

FORM 31.2 MORTGAGE LOAN SALE AND SERVICING AGREEMENT

THIS MORTGAGE LOAN SALE AND SERVICING AGREEMENT (this "Agreement") is between _____, a _____ corporation, an approved mortgagee of the Federal Housing Administration and an automatic lender for the Department of Veterans Affairs ("Seller"), and _____ BANK, a national banking association ("Buyer").

WITNESSETH:

WHEREAS, this Agreement governs the sale, transfer and assignment by Seller to Buyer of Department of Veterans Affairs guaranteed, Federal Housing Administration insured, privately insured and uninsured residential mortgage loans, and the servicing and other incidents thereof, which sales may be made from time to time in accordance with the terms of this Agreement;

WHEREAS, each Loan (hereinafter defined) sold hereunder will be subject to the warranties, representations, covenants and agreements made by Seller herein and such warranties and representations are made for the benefit of Buyer and its successors and assignees;

WHEREAS, Seller makes and originates Loans under the Section 203(b) single family mortgage insurance program of the Federal Housing Administration (the "FHA") and under the single family mortgage guaranty programs administered by the Department of Veterans Affairs (the "VA") under the Servicemen's Readjustment Act of 1944 and the regulations promulgated thereunder (38 USC § 1801, et seq., 38 CFR § 36.4300, et seq.);

WHEREAS, each of the FHA insured Loans is subject to a commitment of the FHA to issue federal government mortgage insurance under the National Housing Act and the regulations promulgated thereunder (24 CFR § 200.1, et seq.);

WHEREAS, upon closing of an FHA insured Loan, Seller submits to the FHA, together with the requisite certifications, all loan documentation required by the FHA Commitment and the FHA subsequently issues a mortgage insurance certificate with respect to each such Loan;

WHEREAS, as a VA automatic lender, Seller can make Loans to be guaranteed by the VA without submitting a credit package to the VA for underwriting review, and the VA will issue evidence of the guaranty of the United States if the Loan is reported to the VA within sixty (60) days following full disbursement, upon certification by Seller in accordance with 38 CFR § 36.4303(a), as amended from time to time;

WHEREAS, in addition to federally insured and guaranteed Loans, Seller makes Loans insured by PMI Companies (hereinafter defined) and engages in Qualifying Transactions (hereinafter defined); and

WHEREAS, each Loan insured by a PMI Company is subject to a commitment certificate in accordance with which the PMI Company has agreed to issue a PMI Contract (hereinafter defined) upon the funding of a Loan and payment of a premium to the PMI Company; and

WHEREAS, simultaneously with the closing of some or all of the Loans, Seller desires to sell, transfer and assign to Buyer the Mortgage Notes (hereinafter defined), together with the deeds of trust or mortgages, title policies and any and all other security documents, agreements or other instruments relating thereto and Seller's rights under any FHA Commitment (hereinafter defined); FHA Insurance Contract (hereinafter defined); VA Guaranty (hereinafter defined); PMI Contract; or PMI Commitment (hereinafter defined); and

WHEREAS, at such time as each Loan is conveyed to Buyer, Seller shall provide to Buyer the commitment of an Approved Investor (hereinafter defined) to purchase the Loan from Buyer, and in consideration of Seller's arrangement of the resale of each Loan by Buyer, Seller will convey certain profits, if any, on each such resale to Seller.

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants herein set forth and other good and valuable consideration, and for reasonably equivalent value, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. The following terms will have the meanings set forth therefor herein:

"*Approved Investor*" means a purchaser of Loans eligible and authorized to purchase Loans in accordance with FHA and/or VA regulations.

"*Approved Mortgage Companies*" will have the meaning set forth therefore in Section 3.02(a) hereof.

"*Approved Mortgage Insurers*" will have the meaning set forth therefor in Section 3.02(a) hereof.

"*Approved Title Insurance Companies*" will have the meaning set forth therefor in Section 3.02(a) hereof.

"*ARM Loan*" means a Loan with respect to which the rate of interest charged may be adjusted from time to time in accordance with the terms of the instrument evidencing such Loan.

"*Bulk Commitment*" means an Investor Commitment to purchase more than one Loan from Buyer. A Bulk Commitment will list each Loan covered by such Bulk Commitment or Seller will provide a separate listing of all Loans covered by such Bulk Commitment.

"*Business Day*" will mean any day other than a Saturday, Sunday, or legal holiday on which banks are not open for regular business in [city/state].

"*Closing Date*" with respect to any Loan, is the date upon which such Loan is sold to Buyer pursuant to Sections 2.02 and 3.03 hereof.

"*Commissioner*" means the Secretary of the Department of Housing and Urban Development or officers acting on his behalf.

“*Commitment Contract*” means the written contract between Seller and Seller’s Approved Investor governing the terms of an Investor Commitment or a Bulk Commitment.

“*FDIC*” means the Federal Deposit Insurance Corporation.

“*FHA*” means the Federal Housing Administration.

“*FHA Commitment*” means the conditional commitment issued by the Commissioner binding the Commissioner to insure a mortgage loan on a specified property pursuant to specified terms and conditions provided the property is sold to a purchaser satisfactory to the FHA and all of the conditions noted in the FHA Commitment are met; and/or the firm commitment issued by the Commissioner binding the Commissioner to insure a mortgage loan to a specific borrower on a specified property pursuant to specified terms and conditions, once all of the conditions noted in the FHA Commitment have been met.

“*FHA Insurance Contract*” means the agreement evidenced by the issuance of a mortgage insurance certificate by the Commissioner, or his representative, incorporating by reference the regulations governing FHA insured mortgage loans.

“*FHA Insurance Premium*” means the insurance premium payable to the FHA on account of each Loan insured pursuant to an FHA Insurance Contract.

“*FHA Lender*” is any lender approved by the FHA to sell, service, or originate FHA insured mortgage loans.

“*HUD*” means the Department of Housing and Urban Development.

“*Insured Institution*” includes a state or national bank or a savings bank whose accounts are insured by the FDIC.

“*Investor Commitment*” means, with respect to each Mortgage Note, the current, valid, written commitment of an Approved Investor to purchase from Buyer all of Buyer’s right, title, and interest in such Mortgage Note.

“*Loan*” means a one to four family, residential mortgage loan secured by a first lien mortgage or deed of trust on real property made and originated by Seller or by an Approved Mortgage Company (i) for which (a) a PMI Commitment or a PMI Contract or (b) an FHA Commitment or an FHA Insurance Contract, pursuant to the provisions, as from time to time amended, of Section 203 of the National Housing Act of 1934, has been issued to insure such Loan, in whole or in part; or (c) Seller is able to make the required certifications to the VA to cause a VA Loan Guaranty Certificate to be issued under the Servicemen’s Readjustment Act of 1944 and 38 CFR § 36.4303, as amended from time to time, to guaranty such Loan; or (ii) which is a Qualifying Transaction.

“*Loan Closing Documents*” will have the meaning set forth therefor in Section 4.02(b) hereof.

“*Loan Disbursement Detail*” means the closing statement prepared by Seller in connection with each Loan instructing the Title Company how Loan proceeds shall be disbursed.

“*Loan Documents*” means documentation evidencing or otherwise associated with the Loans, including, but not limited to, the documents contained in the Loan Package, the Loan Closing Documents, deeds with vendor’s liens, security agreements, guaranties, deeds of trust or mortgages, title insurance policies, FHA Commitments, FHA Insurance Contracts, VA Certificates of Guaranty, PMI Commitments, PMI Contracts, and any and all other documents evidencing, securing, guaranteeing or insuring the Loans of any collateral therefor.

“*Loan Package*” will have the meaning set forth therefor in Section 3.03 hereof.

“*Lock Price*” means the price at which a particular Approved Investor has committed to purchase a particular from Buyer Mortgage Note, as stated in the Investor Commitment for such Mortgage Note.

“*Mortgage Note*” means the promissory note evidencing a Loan.

“*Mortgage Record Change Form*” shall mean Form HUD-92080 issued by HUD, as amended from time to time, or any subsequent or additional form or forms that may now or hereafter be required by HUD to notify HUD and/or the FHA that a Loan has been sold.

“*Mortgaged Property*” means real property securing or that shall secure a Loan pursuant to a deed of trust or mortgage.

“*Mortgagors*” means mortgagors, grantors of deeds of trust, and grantors of any security deeds relating to the Loans.

“*Nonconforming Loan*” shall mean any Loan the original principal amount of which exceeds \$203,150, or such other amount as may be specified by the Federal National Mortgage Association, Government National Mortgage Association or Federal Home Loan Mortgage Corporation, or similar governmental entities as the maximum size of loan eligible to be included in mortgage pools established for secondary market resale by such agency.

“*Person*” means any person, firm, corporation, partnership, trust, limited liability company, individual, or other business entity of any kind.

“*PMI*” means mortgage insurance issued by any entity other than an agency, department or other division of the United States government.

“*PMI Commitment*” means the commitment certificate issued by a PMI Company committing the PMI Company to issue a PMI Contract upon the payment of a premium and the fulfillment of any requirement contained in the PMI Contract.

“*PMI Company*” means a company issuing PMI approved by Buyer, and being a member company of Mortgage Insurance Companies of America.

“*PMI Contract*” means the contract or agreement evidencing PMI insuring a Loan. Depending on the PMI Company involved, the PMI Contract may be a separate certificate from the PMI Commitment or the PMI Commitment may automatically convert to a PMI Contract upon payment of a premium.

“*Purchase Guidelines*” will have the meaning set forth therefor in Section 3.01 hereof.

“*Purchase Price*” means the price that Buyer agrees to pay to Seller to purchase a Loan, which price shall be an amount equal to ninety-eight percent (98%) of the Lock Price for the applicable Mortgage Note, but not to exceed the lesser of (i) the unpaid principal amount of the applicable Mortgage Note or (ii) the amount that is to be funded by Buyer pursuant to Section 2.02 or 2.03, provided that such percentages may be modified by Buyer from time to time, in Buyer’s sole and absolute discretion; provided, that any such percentage change shall not become effective until thirty (30) calendar days after the date upon which Buyer provides Seller written notice of such change. Buyer may also announce different Purchase

Prices for different types of Loans (such as VA guaranteed loans, FHA insured loans or Nonconforming Loans) from time to time, as Buyer may determine in its sole and absolute discretion.

“*QC Standards*” will have the meaning set forth therefor in Section 4.02 hereof.

“*Qualifying Transaction*” means a residential mortgage loan made and originated by Seller in an original principal amount less than or equal to eighty percent (80%) of the purchase price paid by Mortgagor for the Mortgaged Property.

“*Resale Consideration*” will have the meaning set forth therefore in Section 6.01 hereof.

“*Reserve Account*” means the escrow account to be held by Buyer and funded from an initial advance by Seller as a reserve against losses caused by Seller on resales of Loans by Buyer.

“*Title Company*” will have the meaning set forth therefore in Section 2.01(c) hereof.

“*VA*” means the Department of Veterans Affairs.

“*VA Certification*” means the certification to the VA required to be filed by an automatic lender within sixty (60) days following disbursement of a Loan to be guaranteed pursuant to a VA Loan Guaranty Certificate in order to obtain a VA Loan Guaranty Certificate in accordance with 38 CFR § 36.4303, as amended from time to time.

“*VA Guaranty*” means the guaranty of the United States of an eligible home mortgage loan on behalf of an eligible veteran for a one to four family home to be occupied by the veteran pursuant to the Servicemen’s Readjustment Act of 1944.

“*VA Loan Guaranty Certificate*” means the guaranty agreement evidenced by the Loan Guaranty Certificate issued by the VA on behalf of the United States.

“*VA Lender*” means an “automatic lender” under 38 CFR § 36.4301, an “automatic lender” being a lender that may process a Loan or assumption to be guaranteed by a VA Guaranty without submitting the credit package for such Loan to the VA for underwriting review.

ARTICLE II PURCHASE AND SALE OF MORTGAGE LOANS

Section 2.01. *Purchase and Sale Provisions.* Subject to the terms and conditions hereinafter set forth and for the considerations stated herein, Seller agrees that in the event that Seller elects to offer to sell to Buyer certain Loans, and in the event that Buyer elects to purchase such Loans from Seller, the following conditions will apply:

- a. The maximum aggregate original principal amount of all Loans approved by Buyer for purchase pursuant to the terms of this Agreement, at any time outstanding, will not exceed ____ dollars (\$____), which Loans, together with all Loan Documents associated with any Loan conveyed hereunder, may be conveyed to Buyer either individually or in packages or more than one Loan. In no event shall the total original principal amount of (i) all Nonconforming Loans at any one time owned by Buyer exceed \$____ or (ii) all ARM Loans purchased from Seller and at any one time owned by Buyer exceed ____ dollars (\$____).
- b. When Seller desires to offer to sell a Loan to Buyer, Seller will present Buyer with a Loan Package for such Loan. Seller will pay to Buyer, concurrently with each presentation to Buyer of a Loan Package, a non-refundable administration fee equal to the product obtained by multiplying ____ dollars (\$____) by the number of Loans proposed for purchase by Buyer at such times. Notwithstanding anything to the contrary contained herein, Seller agrees that it shall not present for sale to Buyer, or otherwise attempt to sell to Buyer, any Loan having an original principal amount in excess of ____ dollars (\$____).
- c. If the Loan is to be funded through an Approved Title Insurance Company, or an agent therefor, Buyer will deliver immediately available funds to the Approved Title Insurance Company or agent therefor closing such Loan (the “*Title Company*”) in accordance with Section 2.02 and in an amount equal to the Purchase Price, and Seller will deliver to Buyer, immediately following closing, any of the Loan Documents required to be delivered in accordance with this Agreement and not already delivered as part of the Loan Package. In the event the Loan was funded prior to being purchased by Buyer, Buyer will deliver immediately available funds directly to Seller in accordance with Section 2.03 in an amount equal to the Purchase Price and Seller will deliver to Buyer at closing any of the Loan Documents required to be delivered in accordance with this Agreement and not already delivered as part of the Loan Package.
- d. Buyer and Seller hereby agree that the purchase of any Loans will be without recourse against Seller, except that Buyer shall have such recourse, rights and remedies against Seller for breach of any representation, warranty or covenant of Seller contained herein in accordance with Section 9.01 hereof.

Section 2.02. *Funding Through a Title Company.* For Loans to be funded through a Title Company, Buyer will fund the Purchase Price directly to the Title Company at closing either via wire transfer of funds or by cashier’s check drawn on Buyer.

No disbursements will be made directly to Seller. Seller will provide the Title Company with closing instructions requesting the Title Company to deliver directly to Buyer the Loan Closing Documents, original Mortgage Note endorsed by Seller and endorsed in blank, a copy of the deed of trust or mortgage securing said Mortgage Note certified as true and correct by the Title Company, a copy of the Mortgagee Policy of Title Insurance and, for Loans insured by PMI Companies, a copy of the PMI Commitment and, if available, the PMI Contract.

Section 2.03. *Funding Without a Title Company.* In the case of Loans that were funded by or through Seller prior to the time such Loans are sold to Buyer or Loans purchased by Seller after funding by a third party lender, Seller shall provide wire transfer instructions for such sales to Buyer and Buyer shall wire transfer funds to purchase such Loans in accordance with such wire transfer instructions. Buyer shall deliver the Purchase Price for such Loans only after receipt of all Loan Documents normally provided at or before closing, as well as any additional Loan Documents not normally received until

after closing, but which are in Seller's possession at the time of the sale. The Purchase Price for Loans that were closed and funded prior to their sale to Buyer may be delivered directly to Seller. Seller agrees to pay any wire fees incurred by Buyer in connection with funding the purchase of Loans. If a Loan is not funded directly through a title company, Seller shall provide Buyer with a copy of the Mortgagee Policy of Title Insurance for such Loan and, for Loans insured by PMI Companies, a copy of the PMI Commitment and, if available, the PMI Contract.

ARTICLE III LOAN PURCHASE GUIDELINES

Section 3.01. *Purchase Guidelines.* To the extent that Buyer elects to purchase Loans, Buyer will only purchase Loans from Seller which conform to the guidelines set forth below. Seller agrees to pre-screen all Loans that Seller desires to sell to Buyer under this Agreement, and agrees to submit to Buyer only Loan Packages that conform to the following guidelines (the "*Purchase Guidelines*"):

- a. All Loans will have been originated by Approved Mortgage Companies;
- b. All Mortgagee Policies of Title Insurance will have been issued by Approved Title Insurance Companies;
- c. Seller will have compiled a full and complete Loan Package for each Loan;
- d. Each Loan will be secured by a valid first lien deed of trust or mortgage and a valid vendor's lien and security interest in the Mortgaged Property;
- e. Each Mortgagor's credit, as shown by the documents included in the Loan Package, will be of a quality generally acceptable to VA Lenders, FHA Lenders or PMI Companies in the Houston, Texas, area;
- f. For all Loans in an original principal amount greater than eighty percent (80%) of the purchase price paid by the Mortgagor for the Mortgaged Property securing such Loan, Seller shall have submitted the required documents to the PMI Company or the FHA and shall have received an FHA Commitment or a PMI Commitment, or, if the Loan is to be guaranteed by a VA Guaranty, Seller shall have confirmed that the Loan is eligible for such guaranty under the provisions of 38 USCS. § 1801, et seq., and 38 CFR § 36.4300, et seq. and that there is no reason why such Loan would not be guaranteed upon payment of the guaranty fee and filing of the VA Certification and other documents required to be filed by the VA;
- g. All Loans for which an FHA Commitment or FHA Insurance Contract is in effect shall have been originated by FHA Lenders, and all Loans for which VA Certificates of Guaranty have been or are to be issued shall have been originated by VA Lenders.
- h. Seller shall have obtained a currently effective Investor Commitment or Bulk Commitment for each Loan offered for sale by Seller, which Investor Commitment must be valid for a period of at least seven (7) Business Days following the date the relevant Loan is sold to Buyer.

Section 3.02. *Approved Parties.* Seller will only conduct business with individuals and companies that have been approved by Buyer in accordance with the following provisions:

- a. On the date hereof, Seller has submitted to Buyer for Buyer's approval a list of home mortgage loan origination companies, title insurance companies, hazard insurance companies and private mortgage insurance companies with whom Seller intends to work to originate, process and sell the Loans. Seller will provide with such list current Best and Company ratings of all such insurers, when so rated. Within three (3) Business Days following Buyer's receipt of such lists and other data, Buyer, if Buyer has not previously done so, will notify Seller in writing if any of the individuals or companies included in Seller's list are unacceptable to Buyer. Home mortgage loan origination companies, title insurance companies, hazard insurance companies and mortgage insurance companies that are not declared unacceptable by Buyer will be known as "*Approved Mortgage Companies*," "*Approved Title Insurance Companies*" and "*Approved Mortgage Insurers*" respectively.
- b. Seller may, at any time, and from time to time, submit amended lists of home mortgage loan origination companies, hazard insurance companies, title insurance companies and/or private mortgage insurance companies to Buyer for Buyer's approval. Buyer will, within five (5) Business Days of Buyer's receipt of such amended lists, give Seller written notice of any individuals or companies on such amended lists that are not approved. Buyer may, at any time, and from time to time, by giving written notice to Seller, terminate the status of any individual or company as an Approved Mortgage Company, an Approved Title Insurance Company or an Approved Mortgage Insurer. Buyer may cease to review and return to Seller any Loan Package if such Loan was not funded prior to the date the title company, hazard insurance company, home mortgage loan origination company or private mortgage insurance company associated with such Loan loses its approved status.

Section 3.03. *Loan Package.* At least three (3) Business Days prior to the Closing Date for a particular Loan, Seller will deliver to Buyer, for Buyer's review, a file of information and documentation associated with the Loan containing, without limitation, the following (the "*Loan Package*"):

- a. Loan Disbursement Detail prepared by Seller and containing, among other information, funding instructions, including a completed Charter Bank wire form or airbill (if a check is to be delivered outside of Houston) or typed envelope (if a local Title Company will pick up the check);
- b. Copy of the executed Transfer, Sale and Assignment of Mortgage Loan Package to be provided at closing, and which will be in form approved by Buyer;
- c. Copy of each Mortgagor's loan application (and, for loans guaranteed by a VA Guaranty, a copy of the VA Certification for such loan);
- d. Except where not required by HUD because the Loan constitutes a refinancing, (i) one or more written appraisal reports prepared in conformity with the requirements of the PMI Company, applicable Federal Home Loan Bank Board requirements, VA requirements or in the form of a HUD short form, as appropriate, and signed, prior to the approval of the Mortgagor's application, by a person or persons duly appointed and qualified as appraiser(s) by Seller's board of directors and who has no interest, direct or indirect, in the Mortgaged Property or any Loan or the security therefor and who does not receive compensation that is affected by the approval of the Loan to be used to purchase such Mortgaged Property; (ii) such appraisal will disclose the market value of the Mortgaged Property and will contain sufficient information and data concerning the Mortgaged Property to substantiate its market value; and (iii) a certification that the valuation assigned to the Mortgaged Property by the appraiser has been accepted by the insuring agency;
- e. For insured or guaranteed Loans, the FHA Commitment and, if available, the FHA Contract or VA Loan Guaranty Certificate;
- f. For insured Loans, the executed HUD Mortgage Record Change Form or loan sale notice form notifying the PMI Company or the FHA of the transfer of the Loan, and all required documents of a similar nature;
- g. Investor Commitment or Bulk Commitment;
- h. Copy of each Mortgagor's credit report; and
- i. Such other documents, instruments and agreements as Buyer may have previously requested.

In the event the Loan Package is delivered to Buyer less than three (3) Business Days prior to the Closing Date and Buyer elects to purchase the Loan, Buyer will use reasonable efforts to fund the Loan at closing, but Seller understands that, even if Buyer elects to purchase a Loan on less than three (3) Business Days' notice, Buyer may not be able to purchase Loans on such notice and agrees that Buyer shall have no liability to Seller if Buyer is unable, or unwilling for any reason, to purchase such Loans.

Section 3.04. *Guidelines Illustrative.* The Purchase Guidelines contained in this Article III and any other guidelines contained in this Agreement are merely illustrative and are not intended to be an exhaustive list of all Buyer's considerations in determining whether to purchase a Loan. Buyer will have the right to refuse at any time or from time to time to purchase any Loan in its sole and absolute discretion, whether or not such Loan meets any or all of the Purchase Guidelines. Buyer may request or require from Seller or any other Person, as a condition with respect to the purchase of any Loan, the delivery of such documents, instruments and agreements as Buyer may deem appropriate in its sole and absolute discretion.

ARTICLE IV GENERAL WARRANTIES, REPRESENTATIONS, AND COVENANTS

Section 4.01. *Seller's Ownership of Loans Sold and Compliance with Applicable Law.* As of the origination of each Loan, Seller represents and warrants, with respect to each Loan offered for sale under this Agreement, as follows:

- a. Seller hereby represents and warrants that it is the sole owner of each Loan to be sold under this Agreement and has the requisite power and authority to sell, transfer, and assign such Loans on the terms herein set forth, free and clear of all liens, claims and encumbrances upon such Loans;
- b. Seller further represents and warrants that, as to each Loan to be sold, all applicable federal and state laws, rules, and regulations, as from time to time amended, have been complied with, including but not limited to the following: applicable usury limitations, the applicable laws and regulations governing lending, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, the Flood Disaster Protection Act, the Truth-in-Lending Act of 1968, the Depository Institutions Deregulation and Monetary Control Act of 1980, the Garn-St. Germain Depository Institutions Act of 1982, and all applicable regulations issued pursuant thereto; and that all conditions as to the validity, transferability and continuation of the FHA Insurance Contract or VA Loan Guaranty Certificate, if any, as required by the National Housing Act of 1934 and the Servicemen's Readjustment Act of 1944, as amended, and the rules and regulations thereunder, or by the FHA or VA have been properly satisfied, and said FHA Insurance Contract, FHA Commitment, VA Loan Guaranty Certificate or right to obtain a VA Loan Guaranty Certificate, on each Loan will be valid and enforceable by Buyer.
- c. The Loan was properly closed by an Approved Title Insurance Company, all of the applicable Loan Documents have been duly executed by the Mortgagor, acknowledged, and recorded; and the Loan is secured by a valid and

- enforceable first lien on the Mortgaged Property in the full amount of the Mortgage Note and complies with all applicable lending laws and regulations;
- d.** The Mortgagor has duly executed and delivered appropriate evidence indicating that the Mortgagor has received any and all disclosure materials as required by applicable law and regulations;
 - e.** The full original principal amount of each Loan has been advanced to the Mortgagor, either by direct payment, or by payment made on the Mortgagor's request or approval; and all costs, fees, and expenses incurred in making, closing, and recording the Loan have been paid;
 - f.** Each Loan in an original principal amount greater than eighty percent (80%) of the purchase price paid by Mortgagor for the Mortgaged Property is either (i) validly insured by HUD or FHA pursuant to an FHA Insurance Contract or subject to a valid FHA Commitment, (ii) validly insured by a PMI Company pursuant to a PMI Contract or subject to a PMI Commitment, or (iii) validly guaranteed by the United States pursuant to a VA Loan Guaranty Certificate, or eligible to be guaranteed upon the filing of a VA Certification and the payment of the guaranty fee to the VA, and there is no fact or circumstance which would prevent or prohibit HUD, FHA, VA or the PMI Company from issuing its FHA Insurance Contract, PMI Contract or Loan Guaranty Certificate on account of each such Loan for which an FHA Commitment or a PMI Commitment is currently in effect or which was or is to be made by a VA Lender;
 - g.** There is in force a paid-up Mortgagee Policy of Title Insurance on the Loan in an amount not less than the outstanding principal balance of the Loan, affirming that the Mortgagor has fee simple, indefeasible title to the Mortgaged Property and insuring the validity and priority of Seller's first lien securing the Loan, and such Mortgagee Policy of Title Insurance does not contain any exceptions to or defects in title not otherwise disclosed to and approved by Buyer in writing;
 - h.** All documents submitted or delivered are genuine, and all other representations as to each Loan sold are true and correct and meet the requirements and specifications of all parts of this Agreement;
 - i.** There is in force such flood insurance policy as is required under the Flood Disaster Protection Act of 1973, as amended, and other regulations;
 - j.** The improvements on the premises securing each Loan are kept insured by hazard insurance policies issued by insurers of recognized national standing: (i) in an amount not less than the lesser of the outstanding principal balance of the Loan or the full replacement value of the improvements, or in such other amount specified or required by the PMI Company, the FHA, HUD or the VA, (ii) of a type substantially in the form of and at least as protective as the fire and extended coverage contained in the "Standard" loss mortgage clause which provides that Seller's hazard insurance is not invalidated by acts of the Mortgagor, and (iii) containing suitable provisions for payment on all present and future Loans on the Mortgaged Property in order of precedence;
 - k.** On all insured Loans, Seller has provided Buyer with an executed HUD Mortgage Record Change Form or loan sale notice as well as any and all other documents necessary to transfer all of Seller's rights to and under the FHA Insurance Contract, FHA Commitment, PMI Contract or PMI Commitment for each Loan;
 - l.** Each of the Loan Documents executed by the Mortgagor is the legal, valid and binding obligation of the Mortgagor, enforceable in accordance with its terms, and there is as of the Closing Date no offset, defense, or counterclaim with respect to the Mortgage Note or any of the other Loan Documents;
 - m.** As of the Closing Date, to the best of Seller's knowledge, the Mortgaged Property was not affected by any condition arising from the presence of any dangerous, toxic or hazardous pollutants, chemicals, wastes, or substances;
 - n.** Except for Nonconforming Loans, each Loan is eligible for sale to the Federal National Mortgage Association, Government National Mortgage Association or Federal Home Loan Mortgage Corporation to be included in mortgage pools established for secondary market resales by such agencies; and
 - o.** Each loan offered for sale or sold to Buyer was made for the purchase of one to four family residential real property.

Section 4.02. *Seller's Duties.*

- a.** Seller agrees to take any and all actions necessary (i) to perfect and maintain good title to the Loans sold under this Agreement in Buyer, free and clear of all liens, claims and encumbrances upon such Loans; (ii) to take any and all actions that may be required to comply with the FHA Commitment or PMI Commitment; (iii) to file a VA Certification, pay the VA guaranty fee and file all relevant loan and credit documents with the VA; (iv) to obtain the FHA Insurance Contract, VA Loan Guaranty Certificate or PMI Contract; and (v) to be responsible, at no expense to Buyer, for ensuring that, at all times while this Agreement is in force, policies of fidelity, fire and extended coverage, theft, forgery, and errors and omissions insurance are maintained on Seller, each Loan or each Mortgaged Property, as applicable, and to promptly furnish proof of such insurance coverage upon demand by Buyer. Such policies of insurance will be in amounts, and written by companies of recognized national standing and will contain, in form and substance satisfactory to Buyer, standard coverages and endorsements indemnifying

Buyer against loss. Each hazard insurance policy will comply with the specifications as set forth in this Agreement.

- b.** Seller will sell, assign, and deliver to Buyer, with respect to each Loan sold to Buyer, the following documents (collectively, the "Loan Closing Documents"), all subject to the approval of Buyer and its legal counsel as to proper form and execution:
 - i.** Mortgage Note property endorsed by Seller in accordance with applicable law and regulations and, if necessary, by any company or agency insuring or guaranteeing the Loan;
 - ii.** Deed of trust or mortgage, accompanied by those assignments and other instruments necessary to record and perfect ownership thereof in Buyer, including separate assignments of rents, if any;
 - iii.** A copy of the deed with vendor's lien certified to be true and correct by the Title Company;
 - iv.** Hazard insurance policies meeting the specifications as contained in this Agreement and such forms or letters sufficient to instruct the insurer to change the loss payee under such policies to Buyer;
 - v.** Certified copy of resolutions of Seller's Board of Directors authorizing the sale of each Loan, an incumbency certificate with respect to each officer of Seller who is to sign any documents in connection with such sale, a certified copy of Seller's corporate charter and bylaws, and all amendments to each, each such certificate signed by the secretary or the assistant secretary of Seller;
 - vi.** Appropriate evidence indicating that each Mortgagor has received the disclosure materials as required by applicable law and regulations;
 - vii.** All documents, instruments and agreements constituting the Loan Package;
 - viii.** For insured or guaranteed Loans, loan sale notice or HUD Mortgage Record Change Form and any other form or notice necessary to properly notify the PMI Company, HUD, the FHA or the VA, as appropriate, of the transfer of the Loan and to transfer effectively to Buyer all rights of Seller to PMI or FHA Insurance or the guaranty of the United States covering the Loan; and
 - ix.** Such other documents, instruments and agreements required or desirable (in Buyer's sole and absolute discretion) in connection herewith.

Seller will sell and assign to Buyer all other Loan Documents previously delivered to Buyer.

- c.** Seller, or any subsequent servicer, will reinspect the Mortgaged Property securing any Loan sold hereunder which becomes sixty (60) or more calendar days delinquent and will notify Buyer of the results of such inspection.
- d.** Seller shall maintain and continue its status as an FHA Lender so long as Seller continues to offer and sell to Buyer FHA insured Loans, and shall maintain and continue its status as a VA Lender so long as Seller continues to offer and sell to Buyer VA guaranteed Loans.
- e.** Seller shall provide Buyer with revised or amended copies of all Commitment Contracts relating to Loans then held by Buyer promptly upon Seller's receipt thereof.
- f.** Seller shall provide to Buyer upon the execution of this Agreement and, thereafter, no later than thirty (30) days after the same become available, (i) current copies of Seller's quality control standards or other policy statements ("QC Standards") relating to Seller's efforts to ensure that (A) Loans originated by Seller are originated in accordance with Seller's lending policies and with all applicable federal, state, and local laws or (B) Loans purchased by Seller were purchased in accordance with all Seller's standards and policies relating to the purchase of such loans; (ii) copies of Seller's own internal audits of its own QC Standards; and (iii) copies of all third-party audits of Seller's QC Standards and/or all third-party audits of Seller's internal audits of its QC Standards.

Section 4.03. *Performance by Buyer.* In the event that Seller should fail to pay any cost or expense required to be paid by Seller hereunder, or should fail to carry out or perform fully and to Buyer's satisfaction any non-monetary duty, obligation or requirement thereunder, Buyer will have the right, but not the obligation to pay such cost or expense or to perform such duty, obligation or requirement on Seller's behalf, and Seller covenants and agrees to reimburse Buyer for any and all costs and expenses (including interest at the maximum lawful rate) incurred by Buyer on account of such performance promptly upon receipt of a written invoice from Buyer.

Section 4.04. *Seller's Representations and Warranties on Loans Sold.* In addition to the representations and warranties made by Seller under Section 4.01 at the time each Loan is offered for sale, Seller represents and warrants, as of the Closing Date for each Loan actually sold to Buyer under this Agreement, as follows:

- a.** The assignment of the Loan, all liens securing such Loan and any insurance or guaranty pertaining to such Loan, from Seller to Buyer is valid, sufficient, enforceable and conveys good title to such Loan to Buyer, free and clear of any liens, claims, or encumbrances upon such Loan;
- b.** Seller has executed and delivered to Buyer all instruments necessary to convey to Buyer all rights, titles and interests in and to each Loan and all documents evidencing, insuring, guaranteeing or securing each Loan;
- c.** All taxes and governmental assessments that became due and owing prior to the Closing Date in respect of the Mortgaged Property have been paid;

- d. An escrow of funds in an amount sufficient, in accordance with industry standards or any applicable HUD regulations, to cover a portion of one (1) calendar year's payments of taxes and governmental assessments, hazard insurance and, if applicable, mortgage insurance premiums or guaranty fees on the Mortgaged Property, has been established;
- e. Seller has not effected an assignment, sale or hypothecation of the Loan, except in favor of Buyer;
- f. The unpaid principal balance of the Loan is as stated; no part of the Mortgaged Property has been released from the lien securing each Loan; the terms of the Loan have in no way been changed or modified; and the Loan is current and not in default and no condition or circumstance exists that, with the passage of time, would constitute a default; and
- g. Seller has a current, enforceable Investor Commitment or Bulk Commitment for each Loan offered for sale to Buyer, which commitment will remain valid for at least seven (7) Business Days following the date the Loan is sold to Buyer, and Seller has done nothing to affect the validity of the Investor Commitment or Bulk Commitment.

ARTICLE V ADMINISTRATION AND SERVICING OF THE LOAN

Section 5.01. *Identification of Servicer.* Buyer hereby designates and appoints Seller as the servicer of each Loan, subject to and upon the terms and conditions hereinafter stated. Seller agrees that it will not delegate or assign its duties or obligations as servicer hereunder without Buyer's written consent. In the event of any such assignment or delegation, Seller's warranties herein contained with respect to the servicing of Loans will continue in effect, and all references to "Seller" contained in this Article V will be construed to mean "Seller or any subsequent servicer;" provided, however, no such delegation or assignment will relieve Seller of responsibility and liability for the performance of its duties and obligations hereunder.

Section 5.02. *Post-Closing Review.* Following the purchase of a Loan by Buyer, and on a continuing basis thereafter, Seller will review all of the Loan Documents to ensure that (a) each of the Loans was properly closed; (b) any and all Loan Documents are genuine and have been properly executed, acknowledged and recorded; (c) all costs, fees, and expenses relating to the closing of the Loans and the recording of all documents and instruments have been paid; (d) a Mortgagee Policy of Title Insurance on the Mortgaged Property is in full force and effect upon origination of each Loan; (e) hazard insurance policies on the Mortgaged Property is in full force and effect upon origination of each Loan and thereafter for so long as the Loan remains outstanding, which policies shall be maintained in accordance with FHA, HUD and VA rules and regulations or the terms of any PMI Contract, as applicable; (f) the assignment of each of the Loans and the Loan Documents to Buyer is valid and enforceable; (g) if an insured or guaranteed Loan, the FHA Commitment and FHA Insurance Contract, PMI Commitment and PMI Contract, the VA Loan Guaranty Certificate or any similar insurance or guaranty commitments and contracts with respect to each Loan are or will be valid and enforceable by Buyer under the National Housing Act of 1934 and the Servicemen's Readjustment Act of 1944, as amended from time to time, the PMI Contract and other applicable laws, rules, regulations and agreements; and (h) all laws, rules, regulations and agreements have been fully complied with, including, without limitation, the National Housing Act of 1934, the Servicemen's Readjustment Act of 1944, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act, the Flood Disaster Protection Act, the Truth-in-Lending Act of 1968, and all applicable usury laws.

Section 5.03. *Seller's and Mortgagor's Compliance with Law.* Seller hereby covenants and agrees that Seller will (i) comply with and cause each Mortgagor to comply with all applicable state and federal laws, rules, and regulations, and the requirements of any PMI Contract or PMI Company including those requiring the giving of notices; (ii) comply with the National Housing Act of 1934 and the Servicemen's Readjustment Act of 1944, as from time to time amended, and all applicable rules and regulations issued thereunder, and all requirements of PMI Companies, including the giving of all notices and the submitting of all claims required to be given or submitted to the FHA, HUD, the VA or the PMI Company to the end that the full benefit of the FHA Insurance Contract, VA Loan Guaranty Certificate or the PMI Contract will inure to Buyer; (iii) forward copies of all such notices or claims to Buyer; and (iv) service the Loans in accordance with all Loan Documents and all applicable federal, state and local laws and regulations, subject to Buyer's right to terminate Seller's servicing duties.

Section 5.04. *Collection, Remittance, Loan Management and Accounting.* Until the principal and interest of each Loan sold hereunder is paid in full to Buyer, Seller will:

- a. Proceed diligently to collect all payments due under the terms of the Loan Documents as they become due;
- b. Keep a complete, accurate, and separate account of and properly apply all sums collected by it from the Mortgagor on account of each Loan sold hereunder for: principle and interest, taxes, assessments and other public charges, ground rents, hazard insurance premiums, guaranty fees and FHA Insurance Premiums due under any applicable FHA Insurance Contract, and upon request by Buyer, furnish Buyer with evidence acceptable to Buyer of all expenditures for taxes, assessments and other public charges, hazard insurance premiums, PMI premiums, guaranties and FHA Insurance Premiums;
- c. Deposit all funds received from the Mortgagor in payment of the Loans sold under this Agreement, along with any additional payments received from the Mortgagor and intended for escrow to pay taxes and governmental assessments and hazard insurance and, if applicable, mortgage insurance premiums or guaranty fees on the Mortgaged Property in segregated trust or custodial demand deposit accounts at Buyer, such accounts to be held by Seller as trustee or custodian with detailed records maintained by Seller to show the respective interests of each

individual Mortgagor in the accounts, and each such account will be established and maintained in a manner which complies with the applicable rules and regulations of the FDIC, HUD and the FHA;

- d. From the funds so deposited: (1) pay promptly to the proper parties when and if due FHA Insurance Premiums, PMI premiums, VA or other guaranty fees, taxes, special assessments, ground rents, and premiums on hazard insurance policies and (2) within three (3) Business Days following Seller's receipt, deliver to Buyer all amounts of principal and interest collected under the Loan, together with any late charges, and in the event that such collected funds are not received by Buyer on such date, Seller will be subject to a late charge of fifteen percent (15%) per annum charged on the amount of such collected funds not received and such charge will be payable to Buyer by Seller on demand by Buyer;
- e. Submit to Buyer on or before March 1 of each year an accounting of the balances in each trust or custodial account, together with a certificate from Seller's chief accounting or financial officer that all disbursements were made for proper purposes, and that all payments required to be made hereunder have been made, and specifically noting all exceptions to the above, if any;
- f. At all times service and administer the Loans on behalf of and in the best interests of and for the benefit of Buyer, in the same manner in which it services and administers similar mortgage loans for other portfolios, giving due consideration to customary and usual standards of practice of prudent mortgage lenders and loan servicers;
- g. In the event any payment on any Loan is not promptly made by any Mortgagor, use all reasonable and diligent efforts to collect such delinquent payments, subject to the provisions of Section 5.07; and
- h. Perform such other customary duties, furnish such other reports and execute such other documents in connection with its servicing duties hereunder as Buyer may reasonably request.

Section 5.05. *Loan Prepayments.* Seller covenants and agrees that Seller will not accept any prepayment of mortgage principal on any Loan sold hereunder except as authorized by applicable law and regulations, and provided by the terms of the applicable mortgage instrument securing any Loan. In the event that a prepayment is made on any Loan sold hereunder, Seller covenants and agrees that Seller will segregate and deliver to Buyer, within five (5) Business Days of Seller's receipt of such prepayment, the amount of principal prepaid and collected, and the maximum amount of prepayment penalty, if any, authorized and collected under the terms of the applicable mortgage instrument and in accordance with applicable law, rules, and regulations as from time to time amended. If Buyer does not receive within the period specified above such collected prepayment and any prepayment penalty, Seller will be subject to a late charge of fifteen percent (15%) per annum charged on the sum of (a) the amount of such prepayment not timely remitted to Buyer and (b) any prepayment penalty not timely remitted to Buyer; and such late charge will be payable on demand by Buyer. Funds received on the account of the Mortgagor for the purpose of paying taxes, assessments, insurance premiums, or other similar purpose will be retained and disbursed for such purposes by Seller.

Section 5.06. *Mortgagor's Failure to Perform.* Seller covenants and agrees that, in the event any Mortgagor fails to make a payment to Seller required to be made under the terms of the applicable Loan, Seller will notify Buyer of such fact within ten (10) calendar days after the payment will have become due and payable; and Seller will use its best efforts to ascertain and forthwith will notify Buyer of the failure of any Mortgagor to perform any other obligation under the applicable Loan Documents or the occurrence of any event of default under the applicable Loan Documents, and also of any of the following which might come to the attention of Seller:

- a. The vacating of or any change in the occupancy of any Mortgaged Property;
- b. The sale or transfer of any Mortgaged Property;
- c. The death, bankruptcy, insolvency, or other disability of any Mortgagor which might impair ability to repay the Loan;
- d. Any loss or damage to any Mortgaged Property, in which event, in addition to notifying Buyer, Seller will notify promptly the insurance companies concerned; and
- e. Any lack of repair or any other deterioration or waste suffered or committed or the existence of any other condition or event that could have a materially adverse effect on the value of the Mortgaged Property.

Section 5.07. *Foreclosure or Other Acquisition of Mortgaged Property.* Seller shall not, without the express written request of Buyer, accelerate, foreclose or take any similar action with respect to any Loan or to acquire any Mortgaged Property. Should Buyer expressly request Seller's assistance in writing, Seller covenants and agrees that Seller will, under the direction of Buyer, assist in: (a) the foreclosure or other acquisition of the Mortgaged Property; (b) the transfer of such Mortgaged Property to the FHA, HUD, and VA, or the PMI Company, where appropriate; and (c) the collection of any applicable mortgage insurance or guaranty on any Loan; (d) the forwarding of the proceeds of such insurance or guaranty to Buyer immediately upon Seller's receipt thereof; and (e) pending completion of these steps, protect such Mortgaged Property from waste and vandalism. Seller covenants and agrees that it will, upon request of Buyer, have title to the Mortgaged Property conveyed to Buyer. Buyer covenants and agrees to reimburse Seller for its reasonable out-of-pocket expenses so incurred under this section, including attorneys' fees. In the event that Buyer takes title to the Mortgaged Property by deed in lieu of foreclosure, Seller covenants and agrees that it will (i) protect the Mortgaged Property while so owned and (ii) manage, operate, improve, rent, and sell such Mortgaged Property or a portion thereof, all these operations to be on terms and as determined and directed by Buyer from time to time. Upon the sale of such Mortgaged Property on terms

as specified by Buyer, if payments are deferred and payable under a loan contract, Seller covenants and agrees that it will service such Loan until completely liquidated, upon the terms provided for the servicing of Loans herein.

Section 5.08. *Custody of Insurance Policies.* Seller covenants and agrees that it will hold for Buyer's account all insurance policies and renewals as required by this Agreement, and if directed by Buyer, will deliver such policies to Buyer.

Section 5.09. *Seller's Furnishing of Financial Condition Statement.* Seller covenants and agrees that it will, within thirty (30) calendar days after the end of each calendar month following the date of execution hereof, provide Buyer with monthly financial statements (including, without limitation, balance sheet, income statement and statement of cash flows) prepared in accordance with generally accepted accounting principles, consistently applied. Upon Buyer's request, Seller agrees to give to Buyer or its authorized representative an opportunity at any time during normal business hours to examine Seller's books and records. Seller covenants and agrees that it will cause a certified public accountant to provide Buyer, not later than ninety (90) calendar days after the close of each fiscal year of Seller, with audited financial statements prepared in accordance with generally accepted accounting principles, consistently applied, and consisting at a minimum of a balance sheet, an income statement and a statement of cash flows, setting forth Seller's financial condition and results of operations as of the close of the most recently ended fiscal year.

Section 5.10. *Records Maintenance.* Seller covenants and agrees that it will keep records satisfactory to Buyer pertaining to each Loan sold hereunder, and such records will be the property of Buyer and upon termination of this Agreement will be delivered to Buyer. Seller further covenants and agrees, on Buyer's behalf, to comply with all state and federal record retention rules by keeping all documents relating to the Loans for the number of years required thereunder.

Section 5.11. *Other Seller Duties.* Until the principal and interest of each Loan sold hereunder is paid in full, Seller covenants and agrees that it will perform such other customary duties, furnish such reports, and execute such other documents in connection with its duties hereunder as Buyer from time to time reasonably may require.

Section 5.12. *Compensation.* The Mortgage servicing being provided hereunder is in further consideration of the purchase of the Loans by Buyer, and Seller is not entitled to and will not receive from Buyer any additional compensation or remuneration for any services hereunder; provided, however, that in the event that provisions of this Agreement *other than* this Article V are terminated, Seller shall be paid a reasonable servicing fee to be agreed upon by Buyer and Seller with respect to any Loans that will continue to be serviced by Seller following such termination.

Section 5.13. *Other Agreements.* Seller covenants and agrees that it will not waive, amend, modify, release, or consent to postponement on the part of the Mortgagor of any term or provision of the Loan Documents or any other right of Buyer or obligation of any Mortgagor without the prior written consent of Buyer.

Section 5.14. *Transfer of Servicing Duties.* In the event of any assignment or delegation of Seller's or any subsequent servicer's duties under Article V, whether at the direction of Seller, any subsequent servicer or Buyer, such transfer of servicing duties shall be at Seller's, or any subsequent servicer's expense. In connection with any transfer of Loan servicing duties hereunder, Seller and each subsequent servicer covenant and agree:

- a. To take any and all action necessary to enable each new servicer designated by Buyer to convert the servicing of the Loans to its own servicing system;
- b. To provide each new servicer with all documents and records (including records stored electronically on computer tapes, magnetic discs and the like) relating to the Loans that are reasonably requested by the new servicer;
- c. To transfer all amounts being held by Seller in escrow and other accounts to each new servicer; and
- d. To take any and all action necessary to notify any and all parties as Buyer reasonably desires, including, without limitation, the Mortgagor, the FHA, HUD, the VA, the PMI Company and all other insurers or guarantors, of the identity of the new servicer.

ARTICLE VI RESALE OF LOANS BY BUYER

Section 6.01. *Sale of Loans Pursuant to Investor Commitment or Bulk Commitment.* Buyer may, at any time, and from time to time, should Buyer so desire, sell any one or more Loans purchased from Seller hereunder to the appropriate Approved Investor pursuant to the terms of Investor Commitments or Bulk Commitments provided to Buyer by Seller. In the event that either an Approved Investor fails to honor an Investor Commitment or a Bulk Commitment, or the appropriate Bulk Commitment or Investor Commitment expires, Buyer may resell the relevant Loan to any Approved Investor. As additional consideration for Seller's procurement for Buyer of said Investor Commitments or Bulk Commitments, Buyer agrees to remit to Seller certain profits, if any, received by Buyer upon the sale of any Loan pursuant to an Investor Commitment or Bulk Commitment, or if not pursuant to an Investor Commitment or a Bulk Commitment, to an Approved Investor otherwise procured by Seller. The profits to be remitted to Seller shall be determined as follows: within ten (10) Business Days following Buyer's receipt of payment for each Loan resold by Buyer to an Approved Investor procured by Seller as provided above, Buyer shall remit to Seller the amount, if any, by which the sum of (i) the purchase price actually paid in cash by the Approved Investor to Buyer for the Loan, plus (ii) the amount of any principal payments made by Mortgagors and actually received by Buyer, plus (iii) the amount of any escrowed funds held by Buyer and offset by the Approved Investor on the payment for the Loan (collectively, the "Resale Consideration"), exceeds the Purchase Price. In the event that the Resale Consideration is less than or equal to the Purchase Price, no funds shall be owed by Buyer, and any such loss shall be incurred by Buyer, except to the extent that Buyer may be reimbursed from the Reserve Account pursuant to Article VII. In the event that Buyer resells a Loan to a purchaser procured by Buyer, no profits will be owed to Seller.

Section 6.02. *Sale of Loans or Participation Interests to Third Parties.* In the event that Buyer should sell any Loan other than pursuant to an Investor Commitment or a Bulk Commitment, such third parties as purchase such Loan shall succeed to all of the rights of Buyer hereunder for the portion purchased, and this Agreement will remain in full force and effect, subject to such subsequent purchasers' right to terminate this Agreement in accordance with Article VIII. In the event that such subsequent purchaser does not terminate this Agreement, Seller covenants and agrees that it will remit all principal and interest installments collected under the Loans directly to such third party or parties as hereinabove provided with respect to Buyer. The obligation to make direct remittances and to execute and deliver all appropriate notices required by this Agreement to such third party or parties will arise upon thirty (30) calendar days' prior written notice of such assignment delivered by Buyer and such subsequent purchasers to Seller, which written notice must include proof of ownership of the Loans.

ARTICLE VII RESERVE ACCOUNT

Section 7.01. *Establishment of a Reserve Account.* On or before the date the first Loan Package is submitted by Seller to Buyer pursuant to Section 3.03, Seller shall deposit with Buyer the sum of \$25,000.00 in immediately available funds to be held by Buyer in a non-interest bearing reserve account.

Section 7.02. *Reserve Against Losses on Loan Resales.* In the event that Seller shall fail to deliver promptly, to cause to be delivered promptly or to facilitate the prompt delivery of any Loan Documents to Buyer or to an Approved Investor, as required by Investor Commitment and, as a result of such delay, the Approved Investor does not receive the Loan Documents prior to the expiration of the Investor Commitment, or Seller shall cause any other losses to Buyer with respect to any Loan, Buyer shall be entitled to deduct from the Reserve Account an amount equal to the difference between the Resale Consideration that Buyer should have received pursuant to the Investor Commitment for such Loan and the actual Resale Consideration received by Buyer following the expiration of the Investor Commitment. In the event that Buyer withdraws funds from the Reserve Account pursuant to this paragraph, within ten (10) calendar days from the date of such withdrawal, Seller shall deposit with Buyer, in immediately available funds, an amount sufficient to increase the balance of the Reserve Account back to twenty-five thousand dollars (\$25,000). Buyer shall have no right to receive repayment for losses on the sale of any Loan or Loans from Seller other than out of the Reserve Account, and Buyer's right to recover against losses is limited to losses resulting, directly or indirectly, from Seller's failure to deliver promptly, to cause to be delivered promptly, or to facilitate the prompt delivery of Loan Documents. Buyer shall have the right to require an increase in the minimum balance of the Reserve Account from time to time upon thirty (30) calendar days written notice to Seller.

Section 7.03. *Distribution of Reserves to Seller.* At such time as (i) all Loans purchased by Buyer from Seller have been resold by Buyer and (ii) Buyer and Seller agree in writing to terminate this Agreement, all remaining funds contained in the Reserve Account will be distributed to Seller.

ARTICLE VIII TERMINATION OF THIS AGREEMENT

Section 8.01. *Loans Being Serviced.* Buyer may, by delivering notice to Seller, terminate all rights of Seller hereunder, including, without limiting the generality of the foregoing, Seller's rights pursuant to any or all of the following Articles: II, III, IV, V, VI, VII, VIII and IX, in the event that:

- a. Seller, in the sole opinion of Buyer, fails to perform its obligations hereunder; or
- b. Seller is placed under conservatorship or receivership or files for protection under any applicable bankruptcy law or an order for relief is entered in any bankruptcy proceeding of or against Seller; or
- c. Seller assigns or attempts to assign its rights and obligations hereunder, without written consent of Buyer; or
- d. In the event and without cause, upon delivering, at any time, thirty (30) calendar days' prior written notice of termination specifying which Articles of this Agreement Buyer desires to terminate.

Unless Seller's rights under Article V are specifically terminated, Seller shall continue to service the Loans as provided herein for so long as they are owned by Buyer. In the event that Buyer terminates Seller's rights under Article V pursuant to this Section 8.01, Seller will facilitate and cooperate with Buyer in transferring to Buyer or its nominee all Loan servicing functions theretofore performed or required to be performed by Seller pursuant hereto.

Section 8.02. *Future Acceptance of Loans.*

- a. Seller's right to offer to sell Loans to Buyer, Buyer's option to purchase Loans and Buyer's obligations hereunder, may be terminated by either party hereto at any time upon delivering written notice of termination to the other party, but such termination will not in any respect change or modify the obligation of Seller with respect to the servicing of Loans which Seller is then servicing or required to service, pursuant hereto, and Seller will continue to be responsible for the servicing of such Loans unless and until Buyer terminates this Agreement in accordance with the provisions contained herein.
- b. Buyer may terminate all effects, provisions, requirements and obligations arising under this Agreement and cause this Agreement to be without further force or effect, by giving written notice (making specific reference to this

Section 8.02(b)) of such termination to Seller, and such termination will be effective thirty (30) calendar days after the sending of such notice to Seller.

Section 8.03. *Seller's Duties.* Upon termination of any of Seller's obligations under this Agreement, Seller covenants and agrees that it or any subsequent servicer will account for, turn over and assign to Buyer all funds collected under each Loan sold hereunder and deliver to Buyer all records and documents that it may have in its possession relating to each such Loan, and will identify and turn over to Buyer all other amounts, escrowed funds, documents, and agreements pertaining to the Loans.

ARTICLE IX MISCELLANEOUS PROVISIONS

Section 9.01. *Events of Default, Remedies.* In the event that any agreement, covenant or promise contained in this Agreement is breached or violated by one of the parties hereto, or any representation or warranty is untrue or incorrect in any respect, the non-breaching party shall be entitled to obtain from the breaching party such remedies, relief or damages as are allowable at law or in equity, by common law or by statute, whether for damages, equitable relief (including, without limitation, rescission of the purchase by Buyer of the Loan(s) with respect to which such breach, violation or misrepresentation occurred) or such other remedies as may be granted by a court of competent jurisdiction.

Section 9.02. *"Doing Business" Registration and Fees.* On request of Buyer, Seller will arrange for appropriate registration and payment of any fee which might be required under the laws of each state in which Mortgaged Property is located, in connection with doing business by Buyer in such state. Such registration fees are to be reimbursed by Buyer upon submission of a statement.

Section 9.03. *Appointment of Trustees.* It is agreed by Buyer and Seller that the appointment of any trustees or successor trustees under any deeds of trust will be subject to the approval of Buyer.

Section 9.04. *Effect of Article and Section Headings.* The Article and Section headings herein are for convenience only and will not be used in construing the meaning, purposes, or intent of this Agreement.

Section 9.05. *Notices and Deliveries.*

- a. Any notice to be given by either party to this Agreement will be given in writing and may be effected by facsimile transmission, personal delivery, overnight courier service or sent by certified, United States Mail, postage prepaid, and sent to the address listed below.
- b. Any delivery of documents will be effected by personal delivery or overnight courier service directed to the address listed below.
 - i. If to Seller:
[address]
[Facsimile:]
[Attention:]
 - ii. If to Buyer:
[address]
[Facsimile:]
[Attention:]
- c. Any notice sent in compliance with the requirements of this Section 9.05 will be deemed received on the earlier to occur of (i) the date such notice is received by the party or parties to whom such notice is addressed and (ii) five (5) Business Days following the date such notice is deposited in a United States Post Office or other official depository of the United States mail. Notwithstanding the foregoing, any notice by facsimile, other than the notice required under section 2.01(b), will not be valid unless an original written notice is delivered within five (5) Business Days of the delivery of notice of facsimile.

Section 9.06. *Modification.* This Agreement cannot under any circumstance be modified orally, and no agreement will be effective to waive, change, modify or discharge this Agreement in whole or in part unless such agreement is in writing and is signed by both Seller and Buyer.

Section 9.07. *Time of Essence.* Seller and Buyer agree that time is of the essence with regard to this Agreement.

Section 9.08. *Successors and Assigns.* The terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto. Seller will not assign, nor be entitled to assign, this Agreement or any rights therein, any such attempted assignment by Seller being void *ab initio*. Buyer may assign all or any part of its interests, rights, duties or obligations herein, or in any Loans purchased by Buyer, at any time or from time to time.

Section 9.09. *Further Assurances.* Both Seller and Buyer agree that each will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to the Closing Date of each Loan, as may be reasonably requested by the other party to consummate more effectively the transactions contemplated by this Agreement. The provisions of this Section 9.09 will survive the termination of this Agreement. The representations and warranties made by Seller herein shall survive the execution and delivery hereof as well as the Closing Date for each sale of Loans, and shall be actionable for so long as permitted by the applicable statute of limitations.

Section 9.10. *Attorney Fees.* In the event of any controversy, claim or dispute between Seller and Buyer affecting or relating to the subject matter or performance of this Agreement, Buyer will be entitled to recover from Seller all of Buyer's reasonable expenses related to such controversy, claim or dispute, including, without limitation, attorney fees, accountants' fees and court costs.

Section 9.11. *Counterparts.* This Agreement may be executed in multiple counterparts, and all such executed counterparts will constitute the same agreement. It will be necessary to account for only one such counterpart in proving the existence, validity or content of this Agreement.

Section 9.12. *Severability; Waiver.*

- a. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will nonetheless remain in full force and effect; and
- b. No failure on the part of Buyer to exercise and no delay in exercising and no course of dealing with respect to any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof of the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided at law or in equity.

Section 9.13. *Document Contains Entire Agreement.* This document contains the entire agreement between the parties hereto and cannot be modified in any respect except by an agreement in writing. The invalidity of any portion of this Agreement will in no way effect the balance thereof. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. The execution of this Agreement shall serve to terminate any Mortgage Loan Sale and Servicing Agreement or similar agreement or arrangement concerning the sale of Loans from Seller to Buyer executed prior to the date hereof including, without limitation, the Prior Agreement. THIS AGREEMENT IS THE ONLY ARRANGEMENT BETWEEN SELLER AND BUYER CONCERNING THE PURCHASE AND SALE OF LOANS.

Section 9.14. *Not a Commitment.* THIS AGREEMENT IS NOT AND WILL NOT BE CONSTRUED AS A COMMITMENT FROM BUYER TO PURCHASE LOANS FROM SELLER, BUT IS RATHER A STATEMENT OF TERMS TO GOVERN ANY FUTURE SALES OF LOANS FROM SELLER TO BUYER, IF, AS, AND WHEN BUYER AGREES TO PURCHASE SUCH LOANS AND SUCH SALES OCCUR, AS EVIDENCED BY THE EXECUTION AND DELIVERY BY SELLER OF AN EXECUTED FORM OF TRANSFER, SALE AND ASSIGNMENT OF MORTGAGE LOAN PACKAGE.

Section 9.15. *Governing Law.* This Agreement will be governed by and construed in accordance with the internal laws of the State of _____, without regard to _____ principles of conflicts of laws.

Section 9.16. *No Partnership; No Fiduciary Relationship.* Notwithstanding anything to the contrary contained in this Agreement, nothing herein contained is intended to create, nor shall be construed as creating a partnership, joint venture or other association for profit between Buyer and Seller. Buyer is not the agent of Seller, and Buyer owes no fiduciary or other duty to Seller. Buyer is entitled, in the event that the Approved Investor obtained by Seller does not or cannot purchase the Loans which such Approved Investor is committed to purchase, to resell Loans purchased from Seller to any person (including any affiliate of Buyer), and at any price and upon any terms, as may be satisfactory to Buyer in Buyer's sole and absolute discretion.

IN WITNESS WHEREOF, each party has caused its corporate seal to be affixed hereto and this instrument to be signed in its corporate name on its behalf by its proper officers duly authorized.

Executed in multiple counterparts, each of which will be deemed an original, as of the dates set forth below, to be effective, however, as of the _____ day of _____, 20____.

SELLER:

Executed by Seller
this _____ day of _____,
_____, 20____

a _____ corporation

By: [name]
President

By: [name]
Secretary

BUYER:

Executed by Buyer
this _____ day of _____,
_____, 20____

_____ BANK, a national
banking association

By: [name]
[title]