parties. I represent that my performance of all the terms of this Agreement will not breach any agreement to keep in confidence proprietary or confidential information acquired by me in confidence or in trust prior to my employment with the Company. I have not entered into, and I agree I will not enter into, any agreement either written or oral in conflict herewith or in conflict with my employment with the Company.

7. Remedies. I recognize that nothing in this Agreement is intended to limit any remedy of the Company under the California Uniform Trade Secrets Act. I recognize that my violation of this Agreement could cause the Company irreparable harm, the amount of which may be extremely difficult to estimate, making any remedy at law or in damages inadequate.

EXHIBIT D

Therefore, I agree that the Company shall have the right to apply to any court of competent jurisdiction for an order restraining any breach or threatened breach of this Agreement and for any other relief the Company deems appropriate. This right shall be in addition to any other remedy available to the Company.

8. Survival. I agree that my obligations under Sections 3.1 through 3.6, 5 and 6 shall continue in effect after termination of my employment, regardless of the reason or reasons for termination, and whether such termination is voluntary or involuntary on my part, and that the Company is entitled to communicate my obligations under this Agreement to any future employer or potential employer of mine.

9. Controlling Law. This Agreement is and shall be governed and construed in accordance with the laws of the State of California, regardless of any laws on choice of law or conflicts of law of any jurisdiction.

10. Severable Provisions. The provisions of this Agreement are severable and if any one or more provisions is determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provisions to the extent enforceable, shall nevertheless be binding and enforceable.

11. Successors and Assigns. This Agreement shall be effective as of the date I execute this Agreement and shall be binding upon me, my heirs, executors, assigns, and administrators and shall inure to the benefit of the Company, its subsidiaries, successors and assigns.

12. Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes. This Agreement may be executed by a party's signature transmitted by facsimile ("fax"), and copies of this Agreement executed and delivered by means of faxed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed signatures as if such signatures were originals. Any party executing and delivering this Agreement by fax shall promptly thereafter deliver a counterpart signature page of this Agreement containing said party's original signature. All parties hereto agree that a faxed signature page may be introduced into evidence in any proceeding arising out of or related to this Agreement as if it were an original signature page.

13. Rules of Construction. This Agreement has been negotiated by the parties and is to be interpreted according to its fair meaning as if the parties had prepared it together and not strictly for or against any party. References in this Agreement to "Sections" refer to Sections of this Agreement, unless the context expressly indicates otherwise. References to "provisions" of this Agreement refer to the terms, conditions, restrictions and promises contained in this Agreement. References in this Agreement to laws and regulations refer to such laws and regulations as in effect on this date and to the corresponding provisions, if any, of any successor law or regulation. At each place in this Agreement where the context so requires, the masculine, feminine or neuter gender includes the others and the singular or plural number includes the other. Forms of the verb "including" mean "including without limitation" unless the context

EXHIBIT D





**EXHIBIT A**

**EMPLOYEE'S DISCLOSURE**

Gentlemen:

1. Except for the information and ideas listed below that rightfully became part of my general knowledge prior to my first contact or communication with the Company or any of its affiliates or related entities, I represent that I am not in the possession of and have no knowledge of any information that can be considered the Proprietary Information of Impac Funding Corporation, a California corporation (the "Company"), other than information disclosed by Company or any of its affiliates or related entities during my employment negotiations or my prior employment with the Company or any of its affiliates or related entities, which I understand and agree is the Proprietary Information of Company or its affiliates or related entities, as the case may be.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Except for the complete list of Inventions set forth below, I represent that I (in whole or in part, either alone or jointly with others) have not made, conceived, developed or first reduced to practice any Inventions relevant to the subject matter of my employment with the Company prior to my employment with the Company or any of its affiliates or related entities.

No Inventions

See below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional sheets attached

/s/ Williams S. Ashmore

\_\_\_\_\_  
WILLIAM S. ASHMORE

EXHIBIT A  
TO PROPRIETARY RIGHTS AND INVENTIONS AGREEMENT

**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT is made as of April 1, 2003, by and between Impac Funding Corporation, a California corporation ("Employer"), and Richard J. Johnson, an individual ("Employee"); provided that the Incentive Compensation that may be paid pursuant to this Agreement is subject to approval by a majority of the shareholders of Impac Mortgage Holdings, Inc., a Maryland corporation ("IMH"), and if such shareholder approval is not obtained on or before the earlier of (i) the date of the next annual meeting of the shareholders of IMH and (ii) August 31, 2003, then this Agreement shall terminate as of the earlier of such dates and be of no further force or effect.

**RECITALS**

WHEREAS, Employee is knowledgeable of and skillful in the business of Employer and IMH, which includes acquiring for investment and sale non-conforming residential mortgage loans and mortgage backed securities and performing mortgage operations for affiliates or related entities of Employer (the "Business");

WHEREAS, Employer believes that Employee is an integral part of its management and currently is and will become more knowledgeable of and be in part responsible for developing the Business;

WHEREAS, Employee possesses extensive management experience and knowledge regarding the Business, including confidential information concerning service marketing plans and strategy, business plans and projections and the formulas and models pertaining thereto, customer needs and peculiarities, finances, operations, billing methods and customer lists;

WHEREAS, Employer desires that Employee continue his employment as Executive Vice President and Chief Financial Officer of Employer; and

WHEREAS, Employee is willing to be employed by Employer and provide services to Employer and any affiliates or related entities of Employer (as more fully described in Exhibit A attached hereto) under the terms and conditions herein stated.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, it is hereby agreed by and between the parties hereto as follows:

**1. Employment, Services and Duties.**

1.1 Employer hereby employs Employee and Employee hereby accepts such employment full-time (subject to those exceptions, if any, set forth below) as Executive Vice President and Chief Financial Officer of Employer to perform the duties and functions set forth in Exhibit A attached hereto and, Subject to Section 2.2(i), to perform such other duties or functions as are reasonably required or as may be prescribed from time to time or as otherwise

agreed. Employee shall render his services by and subject to the instructions and under the direction of Employer's Chief Executive Officer to whom Employee shall directly report.

1.2 Employee acknowledges and agrees that Employee may be required by Employer to devote a portion of his working time to perform functions for Employer's affiliates or related entities (as set forth in Exhibit A attached hereto) and that such services are to be performed pursuant to and consistent with Employee's duties and obligations under this Agreement.

1.3 Employee will at all times faithfully, industriously and to the best of his ability, experience and talents perform all of the duties required of and from him pursuant to the terms of this Agreement. Employee will devote his full business energies and abilities and all of his business time to the performance of his duties hereunder and will not, without Employer's, prior written consent, render to others any service of any kind (whether or not for compensation) that would interfere with the full performance of Employee's duties hereunder, and in no event will engage in any activities that compete with the Business or that could create a reasonably foreseeable conflict of interest or the appearance of a reasonably foreseeable conflict of interest; provided that nothing contained in this Section 1.3 shall preclude Employee from engaging in or managing Employee's outside investments.

## **2. Term and Termination.**

2.1 The term of this Agreement shall be through December 31, 2007, unless extended by the mutual written agreement of Employer and Employee.

2.2 Employee's employment shall terminate prior to the expiration of the term set forth in Section 2.1 upon the happening of any of the following events:

(a) Voluntary termination by Employee other than for Good Reason (as defined below); provided that Employee shall be required to provide Employer with at least 30 days prior written notice of such voluntary termination;

(b) Death of Employee;

(c) Employer may terminate Employee under this Agreement for "cause" if any of the following occurs (any determination of "cause" as used in this Agreement shall be made only by an affirmative majority vote of the Board of Directors (not including Employee in the deliberations or vote on the same, if a director) of Employer):

(i) Employee is convicted of (or pleads nolo contendere to) (A) a crime of dishonesty or breach of trust, including such a crime involving either the property of Employer IMH (or any affiliate or related entity of Employer or IMH) or the property entrusted to Employer or IMH (or any affiliate or related entity of Employer or IMH) by its clients, including fraud, or embezzlement or other misappropriation of funds belonging to Employer or IMH (or any affiliate or related entity of Employer or IMH) or any of their respective

clients, or (B) a felony leading to incarceration of more than 90 days or the payment of a penalty or fine of \$100,000 or more;

(ii) Employee materially and substantially fails to perform Employee's job duties properly assigned to Employee after being provided 30 days prior written notification by the Board of Directors of Employer setting forth those duties that are not being performed by Employee; provided that Employee shall have a reasonable time to correct any such failures to the extent that such failures are correctable and Employer may not terminate Employee for "cause" on the basis on any such failure that is cured within a reasonable time.

(iii) Employee has engaged in willful misconduct or gross negligence in connection with his service to Employer or IMH (or any affiliate or related entity of Employer or IMH) that has caused or is causing material harm to Employer or IMH (or any affiliate or related entity of Employer or IMH); or

(iv) Employee's material breach of any of the terms of this Agreement or any other obligation that Employee owes to Employer or IMH (or any affiliate or related entity of Employer or IMH), including a material breach of trust or fiduciary duty or a material breach of any proprietary rights and inventions or confidentiality agreement between Employer and Employee or between IMH and Employee, (or between Employee and any affiliate or related entity of Employer or IMH)(as such agreements may be adopted or amended from time to time by Employer and Employee).

(d) By mutual agreement between Employer and Employee;

(e) The date when Employee is declared legally incompetent under the laws of the State of California, or if Employee has a mental or physical condition that can reasonably be expected to prevent Employee from carrying out his essential duties and obligations under this Agreement for a period of greater than six months (any such condition an "Incapacitating Condition"), notwithstanding Employer's reasonable accommodations (to the extent required by law);

(f) Employer may terminate Employee under this Agreement at will (and without cause) upon written notice at any time. Unless otherwise provided in such notice, such termination shall be effective immediately upon providing written notice to Employee; or

(g) Employee may terminate his employment under this Agreement for Good Reason upon providing Employer at least 30 days prior written notice of such termination stating the basis on which Employee has determined that he has Good Reason to terminate his employment; provided that Employer shall have a reasonable time after receiving such notice to cure any event that would constitute Good Reason for Employee to terminate his employment (provided such event is curable) and Employee may not terminate his employment for Good Reason on the basis of any such event that is cured within a reasonable time. Notwithstanding the foregoing portion of this Section

2.02(g), the aforementioned 30-day notice and reasonable cure period shall not apply to Section 2.02(g)(iv). "Good Reason" shall mean:

- (i) the assignment to Employee of duties materially inconsistent with, or a substantial reduction or alteration in, the authority, duties or responsibilities of Employee as set forth in this Agreement, without Employee's prior written consent;
- (ii) the principal place of the performance of Employee's responsibilities and duties is changed to a location more than 65 miles from the location of such place as of the date of this Agreement, without Employee's prior written consent;
- (iii) a material breach by Employer of this Agreement, including a reduction by Employer of Employee's Base Salary, without Employee's prior written consent; or
- (iv) a failure by Employer to obtain from any acquirer of Employer, before any Acquisition (as defined below) takes place, an agreement to assume and perform this Agreement.

Good Reason does not include the expiration of the term of this Agreement on December 31, 2007.

2.3 Except as set forth in Section 4, in the event that Employee's employment is terminated pursuant to Section 2.2(8), 2.2(b), 2.2(c), 2.2(d) or 2.2(e) herein, neither Employer nor Employee shall have any remaining duties or obligations under this Agreement, except that Employer shall pay to Employee, or his legal representatives, on the date of termination of employment (the "Termination Date") or, with respect to any Incentive Compensation payments or reimbursement for expenses, as promptly as practical after the Termination Date, the following:

- (a) Such compensation as is due pursuant to Sections 3.1 (a) and 3.1(b), prorated through the Termination Date;
- (b) Any expense reimbursements due and owing to Employee for reasonable and necessary business and entertainment expenses of Employer incurred by Employee prior to the Termination Date; and
- (c) The dollar value of all accrued and unused paid time off that Employee is entitled to through the Termination Date.

2.4 Except as set forth in Section 4, in the event that Employee's employment is terminated pursuant to Section 2.2(f) or 2.2(g), neither Employer nor Employee shall have any remaining duties or obligations under this Agreement, except that Employer shall pay to Employee, or his representatives, the amounts set forth in Section 2.3 at the times set forth in Section 2.3 and the following (provided that payments for health insurance coverage shall be made to an insurance provider):

(a) An additional 30 month's worth of Base Salary to be paid as follows:

(i) 12 month's worth of Base Salary paid eight days after Employee signs and delivers to Employer the Waiver and Release Agreement required pursuant to Section 2.5; and

(ii) 18 month's worth of Base Salary paid over the 18-month period succeeding the Termination Date (paid at the times set forth in Section 3.1(a)).

(b) Premiums for continuation of Employee's health insurance benefits under Employer's group health insurance plan, pursuant to COBRA, for the 30 month period succeeding the Termination Date (with such health insurance coverage to be at a level and quality equivalent to the health insurance coverage provided by Employer to Employee immediately prior to the Termination Date, "Equivalent Coverage"); provided that Employer shall pay such premiums only so long as (during said 30 month period) Employee remains eligible for such Equivalent Coverage under COBRA;

(c) Incentive Compensation to be determined and paid as follows:

(i) On the Termination Date, Employee will be paid an amount, if any, equal to the total Incentive Compensation paid to Employee for the three quarters immediately prior to the Termination Date for which Incentive Compensation had already been paid to Employee;

(ii) Within 30 days after the end of the quarter in which the Termination Date occurs, Employee's Incentive Compensation for that quarter will be calculated and Employee will be paid an amount equal to the Incentive Compensation that Employee otherwise would have been paid (as if Employee was still employed by Employer) for that quarter pursuant to Section 3.1(b); and

(iii) For the six quarters after the quarter in which the Termination Date occurs, Employee shall be paid the Incentive Compensation that Employee otherwise would have been paid (as if Employee was still employed by Employer) for those quarters pursuant to Section 3.1(b) (with such Incentive Compensation payments to be paid at the times they would have been paid had Employee's employment not terminated); provided that each quarterly Incentive Compensation payment during this six quarter period shall not be less than 50% nor more than 100% of the average of the four quarterly Incentive Compensation amounts paid to Employee for the four quarters immediately preceding the Termination Date.

(d) The payments set forth in Sections 2.4(a), (b) and (c) above are referred to herein collectively as the "Severance Payments" and each as a "Severance Payment."

2.5 As a condition precedent of Employee or his estate receiving any Severance Payment from Employer, whether in a lump sum payment or a string of payments or in the form of payment of benefits, Employee or his estate shall, in consideration for payment of such amount or benefit, sign and deliver to Employer (against the execution and delivery of the same by the other parties thereto) the form of Waiver and Release Agreement attached hereto as Exhibit B. Such Waiver and Release Agreement will not be construed to include any release of any indemnification rights Employee may have against Employer pursuant to Employer's Articles of Incorporation or bylaws, any indemnification agreement or California Labor Code Section 2800.

2.6 This Agreement shall not be terminated by Employer merging with or otherwise being acquired by another entity, whether or not Employer is the surviving entity, or by Employer transferring of all or substantially all of its assets (any such event, an "Acquisition").

2.7 In the event of any Acquisition, the surviving entity or transferee, as the case may be, shall be bound by and shall have the benefits of this Agreement, and Employer shall not enter into any Acquisition unless the surviving entity or transferee, as the case may be, agrees to be bound by the provisions of this Agreement.

### **3. Compensation.**

3.1 As the total consideration for Employee's services rendered hereunder, Employee shall be entitled to the following during the period that Employee is employed hereunder:

(a) A base salary of \$250,000 per year ("Base Salary"), payable in equal installments bi-weekly on those days when Employer normally pays its employees;

(b) "Incentive Compensation" in an amount equal to 3.0% of IMH's Excess Income (as "Excess Income" is defined in Exhibit C attached hereto). Within 20 days after the end of each quarter for which Incentive Compensation for Employee is to be determined, IMH's Chief Financial Officer (the "CFO") will prepare and present a report (the "Incentive Compensation Report") to the Chairman of IMH's Compensation Committee (the "Compensation Committee") containing the calculation of Employee's Incentive Compensation for such quarter and information supporting such calculation in reasonable detail. IMH will instruct its independent auditors (the "Auditors") to examine the Incentive Compensation Report and advise the Chairman of the Compensation Committee on whether it agrees with the calculations and conclusions set forth in that report and to provide its report within 25 days after the end of each quarter for which Incentive Compensation for Employee is to be determined. Within 30 days after the end of each quarter for which Incentive Compensation for Employee is to be determined provided that the Incentive Compensation Report for that quarter has been timely presented to the Compensation Committee, the Compensation Committee will review the Incentive Compensation Report and determine any Incentive Compensation to be paid to Employee for that quarter and will direct the Employer to pay such amount. Within 7 days after Employee's Incentive Compensation for a particular quarter is determined,

Employer will pay such Incentive Compensation to Employee in cash. Incentive Compensation and Excess Income shall be calculated by the CFO of IMH and otherwise determined hereunder in accordance with Exhibit C attached hereto. If the Incentive Compensation Report or the Auditor's agreement with that report is not timely delivered to the Chairman of the Compensation Committee, then for each day that such report or agreement is delayed, the payment of the Incentive Compensation to Employee shall be delayed by one day;

(c) Employee shall accrue paid time off during the period he is employed hereunder at the rate of five weeks per calendar year, subject to any vacation benefit accrual cap established by Employer (i.e., once the cap has been reached, further accrual shall cease until Employee uses some or all of his accrued time to fall below the accrual cap). The timing of Employee's vacation shall be governed by Employer's usual policies applicable to all employees;

(d) Employee is entitled to participate in any policies or plans regarding benefits of employment, including pension, profit sharing, group health, disability insurance and other employee welfare benefit plans now existing or hereafter established to the extent that Employee is eligible under the terms of such plans. Despite the foregoing, Employee is entitled to participate in any such plan or program only if the executive officers of Employer generally are eligible to participate in such plan or program. Employer may, in its sole discretion and from time to time, establish additional senior management benefit programs as it deems them appropriate. Employee understands that any such plans may be modified or eliminated in Employer's sole discretion in accordance with applicable law; and

(e) Such other benefits as the Board of Directors of Employer, in its sole discretion, may from time to time provide.

3.2 During the period that Employee is employed hereunder, Employer shall reimburse Employee for reasonable and necessary business and entertainment expenses incurred by Employee on behalf of Employer in connection with the performance of Employee's duties hereunder.

3.3 IMH shall instruct the CFO, any other employees of IMH who assist in preparing any Incentive Compensation Report (or any information on which any Incentive Compensation Report is based) and the Auditors that if any such party at any time determines that one or more Incentive Compensation Reports was inaccurate in any way, then any and all such parties who make such a determination shall promptly notify the Compensation Committee of any and all such inaccuracies and the reasons supporting such determination. If the Compensation Committee at any time prior to the end of the 12 month period after the filing of the annual tax return for IMH (or any consolidated annual tax return including IMH) covering the period for which the Incentive Compensation payment in question relates (said 12 month period, the "Determination Period") determines that the Incentive Compensation payment in question was calculated incorrectly and underpaid, its shall immediately so notify the Employer and Employer shall, within 15 days after such determination by the Compensation Committee, pay the amount owed to Employee due to such underpayment. If the Compensation Committee



at any time during the Determination Period determines that the Incentive Compensation payment in question was calculated incorrectly and overpaid, it shall so notify the Employer and Employer shall offset such overpayment against the next Incentive Compensation payment(s) to Employee until any and all such overpayments are offset in their entirety; provided that (a) if no Incentive Compensation payments are paid to Employee within 180 days after the Compensation Committee determined that any such overpayment was made, then Employer may, in its discretion, require Employee to repay (and in which case Employee shall repay) the overpayment to Employer at any repayment schedule and rate determined by Employer and (b) if the Compensation Committee makes such an overpayment determination after Employee's employment is terminated, then Employee shall repay any and all such overpayments to Employer at any repayment schedule and rate determined by Employer. Notwithstanding the foregoing, the Compensation Committee shall have no obligation to independently investigate the accuracy of any Incentive Compensation Report or any calculation or conclusion contained in any such report.

3.4 Employee may elect to defer any portion of his Base Salary or Incentive Compensation into an approved, Employer sponsored deferred compensation plan; provided that Employer has no obligation to provide such a deferred compensation plan. All Base Salary and Incentive Compensation, whether or not deferred, shall be deemed to be earned and immediately vested upon distribution to Employee or deferral into a deferred compensation plan.

3.5 There shall be no inflation or any other automatic adjustments to any of the compensation paid to Employee under this Agreement.

3.6 Employer shall have the right to deduct from the compensation due to Employee hereunder any and all sums required for social security and withholding taxes and for any other federal, state, or local tax or charge which may be in effect or hereafter enacted or required as a charge on the compensation of Employee.

3.7 During the period that Employee is employed hereunder, Employer shall pay to Employee an automobile allowance in the amount of \$500 per month (prorated for any partial month during the employment period).

#### **4. Non-Competition.**

4.1 At all times during Employee's employment hereunder, and, if Employee's employment is terminated pursuant to Section 2.2(f) or 2.2(g), during the 30 month period of time after such termination (the "Post-Termination Payment Period") and in consideration for any and all payments and benefits provided to Employee pursuant to this Agreement, during the Post-Termination Payment Period, Employee shall not, directly or indirectly, engage or participate in, prepare or set up, assist or have any interest in any person, partnership, corporation, limited liability company, firm, association, or other business organization, entity or enterprise (whether as an employee, officer, director, member, agent, security holder, creditor, consultant or otherwise) that engages in any activity in those geographic areas where Employer conducts the Business, which activity is the same as, similar to, or competitive with any activity now engaged in by Employer or its affiliates or related entities or in any way relating to the Business. Notwithstanding the foregoing, Employee may

elect at any point during the Post-Termination Payment Period to forego any future remaining payments or benefits payable under Section 2.4, in which case the limitations set forth in this Section 4.1 shall terminate at the time of such election.

4.2 Nothing contained in Section 4.1 shall be deemed to preclude Employee from purchasing or owning, directly or beneficially, as a passive investment, less than five percent of any class of publicly traded securities of any entity so long as Employee does not actively participate in or control, directly or indirectly, any investment or other decisions with respect to such entity.

**5. No Compensation from Related Entities.** Without prior written approval from Employer's Board of Directors, Employee shall not directly or indirectly receive compensation from any company with whom Employer or any of its affiliates (as "affiliate" is defined in Rule 405 promulgated under the Securities Act of 1933) has any financial, business or affiliated relationship.

**6. Confidentiality; Non-Solicitation and Proprietary Rights.** Concurrently with signing this Agreement, Employee and Employer will sign a Proprietary Rights and Inventions Agreement in the form attached hereto as Exhibit D (the "Proprietary Rights and Inventions Agreement").

**7. Copies of Agreement.** Employee authorizes Employer to send a copy of the Proprietary Rights and Inventions Agreement to any and all future employers which Employee may have, and to any and all persons, firms, and corporations, with whom Employee may become affiliated in a business or commercial enterprise, and to inform any and all such employers, persons, firms or corporations that Employer intends to exercise its legal rights should Employee breach the terms of the Proprietary Rights and Inventions Agreement or should another party induce a breach of that agreement on Employee's part.

**8. Severable Provisions.** The provisions of this Agreement are severable and if any one or more provisions is determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provisions to the extent enforceable, shall nevertheless be binding and enforceable.

**9. Arbitration.** To the fullest extent allowed by law, any controversy, claim or dispute between Employee and Employer (or any of its stockholders, directors, officers, employees, affiliates, agents, successors or assigns) relating to or arising out of Employee's employment or the cessation of that employment will be submitted to final and binding arbitration in Orange County, California for determination in accordance with the American Arbitration Association's ("AAA") National Rules for the Resolution of Employment Disputes, as the exclusive remedy for such controversy, claim or dispute. In any such arbitration; the parties may conduct discovery to the same extent as would be permitted in a court of law. The arbitrator shall issue a written decision, and shall have full authority to award all remedies which would be available in court. The arbitrator shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. Employer shall pay the arbitrator's fees and any AAA administrative expenses. In the event Employee files a claim to collect unpaid payments or benefits payable under Section 2.4, the prevailing party

shall be awarded reasonable attorneys fees and costs. Any judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Possible disputes covered by the above include unpaid wages, breach of contract, torts, violation of public policy, discrimination, harassment, or any other employment-related claims under laws including Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the California Fair Employment and Housing Act, the California Labor Code, and any other federal or state constitutional provisions, statutes or laws relating to an employee's relationship with his employer. However, claims for workers' compensation benefits and unemployment insurance (or any other claims where mandatory arbitration is prohibited by law) are not covered by this arbitration agreement, and such claims may be presented to the appropriate court or government agency. BY AGREEING TO THIS MUTUAL AND BINDING ARBITRATION PROVISION, BOTH EMPLOYEE AND EMPLOYER GIVE UP ALL RIGHTS TO TRIAL BY JURY. This arbitration policy is to be construed as broadly as is permissible under relevant law. EMPLOYER AND EMPLOYEE HAVE READ THIS SECTION 9 AND IRREVOCABLY AGREE TO ARBITRATE ANY DISPUTE IDENTIFIED ABOVE.

/s/ RM

Employer's Initials

/s/ RJJ

Employee's Initials

**10. Injunctive Relief.** The parties hereto agree that any breach or threatened breach of Section 4 of this Agreement or the Proprietary Rights and Inventions Agreement will cause substantial and irreparable damage to Employer in an amount and of a character difficult to ascertain. Accordingly, to prevent any such breach or threatened breach, and in addition to any other relief to which Employer may otherwise be entitled, Employer will be entitled to immediate temporary, preliminary and permanent injunctive relief through appropriate legal proceedings in any arbitration, without proof of actual damages that have been incurred or may be incurred by Employer with respect to such breach or threatened breach. Employee expressly agrees that Employer will not be required to post any bond or other security as a condition to obtaining any injunctive relief pursuant to this Section 10, and Employee expressly waives any right to the contrary. Employee agrees that this Section 10 is without prejudice to the rights of the parties to compel arbitration pursuant to Section 9.

**11. Entire Agreement.** This Agreement and the Exhibits attached hereto contain the entire agreement of the parties relating to the subject matter hereof, and the parties hereto have made no agreements, representations or warranties relating to the subject matter of this Agreement that are not set forth otherwise herein or the Exhibits attached hereto. This Agreement supersedes any and all prior agreements, written or oral, with Employer relating to Employees employment with Employer and any other subject matter of this Agreement. Any such prior agreements are hereby terminated and of no further effect and Employee, by the execution hereof, agrees that any compensation provided for under any such prior agreement is specifically superseded and replaced by the provision of this Agreement; subject to the following: (i) any and all compensation previously deferred under any pre-existing deferred compensation plan shall immediately be paid to Employee without condition or limitation; and (ii) this Agreement is not intended to supercede, cancel or replace any stock option or dividend equivalent right payments that Employee may have or otherwise be entitled to receive. The

parties hereto agree that in no event shall an oral modification of this Agreement be enforceable or valid.

**12. Governing Law.** This Agreement is and shall be governed and construed in accordance with the laws of the State of California, regardless of any laws on choice of law or conflicts of law of any jurisdiction.

**13. Notice.** All notices hereunder must be in writing and shall be sufficiently given for all purposes hereunder if properly addressed and delivered personally by documented overnight delivery service, by certified or registered mail, return receipt requested, or by facsimile or other electronic transmission service at the address or facsimile number, as the case may be, set forth below. Any notice given personally or by documented overnight delivery service is effective upon receipt. Any notice given by registered mail is effective upon receipt, to the extent such receipt is confirmed by return receipt. Any notice given by facsimile transmission is effective upon receipt, to the extent that receipt is confirmed, either verbally or in writing by the recipient. Any notice which is refused, unclaimed or undeliverable because of an act or omission of the party to be notified, if such notice was correctly addressed to the party to be notified, shall be deemed communicated as of the first date that said notice was refused, unclaimed or deemed undeliverable by the postal authorities, or overnight delivery service.

If to Employer:

Impac Funding Corporation  
1401 Dove Street  
Newport Beach, California 92660  
Telephone: (949) 475-3600  
Facsimile: (949) 475-3969  
Attention: Ronald Morrison, Esq.  
General Counsel

With a copy to:

Greg T. Williams, Esq.  
Allen Matkins Leck Gamble & Mallory LLP  
1900 Main Street, Fifth Floor  
Irvine, California 92614  
Telephone: (949) 553-1313  
Facsimile: (949) 553-8354

If to Employee:

Richard J. Johnson  
4 South View  
Coto de Caza, California 92679

With a copy to:

Ernest W. Klatte, III, Esq.  
Rutan & Tucker, L.L.P.  
611 Anton Blvd., 14<sup>th</sup> Floor  
Costa Mesa, California 92626  
Telephone: (714) 641-5100  
Facsimile: (714) 546-9035

**14. Amendments And Waivers.** This Agreement may not be amended, modified, superseded, canceled, or any terms waived, except by written instrument signed by both parties, or in the case of waiver, by the party to be charged.

**15. Successor and Assigns.** This Agreement is not assignable by Employee, nor by Employer except to an affiliated or successor entity. This Agreement is binding on the parties' heirs, executors, administrators, other legal representatives, successors, and, to the extent assignable, their assigns.

**16. Representations.** The person executing this Agreement on behalf of Employer hereby represents and warrants on behalf of himself and Employer that he is authorized to represent and bind Employer. Employee specifically represents and warrants to Employer that he is not now under any contractual or quasi-contractual obligations that is inconsistent or in conflict with this Agreement or that would prevent, limit or impair Employee's performance of his obligations under this Agreement, (b) he has had the opportunity to be represented by legal counsel of his choosing in preparing, negotiating, executing and delivering this Agreement; and (c) fully understands the terms and provisions of this Agreement.

**17. Counterparts; Facsimile Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes. This Agreement may be executed by a party's signature transmitted by facsimile ("fax"), and copies of this Agreement executed and delivered by means of faxed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed signatures as if such signatures were originals. Any party executing and delivering this Agreement by fax shall promptly thereafter deliver a counterpart signature page of this Agreement containing said party's original signature. All parties hereto agree that a faxed signature page may be introduced into evidence in any proceeding arising out of or related to this Agreement as if it were an original signature page.

**18. Rules of Construction.** This Agreement has been negotiated by the parties and is to be interpreted according to its fair meaning as if the parties had prepared it together and not strictly for or against any party. References in this Agreement to "Sections" refer to Sections of this Agreement, unless the context expressly indicates otherwise. References to "provisions" of this Agreement refer to the terms, conditions, restrictions and promises contained in this Agreement. References in this Agreement to laws and regulations refer to such laws and regulations as in effect on this date and to the corresponding provisions, if any, of any successor law or regulation. At each place in this Agreement where the context so requires, the masculine, feminine or neuter gender includes the others and the singular or plural number includes the

other. Forms of the verb “including” mean “including without limitation” unless the context expressly indicates otherwise. “Or” is inclusive and includes “and” unless the context expressly indicates otherwise. The introductory headings at the beginning of Sections of this Agreement are solely for the convenience of the parties and do not affect any provision of this Agreement.

[SIGNATURE PAGE FOLLOWS THIS PAGE]

IN WITNESS WHEREOF, this Agreement is executed as of the day and year first above written.

“EMPLOYER”

IMPAC FUNDING CORPORATION,  
a California corporation

By: \_\_\_\_\_ /s/ RONALD MORRISON

Name: Ronald Morrison  
Title: General Counsel

“EMPLOYEE”

By: \_\_\_\_\_ /s/ RICHARD J. JOHNSON

Richard J. Johnson

**EXHIBIT A**

**JOB DESCRIPTION AND RELATED ENTITIES**

Responsible for planning, coordinating and directing the financial affairs of the Organization, including the accounting, treasury, financial planning, reporting, compliance, analysis, and tax functions. For purposes of this Exhibit A, "Organization" means Employer and any affiliates or related entities of Employer for whom Employee is requested to provide services pursuant to the Employment Agreement by and between Employer and Employee dated as of April 1, 2003 (the "Agreement"). Provide management and the Board of Directors of Employer and all of the entities within the Organization with meaningful and timely information regarding the Organization's financial performance. Monitor compliance with all applicable laws, rules, and regulations related to financial information and financial performance of the Organization, including tax compliance, and implement and oversee programs designed to ensure such compliance. Serve on the Asset Liability Committee of Impac Mortgage Holdings, Inc. ("IMH") and administer and oversee its interest rate risk management of IMH's balance sheet. Implement and maintain programs designed to ensure proper management of the Organization's liquidity position and that proper cost effective funding is available to meet the Organization's objectives. Recommend and implement asset/liability and tax strategies to improve financial performance. Direct a financial planning process for both next year budgeting and strategic planning purposes. Provide appropriate financial analysis of investment, merger and acquisition alternatives and capital raising efforts and alternatives. Act as liaison with the internal and external auditors. Manage the staff of exempt and non-exempt employees. Perform supervisory duties to include: hiring, corrective action, performance appraisals, salary reviews, counseling, work scheduling, training, and budgeting. Oversee and manage the Organization's warehouse lending operations. Review and approve credit applications and extensions of additional credit. Oversee and manage the Organization's information technology ("IT") department. Oversee and approve IT projects and allocation of resources and approval of all IT related capital expenditures. Oversee and manage the master servicing and default administration of the Organization's investment portfolio, and master servicing portfolio. Review and approve default administration policies.

Employee acknowledges, understands and agrees that Employee will be requested by Employer to devote some or all of Employee's time and effort during the term of employment pursuant to the Agreement (and consistent with the above job descriptions) to the businesses of Employer's affiliates or related entities pursuant to certain agreements between and among Employer and such affiliates or related entities. Such affiliates and related entities include, but are not limited to, the following: Impac Mortgage Holdings, Inc., Impac Mortgage Capital Corp., Impac Warehouse Lending Group, IMH Assets Corp., Novelle Financial Services, Inc., Impac Lending Group, Impac Secured Assets Corp., Impac Mortgage Acceptance Corp., Impac Multifamily Capital Corp. and Impac Foundation.

Employee further understands and acknowledges that, pursuant to the Agreement, Employee may be directed by Employer to provide services consistent with the above job descriptions to additional real estate investment trusts or other entities which Employer establishes or with which Employer affiliates or becomes related and for which there exists an agreement with Employer or any of the above entities to provide such services.

EXHIBIT A



Employee understands and acknowledges that Employee's obligations under the Agreement, including Employee's duties under Section 4 thereof and the Proprietary Rights and Inventions Agreement entered into pursuant to Section 6 thereof, shall apply and extend to Employee's knowledge of the business of Employer's affiliates or related entities and any trade secret or other confidential or proprietary information relating to same.

EXHIBIT A

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**EXHIBIT B**

**WAIVER AND RELEASE AGREEMENT**

For full and valuable consideration, including, but not limited to, severance payments made and to be made by Impac Funding Corporation and any affiliate or related entity of Impac Funding Corporation (collectively, "Employer") to Richard J. Johnson ("Employee") and guaranteed by Impac Mortgage Holdings, Inc. ("Guarantor") pursuant to the ..Employment Agreement between Employer and Employee dated as of April 1, 2003 (the "Employment Agreement"), Employee, on the one part, and Employer and Guarantor on the other part, hereby enter into this Waiver and Release Agreement ("Waiver"), and each agrees to waive and release the other and, as the case may be, the other's stockholders, directors, officers, employees, affiliates, agents, successors and assigns, if any, from all known and unknown claims, agreements or complaints related to or arising under Employee's employment with Employer, including, but not limited to, any claim arising out of Employee's termination, any express or implied agreement between Employee and Employer (other than each party's respective rights and obligations under Sections 2.3, 2.4 and 4.1 of the Employment Agreement, the Guaranty and the Proprietary Rights and Inventions Agreement), and any other federal or state constitutional provisions, statutes or laws relating to an employee's relationship with his employer, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act, the Age Discrimination in Employment Act, the Americans With Disabilities Act, the California Fair Employment and Housing Act, and the California Labor Code.

This Waiver shall not include a waiver of any of the following: (i) any right to defense and/or indemnification that Employee may have under California Labor Code section 2802, or under any defense and indemnification policy or agreement; (ii) any claim for breach of any pension, 401k, deferred compensation or stock option plan of Employer; or (iii) any claim that Employee may have against any officer, director, employee, or agent of Employer or Guarantor for defamation or intentional interference with prospective employment or business advantage.

This Waiver includes a waiver of any rights the parties may have under Section 1542 of the California Civil Code, which states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Employee's Waiver is conditioned upon Employer and Guarantor's performance of all of their severance obligations pursuant to Sections 2.3 and 2.4 of the Employment Agreement and pursuant the Guaranty. In the event that either Employer or Guarantor materially breaches its severance obligations under the Employment Agreement or Guaranty, then Employee shall be entitled to pursue any claims as though this Waiver did not exist, and the statute of limitations for any such claims shall be deemed to have been tolled during the period from the date of Employee's termination through the date Employer or Guarantor breached it obligations.

Employer's Waiver is conditioned upon Employee's performance of all of his obligations pursuant to Section 4.1 of the Employment Agreement. In the event that Employee materially

EXHIBIT B

breaches his noncompete obligations under the Employment Agreement, then Employer and Guarantor shall be entitled to pursue any claims as though this Waiver did not exist, and the statute of limitations for any such claims shall be deemed to have been tolled during the period from the date of Employee's termination through the date Employee breached his obligations. The parties to this Waiver each acknowledge that each may hereafter discover facts different from or in addition to those now known or believed to be true with respect to the claims, suits, rights, actions, complaints, agreements, contracts, causes of action, and liabilities of any nature whatsoever that are the subject of the above release, and the parties expressly agree that this Waiver shall be and remain effective in all respects regardless of such additional or different facts.

Employee is advised as follows: (i) Employee should consult an attorney regarding this Waiver before executing it; (ii) Employee has 21 days in which to consider this Waiver and whether Employee will enter into it; (iii) this Waiver does not waive rights or claims that may arise after it is executed; and (iv) at anytime within seven days after executing this Waiver, Employee may revoke this Waiver. This Waiver shall not become effective or enforceable until the seven day revocation period set forth herein has passed.

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Employment Agreement.

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

\_\_\_\_\_  
RICHARD J. JOHNSON

IMPAC FUNDING CORPORATION

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

IMPAC MORTGAGE HOLDINGS, INC.

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

EXHIBIT B

EXHIBIT C

INCENTIVE COMPENSATION

**Excess Income:** Excess Income equals the greater of zero or Net Income minus the product of ((the Ten Year U.S. Treasury Rate plus 200 basis points) x ((Average Net Worth x number of days in quarter) divided by 365)).

**Net Income:** The definition for "Net Income" is at any date of determination, the net income of IMH determined in accordance with then current tax law before the total Incentive Compensation paid to Joseph R. Tomkinson, William Ashmore and Richard Johnson (collectively, the "Executives") pursuant to their respective employment agreements, the deduction for dividends paid and any net operating loss deductions arising from losses in prior periods. Upon filing IMH's actual tax return, any variance from prior period estimates shall be an adjustment to the then current period Incentive Compensation calculation.

**Average Net Worth:** The definition of "Average Net Worth" for any quarter is IMH's accumulated net worth of \$514,795,766 at December 31, 2002 plus subsequent to December 31, 2002, the weighted average daily sum of the gross proceeds from any sale of IMH's equity securities, before deducting any underwriting discounts and commissions and other expenses; plus the average balance quarter-to-date on IMH's General Ledger of the retained earnings for the quarter (general ledger account number 317500); less the weighted average daily sum of the gross proceeds used to repurchase IMH's stock; less the average balance quarter-to-date on IMH's General Ledger of the cumulative dividends declared (general ledger account number 317510); plus an amount equal to Prior Period Losses. Prior Period Losses equal the lower of (a) zero, or (b) the sum of any losses incurred by IMH after December 31, 2003 and prior to the quarter of the determination of Incentive Compensation less any Net Income for quarters subsequent to the quarter of the loss plus any losses incurred for quarters subsequent to the quarter of the loss.

**Ten Year U.S. Treasury Rate:** The definition for "Ten Year U.S. Treasury Rate" for a quarterly period is the arithmetic average of the weekly per annum Ten Year Average Yields published by the Federal Reserve Board during such quarter. In the event that the Federal Reserve Board does not publish a weekly per annum Ten Year Average Yield during any week in a quarter, then the Ten Year U.S. Treasury Rate for such week shall be the weekly per annum Ten Year Average Yields published by any Federal Reserve Bank or by any U.S. Government department or agency selected by Employer for such week. In the event that Employer determines in good faith that for any reason Employer cannot determine the Ten Year U.S. Treasury Rate for any quarter as provided above, then the Ten Year U.S. Treasury Rate for such quarter shall be the arithmetic average of the per annum average yields to maturity based upon the daily closing bids during such quarter for each of the issues of actively traded marketable U.S. Treasury fixed interest rate securities (other than securities which can, at the option of the holder, be surrendered at face value in payment of any federal estate tax) with the final maturity date not less than eight nor more than twelve years from the date of each such quotation, for each business day in New York City (or less frequently if daily quotations shall not be generally available) in each such quarterly period as chosen by at least three recognized dealers in U.S. Government securities selected by Employer.

EXHIBIT C

**EXHIBIT D**

**PROPRIETARY RIGHTS AND INVENTIONS AGREEMENT**

In consideration of my employment by Impac Funding Corporation, a California corporation (the "Company"), and the compensation I receive from the Company, I agree to certain restrictions placed by the Company on my use and development of information and technology, as more fully set out below.

1. **Proprietary Information.** I understand that the Company possesses and will possess Proprietary Information which is important to its business. For purposes of this Agreement, "Proprietary Information" is information that was or will be developed, created, or discovered by or on behalf of the Company or any of its affiliates or related entities, or which became or will become known by, or was or is conveyed to the Company, which has commercial value in the Company's business or the business of any of the Company's affiliates or related entities, unless (i) the information is or becomes publicly known through lawful means; (ii) the information was rightfully in my possession or part of my general knowledge prior to my employment by the Company as specifically identified and disclosed by me in Exhibit A attached hereto; or (iii) the information is disclosed to me without confidential or proprietary restriction by a third party who rightfully possesses the information (without confidential or proprietary restriction) and who did not learn of it directly from the Company or any of its affiliates or related entities.

Proprietary Information includes information (whether conveyed orally or in writing) relating to (i) client/customer lists, vendor lists or other lists or compilations containing client, customer or vendor information; (ii) information about investment techniques or strategies, investment research or analysis, business techniques or strategies, processes, costs, profits, markets, marketing plans, forecasts, sales or commissions; (iii) plans for new investment techniques and strategies; (iv) the compensation, performance and terms of employment of other employees; (v) all other information that has been or will be given to me in confidence by the Company (or any affiliate or related entity of the Company); (vi) software in various stages of development, and any designs, drawings, schematics, specifications, techniques, models, data, source code, algorithms, object code, documentation, diagrams, flow charts, research development, processes and procedures relating to any software; (vii) any documents, books, papers, drawings, schematics, models, sketches, computer programs, databases or other data, including electronic data recorded or retrieved by any means, that contain any Proprietary Information; and (viii) any information described above which the Company or any of its affiliates or related entities obtains from another party and which the Company or any of its affiliates or related entities treats as proprietary or designates as Proprietary Information.

2. **Company Materials.** I understand that the Company and its affiliates and related entities possess or will possess "Company Materials" which are important to their respective businesses. For purposes of this Agreement, "Company Materials" are documents or other media or tangible items that contain or embody Proprietary Information or any other information concerning the business, operations or plans of the Company or any of its affiliates or related entities, whether such documents have been prepared by me or by others. "Company Materials" include charts, graphs, notebooks, customer lists, computer software, media or printouts, sound

### 3. Intellectual Property.

3.1 All Proprietary Information and all right, title and interest in and to any patents, patent rights, copyrights, trademark rights, mask work rights, trade secret rights, and all other intellectual and industrial property and proprietary rights that currently exist or may exist in the future anywhere in the world (collectively "Rights") in connection therewith shall be the sole property of the Company or its affiliates or related entities, as the case may be. I hereby assign to the Company any Rights I may have or acquire in such Proprietary Information. At all times, both during my employment with the Company and after its termination, I will keep in confidence and trust and will not use or disclose any Proprietary Information or anything relating to it without the prior written consent of an officer of the Company except as may be necessary and appropriate in the ordinary course of performing my duties to the Company. The disclosure restrictions of this Agreement shall not apply to any information that I can document is generally known to the public through no fault of mine. Nothing contained herein will prohibit me from disclosing to anyone the amount my wages.

3.2 All Company Materials shall be the sole property of the Company. I agree that during my employment with the Company, I will not remove any Company Materials from the business premises of the Company or deliver any Company Materials to any person or entity outside the Company, except as I am required to do in connection with performing the duties of my employment. I further agree that, immediately upon the termination of my employment by me or by the Company for any reason, or for no reason, or during my employment if so requested by the Company, I will return all Company Materials, apparatus, equipment and other physical property, and any reproduction of such property, excepting only (i) my personal copies of records relating to my compensation and (ii) my copy of this Agreement.

3.3 I agree that all "Inventions" (which term includes patentable or non-patentable inventions, original works of authorship, derivative works, trade secrets, trademarks, copyrights, service marks, discoveries, patents, technology, algorithms, computer software, application programming interfaces, protocols, formulas, compositions, ideas, designs, processes, techniques, know-how, data and all improvements, rights and claims related to the foregoing), which I make, conceive, reduce to practice or develop (in whole or in part, either alone or jointly with others) during my employment, shall be the sole property of the Company to the maximum extent permitted by Section 2870 of the California Labor Code. I hereby assign, without further consideration, all such Inventions to the Company (free and clear of all liens and encumbrances), and the Company shall be the sole owner of all Rights in connection therewith. No assignment in this Agreement shall extend to Inventions, the assignment of which is prohibited by Labor Code Section 2870, which states:

Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

EXHIBIT D

1. Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer.
2. Result from any work performed by the employee for the employer.

I acknowledge that all original works of authorship which are made by me (in whole or in part, either alone or jointly with others) within the scope of my employment and which are protectable by copyright are "works made for hire," as defined in the United States Copyright Act (17 USCA, Section 101). I will not disclose Inventions covered by this Section 3.3 to any person outside the Company, unless I am requested to do so by management personnel of the Company.

3.4 I agree to disclose promptly to the Company all Inventions and relevant records, which records will remain the sole property of the Company. I further agree that all information and records pertaining to any idea, process, trademark, service mark, invention, technology, computer program, original work or authorship, design, formula, discovery, patent, or copyright that I do not believe to be an Invention, but is conceived, developed, or reduced to practice by me (in whole or in part, either alone or jointly with others) during my employment, shall be promptly disclosed to the Company (such disclosure to be received in confidence). I will also disclose to the Company all Inventions conceived, reduced to practice, used, sold, exploited or developed by me (in whole or in part, either alone or jointly with others) within one (1) year of the termination of my employment with the Company ("Presumed Inventions"); such disclosures shall be received by the Company in confidence, to the extent they are not assigned to the Company in Section 3.3, and do not extend such assignment. Because of the difficulty of establishing when any Presumed Invention is first conceived or developed by me, or whether it results from access to Proprietary Information or the Company's equipment, facilities, and data, I agree that all Presumed Inventions and all Rights associated therewith shall be presumed to be Inventions subject to assignment under Section 3.3. I can rebut this presumption if I prove that a Presumed Invention is not an Invention subject to assignment under Section 3.3.

3.5 I agree to perform, during and after my employment, all acts deemed necessary or desirable by the Company to permit and assist it, at the Company's expense, in evidencing, perfecting, obtaining, maintaining, defending and enforcing Rights or my assignment with respect to such Inventions in any and all countries. Should the Company be unable to secure my signature on any document necessary to apply for, prosecute, obtain, enforce or defend any Rights relating to any assigned Invention, whether due to my mental or physical incapacity or any other cause, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents, as my agents and attorneys-in-fact, with full power of substitution, to act for and in my behalf and instead of me, to execute and file any documents and to do all other lawfully permitted acts to further the above purposes with the same legal force and effect as if executed by me.

3.6 Any assignment of copyright hereunder (and any ownership of a copyright as a work made for hire) includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "Moral Rights"). To the extent such Moral Rights cannot be assigned under applicable law and to the

EXHIBIT D

extent the following is allowed by the laws in the various countries where Moral Rights exist, I hereby waive such Moral Rights and consent to any action of the Company that would violate such Moral Rights in the absence of such waiver and consent. I will confirm any such waivers and consents from time to time as requested by the Company.

3.7 Attached hereto as Exhibit A is a complete list of all existing Inventions to which I claim personal ownership of as of the date of this Agreement and that I desire to specifically clarify are not subject to this Agreement, and I acknowledge and agree that such list is complete. If no such list is attached to this Agreement, I represent that I have no such Inventions at the time of signing this Agreement.

3.8 I understand that nothing in this Agreement is intended to expand the scope of protection provided me by Sections 2870 through 2872 of the California Labor Code.

4. Prior Actions and Knowledge. I represent and warrant that from the time of my first contact or communication with the Company, I have held in strict confidence all Proprietary Information and have not (i) disclosed any Proprietary Information or delivered any Company Materials to anyone outside of the Company or any affiliate or related entity of the Company, or (ii) used, copied, published, or summarized any Proprietary Information or removed any Company Materials from the business premises of the Company, except to the extent necessary to carry out my responsibilities as an employee of the Company.

5. Non-Solicitation of Employees. I agree that for a period of twelve months following the termination of my employment with the Company, I will not, on behalf of myself or any other person or entity, solicit the services of any person who was employed by the Company or any affiliate or related entity of the Company on the date of my termination of employment or at any time during the six month period prior to the termination of my employment.

6. No Conflict with Obligations to Third Parties. I represent that my performance of all the terms of this Agreement will not breach any agreement to keep in confidence proprietary or confidential information acquired by me in confidence or in trust prior to my employment with the Company. I have not entered into, and I agree I will not enter into, any agreement either written or oral in conflict herewith or in conflict with my employment with the Company.

7. Remedies. I recognize that nothing in this Agreement is intended to limit any remedy of the Company under the California Uniform Trade Secrets Act. I recognize that my violation of this Agreement could cause the Company irreparable harm, the amount of which may be extremely difficult to estimate, making any remedy at law or in damages inadequate. Therefore, I agree that the Company shall have the right to apply to any court of competent jurisdiction for an order restraining any breach or threatened breach of this Agreement and for any other relief the Company deems appropriate. This right shall be in addition to any other remedy available to the Company.

8. Survival. I agree that my obligations under Sections 3.1 through 3.6, 5 and 6 shall continue in effect after termination of my employment, regardless of the reason or reasons for termination, and whether such termination is voluntary or involuntary on my part, and that the

EXHIBIT D



Company is entitled to communicate my obligations under this Agreement to any future employer or potential employer of mine.

9. Controlling Law. This Agreement is and shall be governed and construed in accordance with the laws of the State of California, regardless of any laws on choice of law or conflicts of law of any jurisdiction.

10. Severable Provisions. The provisions of this Agreement are severable and if any one or more provisions is determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provisions to the extent enforceable, shall nevertheless be binding and enforceable.

11. Successors and Assigns. This Agreement shall be effective as of the date I execute this Agreement and shall be binding upon me, my heirs, executors, assigns, and administrators and shall inure to the benefit of the Company, its subsidiaries, successors and assigns.

12. Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes. This Agreement may be executed by a party's signature transmitted by facsimile ("fax"), and copies of this Agreement executed and delivered by means of faxed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed signatures as if such signatures were originals. Any party executing and delivering this Agreement by fax shall promptly thereafter deliver a counterpart signature page of this Agreement containing said party's original signature. All parties hereto agree that a faxed signature page may be introduced into evidence in any proceeding arising out of or related to this Agreement as if it were an original signature page.

13. Rules of Construction. This Agreement has been negotiated by the parties and is to be interpreted according to its fair meaning as if the parties had prepared it together and not strictly for or against any party. References in this Agreement to "Sections" refer to Sections of this Agreement, unless the context expressly indicates otherwise. References to "provisions" of this Agreement refer to the terms, conditions, restrictions and promises contained in this Agreement. References in this Agreement to laws and regulations refer to such laws and regulations as in effect on this date and to the corresponding provisions, if any, of any successor law or regulation. At each place in this Agreement where the context so requires, the masculine, feminine or neuter gender includes the others and the singular or plural number includes the other. Forms of the verb "including" mean "including without limitation" unless the context expressly indicates otherwise. "Or" is inclusive and includes "and" unless the context expressly indicates otherwise. The introductory headings at the beginning of Sections of this Agreement are solely for the convenience of the parties and do not affect any provision of this Agreement.

14. Amendments and Waivers. This Agreement may not be amended, modified, superseded, canceled, or any terms waived, except by written instrument signed by both parties, or in the case of waiver, by the party to be charged.

EXHIBIT D



**EXHIBIT A**

**EMPLOYEE'S DISCLOSURE**

Gentlemen:

1. Except for the information and ideas listed below that rightfully became part of my general knowledge prior to my first contact or communication with the Company or any of its affiliates or related entities, I represent that I am not in the possession of and have no knowledge of any information that can be considered the Proprietary Information of Impac Funding Corporation, a California corporation (the "Company"), other than information disclosed by Company or any of its affiliates or related entities during my employment negotiations or my prior employment with the Company or any of its affiliates or related entities, which I understand and agree is the Proprietary Information of Company or its affiliates or related entities, as the case may be.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Except for the complete list of Inventions set forth below, I represent that I (in whole or in part, either alone or jointly with others) have not made, conceived, developed or first reduced to practice any Inventions relevant to the subject matter of my employment with the Company prior to my employment with the Company or any of its affiliates or related entities.

No Inventions

See below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional sheets attached

/s/ Richard J. Johnson

\_\_\_\_\_  
RICHARD J. JOHNSON

## IMPAC MORTGAGE HOLDINGS, INC.

## GUARANTY

This Guaranty, dated as of April 1, 2003, is executed by Impac Mortgage Holdings, Inc., a Maryland corporation ("Guarantor"), in favor of Joseph R. Tomkinson ("Executive").

A. Impac Funding Corporation, a California corporation ("Obligor"), concurrently herewith has entered into an Employment Agreement with Obligor dated even date herewith (the "Contract"). Guarantor is the parent corporation of Obligor and will receive direct and indirect benefits from the performance of the Contract.

B. Executive's willingness to enter into the Contract is subject to receipt by it of this Guaranty duly executed by Guarantor.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, Guarantor hereby agrees with Executive as follows:

1. Guaranty.

(a) Guarantor unconditionally guarantees and promises to pay to Executive, or order, at Executive's address set forth in Section 4(a) hereof, on demand after the default by Obligor, in lawful money of the United States, any and all Obligations (as hereinafter defined) consisting of payments due to Executive. For purposes of this Guaranty the term "Obligations" shall mean and include all payments owed by Obligor to Executive of every kind and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising pursuant to the terms of Section 2.3, 2.4, 3.1(a), 3.1 (b) or 3.2 of the Contract (as such Obligations may become due subject to the provisions of the Contract, including all notice requirements and cure provisions), including all interest, late fees, charges, expenses, attorneys' fees and other professionals' fees chargeable to Obligor or payable by Obligor thereunder and any costs of collection hereunder, including attorneys' and other professionals' fees.

(b) This Guaranty is absolute, unconditional, continuing and irrevocable and constitutes an independent guaranty of payment and not of collectibility (provided that it is subject to Obligor defaulting on any of the Obligations), and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part any of Obligor's Obligations to Executive, the existence or continuance of Obligor as a legal entity, the consolidation or merger of Obligor with or into any other entity, the sale, lease or disposition by Obligor of all or substantially all of its assets to any other entity, or the bankruptcy or insolvency of Obligor, the admission by Obligor of its inability to pay its debts as they mature, or the making by Obligor of a general assignment for the benefit of, or entering into a composition or arrangement with, creditors. If Obligor or any permitted assignee or successor of Obligor shall fail to pay or perform any Obligations to Executive which are subject to this Guaranty as and when they are due, Guarantor shall forthwith pay to Executive all such liabilities or obligations in immediately available funds. Each failure by Obligor to pay or perform any such liabilities or obligations shall give rise to a separate cause of action, and separate suits may be brought hereunder as each cause of action arises.

(c) Executive, may (subject to the provisions of the Contract) at any time and from time to time, without the consent of or notice to Guarantor, except such notice as may be required by applicable statute which cannot be waived, without incurring responsibility to Guarantor, and without impairing or releasing the obligations of Guarantor hereunder, (i) change the manner, place and terms of payment or change or extend the time of payment of, renew, or alter any Obligation hereby guaranteed, or in any manner modify, amend or supplement the terms of the Contract or any documents, instruments or agreements executed in connection therewith, (ii) exercise or refrain from exercising any rights against Obligor or others (including Guarantor) or otherwise act or refrain from acting, (iii) settle or compromise any Obligations hereby guaranteed and/or any obligations and liabilities (including

any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any obligations and liabilities which may be due to Executive or others, (iv) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property pledged or mortgaged by anyone to secure or in any manner securing the Obligations hereby guaranteed, (v) take and hold security or additional security for any or all of the obligations or liabilities covered by this Guaranty, and (vi) assign its rights and interests under this Guaranty, in whole or in part.

(d) This is a continuing Guaranty for which Guarantor receives continuing consideration and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon and this Guaranty is therefore irrevocable without the prior written consent of Executive.

(e) Guarantor may bring action to enforce Executive's obligations under the Contract if (i) any proceeding is brought against Guarantor to seek enforcement of this Guaranty or (ii) Guarantor makes any payment to Executive pursuant to this Guaranty.

2. Representations and Warranties. Guarantor represents and warrants to Executive that (a) Guarantor is a corporation duly organized, validly, existing and in good standing under the laws of its jurisdiction of incorporation or formation; (b) the execution, delivery and performance by Guarantor of this Guaranty are within the power of Guarantor and have been duly authorized by all necessary actions on the part of Guarantor; (c) this Guaranty has been duly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against it in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally.

### 3. Waivers.

(a) Guarantor, to the extent permitted under applicable law, hereby waives any right to require Executive to (i) proceed against Obligor or any other guarantor of Obligor's obligations under the Contract, (ii) proceed against or exhaust any security received from Obligor or any other guarantor of Obligor's Obligations under the Contract, or (iii) pursue any other right or remedy in the Executive's power whatsoever.

(b) Guarantor further waives, to the extent permitted by applicable law, (i) any defense resulting from the absence, impairment or loss of any right of reimbursement, subrogation, contribution or other right or remedy of Guarantor against Obligor, any other guarantor of the Obligations or any security; (ii) any defense which results from any disability of Obligor or the lack of validity or enforceability of the Contract; (iii) any right to exoneration of sureties which would otherwise be applicable; (iv) any right of subrogation or reimbursement and, if there are any other guarantors of the Obligations, any right of contribution, and right to enforce any remedy which Executive now has or may hereafter have against Obligor, and any benefit of, and any right to participate in, any security now or hereafter received by Executive; (v) all presentments, demands for performance, notices of non-performance, notices delivered under the Contract, protests, notice of dishonor, and notices of acceptance of this Guaranty and of the existence, creation or incurring of new or additional Obligations and notices of any public or private foreclosure sale; (vi) any appraisal, valuation, stay, extension, moratorium redemption or similar law or similar rights for marshalling; and (vii) any right to be informed by Executive of the financial condition of Obligor or any other guarantor of the Obligations or any change therein or any other circumstances bearing upon the risk of nonpayment or nonperformance of the Obligations. Guarantor has the ability to and assumes the responsibility for keeping informed of the financial condition of Obligor and any other guarantors of the Obligations and of other circumstances affecting such nonpayment and nonperformance risks.

### 4. Miscellaneous.

(a) Notices. All notices hereunder must be in writing and shall be sufficiently given for all purposes hereunder if properly addressed and delivered personally by documented overnight delivery service, by certified or registered mail, return receipt requested, or by facsimile or other electronic transmission service at the address or facsimile number, as the case may be, set forth below. Any notice given personally or by documented overnight delivery service is effective upon receipt. Any notice given by registered mail is effective upon receipt, to the extent such receipt is confirmed by return receipt. Any notice given by facsimile transmission is effective upon receipt, to the extent that receipt is confirmed, either verbally or in writing by the recipient. Any notice which is

refused, unclaimed or undeliverable because of an act or omission of the party to be notified, if such notice was correctly addressed to the party to be notified, shall be deemed communicated as of the first date that said notice was refused, unclaimed or deemed undeliverable by the postal authorities, or overnight delivery service.

Executive:

Joseph R. Tomkinson  
40 Smithcliffs  
Laguna Beach, California 92651

Guarantor:

Impac Mortgage Holdings, Inc.  
1401 Dove Street  
Newport Beach, California 92660  
Telephone: (949) 475-3600  
Facsimile: (949) 475-3969  
Attention: Ronald Morrison, Esq., General Counsel

With a copy to:

Ernest W. Klatte, III, Esq.  
Rutan & Tucker, L.L.P.  
611 Anton Blvd., 14th Floor  
Costa Mesa, California 92626  
Telephone: (714) 641-5100  
Facsimile: (714) 546-9035

With a copy to:

Greg T. Williams, Esq.  
Allen Matkins Leck Gamble & Mallory LLP  
1900 Main Street, Fifth Floor  
Irvine, California 92614  
Telephone: (949) 553-1313  
Facsimile: (949) 553-8354

(b) Nonwaiver. No failure or delay on Executive's part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

(c) Amendments and Waivers. This Guaranty may not be amended, modified, superseded, canceled, or any terms waived, except by written instrument signed by both parties, or in the case of waiver, by the party to be charged.

(d) Assignments. This Guaranty shall be binding upon and inure to the benefit of Executive and Guarantor and their respective successors and assigns; provided, however, that without the prior written consent of Executive, Guarantor may not assign its rights and obligations hereunder.

(e) Cumulative Rights, etc. The rights, powers and remedies of Executive under this Guaranty shall be in addition to all rights, powers and remedies given to Executive by virtue of any applicable law, rule or regulation, the Contract or any other agreement, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing Executive's rights hereunder.

(f) Partial Invalidity. The provisions of this Guaranty are severable and if any one or more provisions is determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provisions to the extent enforceable, shall nevertheless be binding and enforceable.

(g) Governing Law. This Guaranty is and shall be governed and construed in accordance with the laws of the State of California, regardless of any laws on choice of law or conflicts of law of any jurisdiction.

(h) Arbitration. To the fullest extent allowed by law, any controversy, claim or dispute between Executive and Guarantor (or any of its stockholders, directors, officers, employees, affiliates, agents, successors or assigns) relating to or arising out of this Guaranty will be submitted to final and binding arbitration in Orange County, California for determination in accordance with the American Arbitration Association's ("AAA") National Rules for the Resolution of Employment Disputes, as the exclusive remedy for such controversy, claim or dispute. In any such arbitration, the parties may conduct discovery to the same extent as would be permitted in a court of law. The arbitrator shall issue a written decision, and shall have full authority to award all remedies which would be available in court. The arbitrator shall be required to determine all issues in accordance with existing case

law and the statutory laws of the State of California. Guarantor shall pay the arbitrator's fees and any AAA administrative expenses. In the event Executive files a claim to collect unpaid payments or benefits payable under Section 2.4 of the Contract, the prevailing party shall be awarded reasonable attorneys fees and costs. Any judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. BY AGREEING TO THIS MUTUAL AND BINDING ARBITRATION PROVISION, BOTH EXECUTIVE AND GUARANTOR GIVE UP ALL RIGHTS TO TRIAL BY JURY. This arbitration policy is to be construed as broadly as is permissible under relevant law. EXECUTIVE AND GUARANTOR HAVE READ THIS SECTION 4(h) AND IRREVOCABLY AWE TO ARBITRATE ANY DISPUTE IDENTIFIED ABOVE.

\_\_\_\_\_/s/ JRT Executive's Initials

\_\_\_\_\_/s/ RM Guarantor's Initials

(i) Entire Agreement. This Guaranty contains the entire agreement of the parties relating to the subject matter hereof, and the parties hereto have made no agreements, representations or warranties relating to the subject matter of this Guaranty that are not set forth otherwise herein. This Guaranty supersedes any and all prior agreements, written or oral, with Guarantor relating to guaranteeing obligations under the Contract and any other subject matter of this Guaranty. Any such prior agreements are hereby terminated and of no further effect. The parties hereto agree that in no event shall an oral modification of this Agreement be enforceable or valid.

(j) Counterparts; Facsimile Signatures. This Guaranty may be executed in any number of counterparts, each of which shall be deemed an original for all purposes. This Guaranty may be executed by a party's signature transmitted by facsimile ("fax"), and copies of this Guaranty executed and delivered by means of faxed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed signatures as if such signatures were originals. Any party executing and delivering this Guaranty by fax shall promptly thereafter deliver a counterpart signature page of this Guaranty containing said party's original signature. All parties hereto agree that a faxed signature page may be introduced into evidence in any proceeding arising out of or related to this Guaranty as if it were an original signature page.

(k) Rules of Construction. This Guaranty has been negotiated by the parties and is to be interpreted according to its fair meaning as if the parties had prepared it together and not strictly for or against any party. References in this Guaranty to "Sections" refer to Sections of this Guaranty, unless the context expressly indicates otherwise. References to "provisions" of this Guaranty refer to the terms, conditions, restrictions and promises contained in this Guaranty. References in this Guaranty to laws and regulations refer to such laws and regulations as in effect on this date and to the corresponding provisions, if any, of any successor law or regulation. At each place in this Guaranty where the context so requires, the masculine, feminine or neuter gender includes the others and the singular or plural number includes the other. Forms of the verb "including" mean "including without limitation" unless the context expressly indicates otherwise. "Or" is inclusive and includes "and" unless the context expressly indicates otherwise. The introductory headings at the beginning of Sections of this Guaranty are solely for the convenience of the parties and do not affect any provision of this Guaranty.

(l) No Employment With Guarantor. Executive understands and agrees that he is an employee of Obligor pursuant to the Contract. Executive further understands and agrees that neither this Guaranty nor any obligations performed hereunder shall change any employee status that Executive may have with Guarantor.

[Signature page on next page.]





**IMPAC MORTGAGE HOLDINGS, INC. GUARANTY**  
**AGREEMENT REGARDING POTENTIAL CONTINUATION OF EMPLOYMENT AGREEMENT**

IMPAC FUNDING CORPORATION, a California corporation ("Employer"), and Joseph R. Tomkinson, an individual ("Employee"), have entered into an Employment Agreement, the effective date of which is April 1, 2003 (the "New Employment Agreement"). The continued effectiveness of the New Employment Agreement is subject to a majority of the shareholders of Impac Mortgage Holdings, Inc., a Maryland corporation ("IMH") approving the incentive compensation that may be paid pursuant to the New Employment Agreement. Employer and Employee previously entered into a prior Employment Agreement dated as of November 20, 1995, which agreement was amended and extended on a number of occasions prior to the date hereof (the "Prior Employment Agreement"). If the aforementioned shareholder approval for the incentive compensation that may be paid pursuant to the New Employment Agreement is not obtained on the earlier of (i) the date of the next annual meeting of the shareholders of the IMH and (ii) August 31, 2003, then (a) the New Employment Agreement shall terminate as of the earlier of such dates and be of no further force or effect and (b) the Prior Employment Agreement shall become effective again and remain in effect through December 31, 2003.

Dated as of: April 1, 2003

IMPAC FUNDING CORPORATION,  
a California corporation

By: \_\_\_\_\_ /s/ Ronald Morrison

Print Name: Ronald Morrison  
Title: General Counsel

\_\_\_\_\_  
/s/ Joseph R. Tomkinson

JOSEPH R. TOMKINSON

## IMPAC MORTGAGE HOLDINGS, INC.

## GUARANTY

This Guaranty, dated as of April 1, 2003, is executed by Impac Mortgage Holdings, Inc., a Maryland corporation ("Guarantor"), in favor of William S. Ashmore ("Executive").

A. Impac Funding Corporation, a California corporation ("Obligor"), concurrently herewith has entered into an Employment Agreement with Obligor dated even date herewith (the "Contract"). Guarantor is the parent corporation of Obligor and will receive direct and indirect benefits from the performance of the Contract.

B. Executive's willingness to enter into the Contract is subject to receipt by it of this Guaranty duly executed by Guarantor.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, Guarantor hereby agrees with Executive as follows:

1. Guaranty.

(a) Guarantor unconditionally guarantees and promises to pay to Executive, or order, at Executive's address set forth in Section 4(a) hereof, on demand after the default by Obligor, in lawful money of the United States, any and all Obligations (as hereinafter defined) consisting of payments due to Executive. For purposes of this Guaranty the term "Obligations" shall mean and include all payments owed by Obligor to Executive of every kind and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising pursuant to the terms of Section 2.3, 2.4, 3.1(a), 3.1(b) or 3.2 of the Contract (as such Obligations may become due subject to the provisions of the Contract, including all notice requirements and cure provisions), including all interest, late fees, charges, expenses, attorneys' fees and other professionals' fees chargeable to Obligor or payable by Obligor thereunder and any costs of collection hereunder, including attorneys' and other professionals' fees.

(b) This Guaranty is absolute, unconditional, continuing and irrevocable and constitutes an independent guaranty of payment and not of collectibility (provided that it is subject to Obligor defaulting on any of the Obligations), and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part any of Obligor's Obligations to Executive, the existence or continuance of Obligor as a legal entity, the consolidation or merger of Obligor with or into any other entity, the sale, lease or disposition by Obligor of all or substantially all of its assets to any other entity, or the bankruptcy or insolvency of Obligor, the admission by Obligor of its inability to pay its debts as they mature, or the making by Obligor of a general assignment for the benefit of, or entering into a composition or arrangement with,

creditors. If Obligor or any permitted assignee or successor of Obligor shall fail to pay or perform any Obligations to Executive which are subject to this Guaranty as and when they are due, Guarantor shall forthwith pay to Executive all such liabilities or obligations in immediately available funds. Each failure by Obligor to pay or perform any such liabilities or obligations shall give rise to a separate cause of action, and separate suits may be brought hereunder as each cause of action arises.

(c) Executive, may (subject to the provisions of the Contract) at any time and from time to time, without the consent of or notice to Guarantor, except such notice as may be required by applicable statute which cannot be waived, without incurring responsibility to Guarantor, and without impairing or releasing the obligations of Guarantor hereunder, (i) change the manner, place and terms of payment or change or extend the time of payment of, renew, or alter any Obligation hereby guaranteed, or in any manner modify, amend or supplement the terms of the Contract or any documents, instruments or agreements executed in connection therewith, (ii) exercise or refrain from exercising any rights against Obligor or others (including Guarantor) or otherwise act or refrain from acting, (iii) settle or compromise any Obligations hereby guaranteed and/or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any obligations and liabilities which may be due to Executive or others, (iv) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property pledged or mortgaged by anyone to secure or in any manner securing the Obligations hereby guaranteed, (v) take and hold security or additional security for any or all of the obligations or liabilities covered by this Guaranty, and (vi) assign its rights and interests under this Guaranty, in whole or in part.

(d) This is a continuing Guaranty for which Guarantor receives continuing consideration and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon and this Guaranty is therefore irrevocable without the prior written consent of Executive.

(e) Guarantor may bring action to enforce Executive's obligations under the Contract if (i) any proceeding is brought against Guarantor to seek enforcement of this Guaranty or (ii) Guarantor makes any payment to Executive pursuant to this Guaranty.

2. Representations and Warranties. Guarantor represents and warrants to Executive that (a) Guarantor is a corporation duly organized, validly, existing and in good standing under the laws of its jurisdiction of incorporation or formation; (b) the execution, delivery and performance by Guarantor of this Guaranty are within the power of Guarantor and have been duly authorized by all necessary actions on the part of Guarantor; (c) this Guaranty has been duly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against it in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally.

### 3. Waivers.

(a) Guarantor, to the extent permitted under applicable law, hereby waives any right to require Executive to (i) proceed against Obligor or any other guarantor of Obligor's obligations under the Contract, (ii) proceed against or exhaust any security received from Obligor or any other guarantor of Obligor's Obligations under the Contract, or (iii) pursue any other right or remedy in the Executive's power whatsoever.

(b) Guarantor further waives, to the extent permitted by applicable law, (i) any defense resulting from the absence, impairment or loss of any right of reimbursement, subrogation, contribution or other right or remedy of Guarantor against Obligor, any other guarantor of the Obligations or any security; (ii) any defense which results from any disability of Obligor or the lack of validity or enforceability of the Contract; (iii) any right to exoneration of sureties which would otherwise be applicable; (iv) any right of subrogation or reimbursement and, if there are any other guarantors of the Obligations, any right of contribution, and right to enforce any remedy which Executive now has or may hereafter have against Obligor, and any benefit of, and any right to participate in, any security now or hereafter received by Executive; (v) all presentments, demands for performance, notices of non-performance, notices delivered under the Contract, protests, notice of dishonor, and notices of acceptance of this Guaranty and of the existence, creation or incurring of new or additional Obligations and notices of any public or private foreclosure sale; (vi) any appraisal, valuation, stay, extension, moratorium redemption or similar law or similar rights for marshalling; and (vii) any right to be informed by Executive of the financial condition of Obligor or any other guarantor of the Obligations or any change therein or any other circumstances bearing upon the risk of nonpayment or nonperformance of the Obligations. Guarantor has the ability to and assumes the responsibility for keeping informed of the financial condition of Obligor and any other guarantors of the Obligations and of other circumstances affecting such nonpayment and nonperformance risks.

#### 4. Miscellaneous.

(a) Notices. All notices hereunder must be in writing and shall be sufficiently given for all purposes hereunder if properly addressed and delivered personally by documented overnight delivery service, by certified or registered mail, return receipt requested, or by facsimile or other electronic transmission service at the address or facsimile number, as the case may be, set forth below. Any notice given personally or by documented overnight delivery service is effective upon receipt. Any notice given by registered mail is effective upon receipt, to the extent such receipt is confirmed by return receipt. Any notice given by facsimile transmission is effective upon receipt, to the extent that receipt is confirmed, either verbally or in writing by the recipient. Any notice which is refused, unclaimed or undeliverable because of an act or omission of the party to be notified, if such notice was correctly addressed to the party to be notified, shall be deemed communicated as of the first date that said notice was refused, unclaimed or deemed undeliverable by the postal authorities, or overnight delivery service.

Executive:

William S. Ashmore  
8 Fern Canyon  
Laguna Niguel, California 92677

Guarantor:

Impac Mortgage Holdings, Inc.  
1401 Dove Street  
Newport Beach, California 92660  
Telephone: (949) 475-3600



With a copy to:

Ernest W. Klatte, III, Esq.  
Rutan & Tucker, L.L.P.  
611 Anton Blvd., 14th Floor  
Costa Mesa, California 92626  
Telephone: (714) 641-5100  
Facsimile: (714) 546-9035

With a copy to:

Greg T. Williams, Esq.  
Allen Matkins Leck Gamble & Mallory LLP  
1900 Main Street, Fifth Floor  
Irvine, California 92614  
Telephone: (949) 553-1313  
Facsimile: (949) 553-8354

(b) Nonwaiver. No failure or delay on Executive's part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

(c) Amendments and Waivers. This Guaranty may not be amended, modified, superseded, canceled, or any terms waived, except by written instrument signed by both parties, or in the case of waiver, by the party to be charged.

(d) Assignments. This Guaranty shall be binding upon and inure to the benefit of Executive and Guarantor and their respective successors and assigns; provided, however, that without the prior written consent of Executive, Guarantor may not assign its rights and obligations hereunder.

(e) Cumulative Rights, etc. The rights, powers and remedies of Executive under this Guaranty shall be in addition to all rights, powers and remedies given to Executive by virtue of any applicable law, rule or regulation, the Contract or any other agreement, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing Executive's rights hereunder.

(f) Partial Invalidity. The provisions of this Guaranty are severable and if any one or more provisions is determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provisions to the extent enforceable, shall nevertheless be binding and enforceable.

(g) Governing Law. This Guaranty is and shall be governed and construed in accordance with the laws of the State of California, regardless of any laws on choice of law or conflicts of law of any jurisdiction.

(h) Arbitration. To the fullest extent allowed by law, any controversy, claim or dispute between Executive and Guarantor (or any of its stockholders, directors, officers, employees, affiliates, agents, successors or assigns) relating to or arising out of this Guaranty will be submitted to final and binding arbitration in Orange County, California for determination in accordance with the American Arbitration Association's ("AAA") National Rules for the Resolution of Employment Disputes, as the exclusive remedy for such controversy, claim or dispute. In any such arbitration, the parties may conduct discovery to the same extent as would be permitted in a court of law. The arbitrator shall issue a written decision, and shall have full authority to award all remedies which would be available in court. The arbitrator shall be required to determine all issues in accordance with existing case law and the statutory laws of the

State of California. Guarantor shall pay the arbitrator's fees and any AAA administrative expenses. In the event Executive files a claim to collect unpaid payments or benefits payable under Section 2.4 of the Contract, the prevailing party shall be awarded reasonable attorneys fees and costs. Any judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. BY AGREEING TO THIS MUTUAL AND BINDING ARBITRATION PROVISION, BOTH EXECUTIVE AND GUARANTOR GIVE UP ALL RIGHTS TO TRIAL BY JURY. This arbitration policy is to be construed as broadly as is permissible under relevant law. EXECUTIVE AND GUARANTOR HAVE READ THIS SECTION 4(h) AND IRREVOCABLY AGREE TO ARBITRATE ANY DISPUTE IDENTIFIED ABOVE.

\_\_\_\_\_/s/ WSA Executive's Initials

\_\_\_\_\_/s/ RM Guarantor's Initials

(i) Entire Agreement. This Guaranty contains the entire agreement of the parties relating to the subject matter hereof, and the parties hereto have made no agreements, representations or warranties relating to the subject matter of this Guaranty that are not set forth otherwise herein. This Guaranty supersedes any and all prior agreements, written or oral, with Guarantor relating to guaranteeing obligations under the Contract and any other subject matter of this Guaranty. Any such prior agreements are hereby terminated and of no further effect. The parties hereto agree that in no event shall an oral modification of this Agreement be enforceable or valid.

(j) Counterparts; Facsimile Signatures. This Guaranty may be executed in any number of counterparts, each of which shall be deemed an original for all purposes. This Guaranty may be executed by a party's signature transmitted by facsimile ("fax"), and copies of this Guaranty executed and delivered by means of faxed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed signatures as if such signatures were originals. Any party executing and delivering this Guaranty by fax shall promptly thereafter deliver a counterpart signature page of this Guaranty containing said party's original signature. All parties hereto agree that a faxed signature page may be introduced into evidence in any proceeding arising out of or related to this Guaranty as if it were an original signature page.

(k) Rules of Construction. This Guaranty has been negotiated by the parties and is to be interpreted according to its fair meaning as if the parties had prepared it together and not strictly for or against any party. References in this Guaranty to "Sections" refer to Sections of this Guaranty, unless the context expressly indicates otherwise. References to "provisions" of this Guaranty refer to the terms, conditions, restrictions and promises contained in this Guaranty. References in this Guaranty to laws and regulations refer to such laws and regulations as in effect on this date and to the corresponding provisions, if any, of any successor law or regulation. At each place in this Guaranty where the context so requires, the masculine, feminine or neuter gender includes the others and the singular or plural number includes the other. Forms of the verb "including" mean "including without limitation" unless the context expressly indicates otherwise. "Or" is inclusive and includes "and" unless the context expressly indicates otherwise. The introductory headings at the beginning of Sections of this Guaranty are solely for the convenience of the parties and do not affect any provision of this Guaranty.

(l) No Employment With Guarantor. Executive understands and agrees that he is an employee of Obligor pursuant to the Contract. Executive further understands and agrees that neither this Guaranty nor any obligations performed hereunder shall change any employee status that Executive may have with Guarantor.

[Signature page on next page.]





**AGREEMENT REGARDING POTENTIAL CONTINUATION  
OF EMPLOYMENT AGREEMENT**

IMPAC FUNDING CORPORATION, a California corporation ("Employer"), and William S. Ashmore, an individual ("Employee"), have entered into an Employment Agreement, the effective date of which is April 1, 2003 (the "New Employment Agreement"). The continued effectiveness of the New Employment Agreement is subject to a majority of the shareholders of Impac Mortgage Holdings, Inc., a Maryland corporation ("IMH") approving the incentive compensation that may be paid pursuant to the New Employment Agreement. Employer and Employee previously entered into a prior Employment Agreement dated as of November 20, 1995, which agreement was amended and extended on a number of occasions prior to the date hereof (the "Prior Employment Agreement"). If the aforementioned shareholder approval for the incentive compensation that may be paid pursuant to the New Employment Agreement is not obtained on the earlier of (i) the date of the next annual meeting of the shareholders of the IMH and (ii) August 31, 2003, then (a) the New Employment Agreement shall terminate as of the earlier of such dates and be of no further force or effect and (b) the Prior Employment Agreement shall become effective again and remain in effect through December 31, 2003.

Dated as of April 1, 2003

IMPAC FUNDING CORPORATION,  
a California corporation

By: \_\_\_\_\_ /s/ Ronald Morrison

Name: Ronald Morrison  
Title: General Counsel

\_\_\_\_\_  
/s/ William S. Ashmore

WILLIAM S. ASHMORE

## IMPAC MORTGAGE HOLDINGS, INC.

## GUARANTY

This Guaranty, dated as of April 1, 2003, is executed by Impac Mortgage Holdings, Inc., a Maryland corporation ("Guarantor"), in favor of Richard J. Johnson ("Executive").

A. Impac Funding Corporation, a California corporation ("Obligor"), concurrently herewith has entered into an Employment Agreement with Obligor dated even date herewith (the "Contract"). Guarantor is the parent corporation of Obligor and will receive direct and indirect benefits from the performance of the Contract.

B. Executive's willingness to enter into the Contract is subject to receipt by it of this Guaranty duly executed by Guarantor.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, Guarantor hereby agrees with Executive as follows:

1. Guaranty.

(a) Guarantor unconditionally guarantees and promises to pay to Executive, or order, at Executive's address set forth in Section 4(a) hereof, on demand after the default by Obligor, in lawful money of the United States, any and all Obligations (as hereinafter defined) consisting of payments due to Executive. For purposes of this Guaranty the term "Obligations" shall mean and include all payments owed by Obligor to Executive of every kind and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising pursuant to the terms of Section 2.3, 2.4, 3.1(a), 3.1(b) or 3.2 of the Contract (as such Obligations may become due subject to the provisions of the Contract, including all notice requirements and cure provisions), including all interest, late fees, charges, expenses, attorneys' fees and other professionals' fees chargeable to Obligor or payable by Obligor thereunder and any costs of collection hereunder, including attorneys' and other professionals' fees.

(b) This Guaranty is absolute, unconditional, continuing and irrevocable and constitutes an independent guaranty of payment and not of collectibility (provided that it is subject to Obligor defaulting on any of the Obligations), and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part any of Obligor's Obligations to Executive, the existence or continuance of Obligor as a legal entity, the consolidation or merger of Obligor with or into any other entity, the sale, lease or disposition by Obligor of all or substantially all of its assets to any other entity, or the bankruptcy or insolvency of Obligor, the admission by Obligor of its inability to pay its debts as they mature, or the making by Obligor of a general assignment for the benefit of, or entering into a composition or arrangement with, creditors. If Obligor or any permitted assignee or successor of Obligor shall fail to pay or perform any Obligations to Executive which are subject to this Guaranty as and when they are due, Guarantor shall forthwith pay to Executive all such liabilities or obligations in immediately available funds. Each failure by Obligor to pay or perform any such liabilities or obligations shall give rise to a separate cause of action, and separate suits may be brought hereunder as each cause of action arises.

(c) Executive, may (subject to the provisions of the Contract) at any time and from time to time, without the consent of or notice to Guarantor, except such notice as may be required by applicable statute which cannot be waived, without incurring responsibility to Guarantor, and without impairing or releasing the obligations of Guarantor hereunder, (i) change the manner, place and terms of payment or change or extend the time of payment of, renew, or alter any Obligation hereby guaranteed, or in any manner modify, amend or supplement the terms of the Contract or any documents, instruments or agreements executed in connection therewith, (ii) exercise or refrain from exercising any rights against Obligor or others (including Guarantor) or otherwise act or refrain from acting, (iii) settle or compromise any Obligations hereby guaranteed and/or any obligations and liabilities (including

any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any obligations and liabilities which may be due to Executive or others, (iv) sell, exchange, release, surrender, realize upon or otherwise, deal with in any manner or in any order any property pledged or mortgaged by anyone to secure or in any manner securing the Obligations hereby guaranteed, (v) take and hold security or additional security for any or all of the obligations or liabilities covered by this Guaranty, and (vi) assign its rights and interests under this Guaranty, in whole or in part.

(d) This is a continuing Guaranty for which Guarantor receives continuing consideration and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon and this Guaranty is therefore irrevocable without the prior written consent of Executive.

(e) Guarantor may bring action to enforce Executive's obligations under the Contract if (i) any proceeding is brought against Guarantor to seek enforcement of this Guaranty or (ii) Guarantor makes any payment to Executive pursuant to this Guaranty.

2. Representations and Warranties. Guarantor represents and warrants to Executive that (a) Guarantor is a corporation duly organized, validly, existing and in good standing under the laws of its jurisdiction of incorporation or formation; (b) the execution, delivery and performance by Guarantor of this Guaranty are within the power of Guarantor and have been duly authorized by all necessary actions on the part of Guarantor; (c) this Guaranty has been duly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against it in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally.

### 3. Waivers.

(a) Guarantor, to the extent permitted under applicable law, hereby waives any right to require Executive to (i) proceed against Obligor or any other guarantor of Obligor's obligations under the Contract, (ii) proceed against or exhaust any security received from Obligor or any other guarantor of Obligor's Obligations under the Contract, or (iii) pursue any other right or remedy in the Executive's power whatsoever.

(b) Guarantor further waives, to the extent permitted by applicable law, (i) any defense resulting from the absence, impairment or loss of any right of reimbursement, subrogation, contribution or other right or remedy of Guarantor against Obligor, any other guarantor of the Obligations or any security; (ii) any defense which results from any disability of Obligor or the lack of validity or enforceability of the Contract; (iii) any right to exoneration of sureties which would otherwise be applicable; (iv) any right of subrogation or reimbursement and, if there are any other guarantors of the Obligations, any right of contribution, and right to enforce any remedy which Executive now has or may hereafter have against Obligor, and any benefit of, and any right to participate in, any security now or hereafter received by Executive; (v) all presentments, demands for performance, notices of non-performance, notices delivered under the Contract, protests, notice of dishonor, and notices of acceptance of this Guaranty and of the existence, creation or incurring of new or additional Obligations and notices of any public or private foreclosure sale; (vi) any appraisal, valuation, stay, extension, moratorium redemption or similar law or similar rights for marshalling; and (vii) any right to be informed by Executive of the financial condition of Obligor or any other guarantor of the Obligations or any change therein or any other circumstances bearing upon the risk of nonpayment or nonperformance of the Obligations. Guarantor has the ability to and assumes the responsibility for keeping informed of the financial condition of Obligor and any other guarantors of the Obligations and of other circumstances affecting such nonpayment and nonperformance risks.

### 4. Miscellaneous.

(a) Notices. All notices hereunder must be in writing and shall be sufficiently given for all purposes hereunder if properly addressed and delivered personally by documented overnight delivery service, by certified or registered mail, return receipt requested, or by facsimile or other electronic transmission service at the address or facsimile number, as the case may be, set forth below. Any notice given personally or by documented overnight delivery service is effective upon receipt. Any notice given by registered mail is effective upon receipt, to the extent such receipt is confirmed by return receipt. Any notice given by facsimile transmission is effective upon receipt, to the extent that receipt is confirmed, either verbally or in writing by the recipient. Any notice which is

refused, unclaimed or undeliverable because of an act or omission of the party to be notified, if such notice was correctly addressed to the party to be notified, shall be deemed communicated as of the first date that said notice was refused, unclaimed or deemed undeliverable by the postal authorities, or overnight delivery service.

Executive:

Richard J. Johnson  
4 South View  
Coto de Caza, California 92679

Guarantor:

Impac Mortgage Holdings, Inc.  
1401 Dove Street  
Newport Beach, California 92660  
Telephone: (949) 475-3600  
Facsimile: (949) 475-3969  
Attention: Ronald Morrison, Esq., General Counsel

With a copy to:

Ernest W. Klatte, III, Esq.  
Rutan & Tucker, L.L.P.  
611 Anton Blvd., 14th Floor  
Costa Mesa, California 92626  
Telephone: (714) 641-5100  
Facsimile: (714) 546-9035

With a copy to:

Greg T. Williams, Esq.  
Allen Matkins Leck Gamble & Mallory LLP  
1900 Main Street, Fifth Floor  
Irvine, California 92614  
Telephone: (949) 553-1313  
Facsimile: (949) 553-8354

(b) Nonwaiver. No failure or delay on Executive's part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

(c) Amendments and Waivers. This Guaranty may not be amended, modified, superseded, canceled, or any terms waived, except by written instrument signed by both parties, or in the case of waiver, by the party to be charged.

(d) Assignments. This Guaranty shall be binding upon and inure to the benefit of Executive and Guarantor and their respective successors and assigns; provided, however, that without the prior written consent of Executive, Guarantor may not assign its rights and obligations hereunder.

(e) Cumulative Rights, etc. The rights, powers and remedies of Executive under this Guaranty shall be in addition to all rights, powers and remedies given to Executive by virtue of any applicable law, rule or regulation, the Contract or any other agreement, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing Executive's rights hereunder.

(f) Partial Invalidity. The provisions of this Guaranty are severable and if any one or more provisions is determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provisions to the extent enforceable, shall nevertheless be binding and enforceable.

(g) Governing Law. This Guaranty is and shall be governed and construed in accordance with the laws of the State of California, regardless of any laws on choice of law or conflicts of law of any jurisdiction.

(h) Arbitration. To the fullest extent allowed by law, any controversy, claim or dispute between Executive and Guarantor (or any of its stockholders, directors, officers, employees, affiliates, agents, successors or assigns) relating to or arising out of this Guaranty will be submitted to final and binding arbitration in Orange County, California for determination in accordance with the American Arbitration Association's ("AAA") National Rules for the Resolution of Employment Disputes, as the exclusive remedy for such controversy, claim or dispute. In any such arbitration, the parties may conduct discovery to the same extent as would be permitted in a court of law. The arbitrator shall issue a written decision, and shall have full authority to award all remedies which would be available in court. The arbitrator shall be required to determine all issues in accordance with existing case

law and the statutory laws of the State of California. Guarantor shall pay the arbitrator's fees and any AAA administrative expenses. In the event Executive files a claim to collect unpaid payments or benefits payable under Section 2.4 of the Contract, the prevailing party shall be awarded reasonable attorneys fees and costs. Any judgment upon the award rendered by the arbitrator(s) maybe entered in any court having jurisdiction thereof. BY AGREEING TO THIS MUTUAL AND BINDING ARBITRATION PROVISION, BOTH EXECUTIVE AND GUARANTOR GIVE UP ALL RIGHTS TO TRIAL BY JURY. This arbitration policy is to be construed as broadly as is permissible under relevant law. EXECUTIVE AND GUARANTOR HAVE READ THIS SECTION 4(h) AND IRREVOCABLY A E TO ARBITRATE ANY DISPUTE IDENTIFIED ABOVE.

**/s/ RJJ Executive's Initials**

**/s/ RM Guarantor's Initials**

(i) Entire Agreement. This Guaranty contains the entire agreement of the parties relating to the subject matter hereof, and the parties hereto have made no agreements, representations or warranties relating to the subject matter of this Guaranty that are not set forth otherwise herein. This Guaranty supersedes any and all prior agreements, written or oral, with Guarantor relating to guaranteeing obligations under the Contract and any other subject matter of this Guaranty. Any such prior agreements are hereby terminated and of no further effect. The parties hereto agree that in no event shall an oral modification of this Agreement be enforceable or valid.

(j) Counterparts; Facsimile Signatures. This Guaranty may be executed in any number of counterparts, each of which shall be deemed an original for all purposes. This Guaranty may be executed by a party's signature transmitted by facsimile ("fax"), and copies of this Guaranty executed and delivered by means of faxed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed signatures as if such signatures were originals. Any party executing and delivering this Guaranty by fax shall promptly thereafter deliver a counterpart signature page of this Guaranty containing said party's original signature. All parties hereto agree that a faxed signature page may be introduced into evidence in any proceeding arising out of or related to this Guaranty as if it were an original signature page.

(k) Rules of Construction. This Guaranty has been negotiated by the parties and is to be interpreted according to its fair meaning as if the parties had prepared it together and not strictly for or against any party. References in this Guaranty to "Sections" refer to Sections of this Guaranty, unless the context expressly indicates otherwise. References to "provisions" of this Guaranty refer to the terms, conditions, restrictions and promises contained in this Guaranty. References in this Guaranty to laws and regulations refer to such laws and regulations as in effect on this date and to the corresponding provisions, if any, of any successor law or regulation. At each place in this Guaranty where the context so requires, the masculine, feminine or neuter gender includes the others and the singular or plural number includes the other. Forms of the verb "including" mean "including without limitation" unless the context expressly indicates otherwise. "Or" is inclusive and includes "and" unless the context expressly indicates otherwise. The introductory headings at the beginning of Sections of this Guaranty are solely for the convenience of the parties and do not affect any provision of this Guaranty.

(l) No Employment With Guarantor. Executive understands and agrees that he is an employee of Obligor pursuant to the Contract. Executive further understands and agrees that neither this Guaranty nor any obligations performed hereunder shall change any employee status that Executive may have with Guarantor.

[Signature page on next page.]

IN WITNESS WHEREOF, Executive and Guarantor have executed this Guaranty as of the day and year first above written.

**GUARANTOR**

Impac Mortgage Holdings, Inc.

By: \_\_\_\_\_ /s/ Ronald Morrison

Name: Ronald Morrison  
Title: General Counsel

**EXECUTIVE**

\_\_\_\_\_/s/ Richard J. Johnson

Richard J. Johnson

**IMPAC MORTGAGE HOLDINGS, INC. GUARANTY**  
**AGREEMENT REGARDING POTENTIAL CONTINUATION OF EMPLOYMENT AGREEMENT**

IMPAC FUNDING CORPORATION, a California corporation ("Employer"), and Richard J. Johnson, an individual ("Employee"), have entered into an Employment Agreement, the effective date of which is April 1, 2003 (the "New Employment Agreement"). The continued effectiveness of the New Employment Agreement is subject to a majority of the shareholders of Impac Mortgage Holdings, Inc., a Maryland corporation ("IMH") approving the incentive compensation that may be paid pursuant to the New Employment Agreement. Employer and Employee previously entered into a prior Employment Agreement dated as of November 20, 1995, which agreement was amended and extended on a number of occasions prior to the date hereof (the "Prior Employment Agreement"). If the aforementioned shareholder approval for the incentive compensation that may be paid pursuant to the New Employment Agreement is not obtained on the earlier of (i) the date of the next annual meeting of the shareholders of the IMH and (ii) August 31, 2003, then (a) the New Employment Agreement shall terminate as of the earlier of such dates and be of no further force or effect and (b) the Prior Employment Agreement shall become effective again and remain in effect through December 31, 2003.

Dated as of April 1, 2003

IMPAC FUNDING CORPORATION,  
a California corporation

By: \_\_\_\_\_ /s/ RONALD MORRISON

Print Name: Ronald Morrison  
Title: General Counsel

\_\_\_\_\_  
/s/ RICHARD J. JOHNSON

RICHARD J. JOHNSON



## COMMON STOCK PURCHASE AGREEMENT

THIS COMMON STOCK PURCHASE AGREEMENT (the "Agreement") is made as of the 1st day of July, 2003 by and between IMPAC Mortgage Holding, Inc., a Maryland corporation (the "Purchaser"), Joseph R. Tomkinson, Johnson Revocable Living Trust and William S. Ashmore (collectively referred to as "Sellers").

WHEREAS, the Sellers jointly own all of the outstanding common stock in IMPAC Funding Corporation, a California Corporation ( the "Company" ):

WHEREAS, the Purchaser owns all of the outstanding Preferred stock in the Company:

WHEREAS, the Sellers desire to sell, and the Purchaser desires to acquire, all of the outstanding common stock of the Company on the terms and conditions hereinafter set forth.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Purchase and Sale of Shares.

(a) On the terms and subject to the conditions contained herein, the Purchaser hereby agrees to purchase from the Sellers, and the Sellers hereby agree to sell to the Purchaser, for an aggregate purchase price of Seven Hundred and Fifty Thousand Dollars (\$750,000) (the "Purchase Amount"), 2, 10,000 shares (the "Shares") of common stock of the Company, constituting all of the outstanding common stock of the Company. The closing of the purchase of the Common Stock Shares hereunder (the "Closing"), shall occur at the offices of the Company no later than July 10, 2003 and shall be concurrent with the execution of this Agreement and upon the satisfaction or waiver of the conditions contained in Section 4 herein.

2. Sellers Representations and Warranties. The Company represents and warrants to the Purchaser the following:

(a) As of July 1, 2003 the outstanding capital stock of the Company consisted of 10,000 shares of Common Stock. All of the outstanding shares of Common Stock have been duly authorized and validly issued and are fully paid and nonassessable grants of stock.

(b) The issuance, sale and delivery of the Shares in accordance with this Agreement have been duly approved, consented to and authorized by all Sellers. The Shares, when issued, sold and delivered against payment therefore in accordance with this Agreement, will be, free and clear of all liens, liabilities, claims, demands and other encumbrances.

(c) The execution of, and consummation of the transactions contemplated by, this Agreement and compliance with its provisions by the Sellers will not violate, conflict with or result in any breach of any of the terms, conditions or provisions of any contract or other agreement to which each Seller is a party.

(d) All outstanding shares of Company are owned as follows:

Joseph R. Tomkinson:	3,333 shares
Johnson Revocable Living Trust:	3,333 shares
William S. Ashmore:	3,334 shares

3. Purchaser Representations and Warranties. The Purchaser hereby represents and warrants to the Company the following:

(a) The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland and has full corporate power and authority to conduct its business as presently conducted and as proposed to be conducted by it and to enter into and perform its obligations set forth in this Agreement and to carry out the transactions contemplated hereby. The Purchaser has not been organized, reorganized or recapitalized specifically for the purpose of investing in the Company.

(b) The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action by the Purchaser. This Agreement has been duly executed and delivered by the Purchaser and constitutes a valid and binding obligation of the Purchaser enforceable against it in accordance with its terms, subject to (i) the effect of any bankruptcy or similar laws affecting creditors' rights generally and (ii) general principles of equity, regardless of whether a matter is considered in a proceeding in equity or at law. The execution of, and consummation of the transactions contemplated by, this Agreement and compliance with its provisions by the Purchaser will not violate, conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or require a consent or waiver under, (i) its Articles of Incorporation or Bylaws (each as amended to the date hereof), (ii) any material indenture, lease, agreement or other instrument to which the Purchaser is a party or by which it or any of its material properties is bound, or (iii) any decree, judgment, order, statute, rule or regulation applicable to the Purchaser, which in the case of clause (ii) or (iii) would have a material adverse effect on (x) the business, condition (financial or otherwise), results of operations, assets, liabilities or properties of the Purchaser and its subsidiaries taken as a whole or (y) on the timely consummation of the transactions contemplated hereby (a "Purchaser Material Adverse Effect"). No consent, approval, authorization or order of, or filing, registration, qualification, license or permit of or with, (i) any Governmental Authority or (ii) any other person is required for the execution, delivery and performance by the Purchaser of this Agreement, except where the failure to obtain or make any such consent, approval, authorization or order of, or filing, registration, qualification, license or permit would not reasonably be expected to result in a Purchaser Material Adverse Effect.

(c) Purchaser understands that the Shares have not been registered under the Securities Act. Purchaser also understands that the Shares are being offered and sold pursuant to an exemption from registration contained in the Securities Act based in part upon Purchaser's representations contained in this Agreement. Purchaser hereby represents and warrants as follows:

- (1) Purchaser has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company so that it is capable of evaluating the merits and risks of its investment in the Company and has the capacity to protect its own interests. Purchaser must bear the economic risk of this investment indefinitely unless the Shares are registered pursuant to the Securities Act, or an exemption from registration is available. Purchaser understands that the Company has no present intention of registering the Shares. Purchaser also understands that there is no assurance that any exemption from registration under the Securities Act will be available and that, even if available, such exemption may not allow Purchaser to transfer all or any portion of the Shares under the circumstances, in the amounts or at the times Purchaser might propose.
- (2) Purchaser is acquiring the Shares for Purchaser's own account for investment only, and not with a view towards their distribution.
- (3) Purchaser represents that by reason of its, or of its management's business or financial experience, Purchaser has the capacity to protect its own interests in connection with the transactions contemplated in this Agreement. Further, Purchaser is aware of no publication or any advertisements in connection with the transaction contemplated in this Agreement.

- (4) Purchaser acknowledges and agrees that the Shares must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Purchaser has been advised or is aware of the provisions of Rule 144 promulgated under the Securities Act as in effect from time to time, which permits limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things; the availability of certain current public information about the Company, the resale occurring following the required holding period under Rule 144 and the number of shares being sold during any three month period not exceeding specified limitations.
- (5) Purchaser acknowledges and agrees that Purchaser is an "accredited investor" as such term is defined in Rule 501 of Regulation D under the Securities Act.

#### 4. Conditions to Closing.

(a) The obligation of each party to this Agreement to consummate the purchase and sale of the Shares at the Closing shall be subject to the satisfaction at or prior to the Closing of the following conditions:

(i) Delivery of the original Share Certificate or an Affidavit of Lost Share Certificate as follows:

Certificate Number 6, 833 shares and Certificate Number 3, 2500 shares Joseph R. Tomkinson

Certificate Number 7, 833 shares and Certificate Number 4, 2501 shares William S. Ashmore

Certificate Number 9, 3,333 shares Johnson Revocable Living Trust

Endorsed to the benefit of the Purchaser.

(ii) Payment of Seven Hundred Fifty Thousand Dollars to the Sellers, divided equally or at the sole option of any individual Seller, a number of shares of stock of the Purchaser equivalent to that Sellers interest, at the closing price of Purchaser's share of stock as traded on the New York Stock Exchange, on July 1, 2003. If Sellers elect not to take shares of stock of the Purchaser, the Seven Hundred Fifty Thousand Dollars shall be paid within ten days of the closing. Each Seller shall provide written notice to the Purchaser of their intent to receive the cash or the stock (or a portion thereof) in the Purchaser .

#### 5. Miscellaneous.

(a) Notices. All notices and other communications required or permitted under either of the Transaction Documents shall be in writing and shall be (i) mailed by registered or certified mail, postage prepaid, return receipt requested, (ii) sent by facsimile or telecopier, with written receipt of confirmation, (iii) sent by email, confirmed by facsimile or telecopier, with written receipt of confirmation or (iv) otherwise delivered by hand or by messenger or a nationally recognized overnight courier, addressed or telecopied as follows:

If to the Purchaser:

IMPAC Mortgage Holding, Inc.

1401 Dove Street

Newport Beach, CA 92660

Attn: Ronald Morrison, Esq.

If to the Sellers:

Joseph R. Tomkinson  
William S. Ashmore  
Richard J. Johnson  
1401 Dove Street  
Newport Beach, CA 92660

A copy of any notice or communication sent by email must also be sent within two (2) business days thereafter by registered or certified mail, postage prepaid, return receipt requested, or delivered personally to the person to whom such notice or communication is being given at its address set forth above. If notice is provided by mail, notice shall be deemed to have been given five (5) business days after proper deposit with the United States mail. If notice is provided by a nationally recognized overnight courier, notice shall be deemed to have been given two (2) business days after deposit with such courier. If notice is provided personally, such notice shall be deemed to have been given immediately upon personal delivery thereof to the party at the address provided above. If notice is provided by telecopier, notice shall be deemed to have been given upon confirmation by the telecopier machine of the receipt of such notice at the telecopier number provided above. If notice is provided by email, notice shall be deemed to have been given upon confirmation by the sender's email program of the receipt of such notice at the email address provided above. A party hereto may change the addresses to which its notices are to be directed by written notice complying with the terms of this Section 8(a).

(b) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties hereby agree that any action brought by either party to interpret or enforce any provision of this Agreement shall be brought in, and each party agrees to, and does hereby, irrevocably submit to the exclusive jurisdiction and venue of, the appropriate state or federal court located in the Orange County, California.

(c) Further Actions. Subject to the terms and conditions contained in this Agreement, the parties hereto agree to cooperate and take all such further actions and execute any additional instruments as may reasonably be necessary to carry out, consummate and give effect to the transactions contemplated by this Agreement.

(d) Fees and Expenses. Each party hereto shall bear its own out-of-pocket costs and expenses incident to the preparation, negotiation and execution of this Agreement and the other Transaction Documents.

(e) Entire Agreement. This Agreement and the other Transaction Documents (including the Exhibits hereto) constitute the entire agreement between the parties with respect to the subject matter hereof or thereof and supersede and merge all prior agreements or understandings, whether written or oral. This Agreement may not be amended, modified or revoked, in whole or in part, except by an agreement in writing signed by each of the parties hereto.

(f) Specific Performance. Each of the parties acknowledges and agrees that the other party hereto would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the parties hereto agrees that the other party hereto shall be entitled to an injunction to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any court in accordance with Section 5(b) hereof, in addition to any other remedy to which they may be entitled at law or in equity.

(g) Waivers. No waiver of any breach or default hereunder shall be considered valid unless in writing, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

(h) Severability. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or

