

NEW YORK MORTGAGE TRUST INC

FORM 10-K (Annual Report)

Filed 03/16/06 for the Period Ending 12/31/05

Address	52 VANDERBILT AVENUE SUITE 403 NEW YORK, NY 10017
Telephone	(212) 792-0107
CIK	0001273685
Symbol	NYMT
SIC Code	6798 - Real Estate Investment Trusts
Industry	Real Estate Operations
Sector	Services
Fiscal Year	12/31

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-K

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

For the Fiscal Year Ended December 31, 2005

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

For the Transition Period From to

Commission File Number 001-32216

NEW YORK MORTGAGE TRUST, INC.

(Exact name of registrant as specified in its charter)

Maryland

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

47-0934168

*(I.R.S. Employer
Identification No.)*

1301 Avenue of the Americas, New York, New York 10019

(Address of principal executive office) (Zip Code)

(Registrant's telephone number, including area code)

(212) 634-9400

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

Title of Each Class

Common Stock, \$0.01 par value

Name of Each Exchange on Which Registered

New York Stock Exchange

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes No R

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes No R

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No R

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of “accelerated filers” and “large accelerated filers” in Rule 12b-2 of The Exchange Act. (check one):

Large Accelerated Filer Accelerated Filer R Non-Accelerated Filer

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

The aggregate market value of voting stock held by non-affiliates of the registrant as of June 30, 2005 was approximately \$133.5 million based on the closing price on such date of the registrant’s common stock as reported by the New York Stock Exchange Composite Transactions.

The number of shares of the Registrant’s Common Stock outstanding on March 1, 2006 was 18,258,221.

DOCUMENTS INCORPORATED BY REFERENCE

Document	Where Incorporated
1. Proxy Statement for Annual Meeting of Stockholders to be held on June 14, 2006, to be filed with the Securities and Exchange Commission	Part III

NEW YORK MORTGAGE TRUST, INC.

FORM 10-K

For the Fiscal Year Ended December 31, 2005

TABLE OF CONTENTS

PART I

Item 1.	Business	1
Item 1A.	Risk Factors	14
Item 1B.	Unresolved Staff Comments	19
Item 2.	Properties	19
Item 3.	Legal Proceedings	19
Item 4.	Submission of Matters to a Vote of Security Holders	19

PART II

Item 5.	Market For Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	19
Item 6.	Selected Financial Data	20
Item 7.	Management's Discussion and Analysis of Financial Condition and Results of Operations	22
Item 7A.	Quantitative and Qualitative Disclosures About Market Risk	53
Item 8.	Financial Statements and Supplementary Data	60
Item 9.	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	60
Item 9A.	Controls and Procedures	60
Item 9B.	Other Information	60

PART III

Item 10.	Directors and Executive Officers of the Registrant	61
Item 11.	Executive Compensation	61
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	61
Item 13.	Certain Relationships and Related Transactions	61
Item 14.	Principal Accountant Fees and Services	61

PART IV

Item 15.	Exhibits and Financial Statement Schedules	62
----------	--	----

PART I

Item 1. *BUSINESS*

General

New York Mortgage Trust, Inc. together with its consolidated subsidiaries (“NYMT”, the “Company”, “we”, “our”, and “us”) is a self-advised residential mortgage finance company that originates, acquires and invests in adjustable and variable rate mortgage (“ARM”) assets. We earn net interest income from residential mortgage-backed securities and adjustable-rate mortgage loans and securities. We also earn gain on sale income and net interest income by originating a variety of residential mortgage loan products through our wholly-owned subsidiary, The New York Mortgage Company, LLC (“NYMC”). NYMC also originates residential mortgage loans as a broker for other mortgage bankers for the purpose of obtaining broker fee income. NYMC, which originates residential mortgage loans through a network of 28 full-service loan origination locations and 26 satellite loan origination locations, is presently licensed or authorized to do business in 43 states and the District of Columbia.

Our residential mortgage investments are comprised of ARM loans, ARM securities and floating rate collateralized mortgage obligations (“CMO Floaters”). The ARM loans and securities have interest rates that reset in a year or less and “hybrid” ARM loans and securities have a fixed interest rate for an initial period of two to seven years before converting to ARM loans and securities whose rates will reset each year or such shorter period for their remaining terms to maturity. ARM securities represent interests in pools of whole ARM loans. The ARM securities are rated by at least one of two nationally recognized rating agencies, Standard & Poor’s, Inc. or Moody’s Investors Service, Inc. (the “Rating Agencies”), or issued by Freddie Mac (“FHLMC”), Fannie Mae (“FNMA”) or Ginnie Mae (“GNMA”). The securitizations result in a series of rated mortgage securities backed by the ARM loans. The CMO Floaters are mortgage securities backed by a pool of FNMA, FHLMC or GNMA fixed rate mortgage loans which have interest rates that adjust monthly. As an investor in residential mortgage assets, our net income is generated primarily from the difference between the interest income we earn on our mortgage assets and the cost of our borrowings (net of hedging expenses), commonly referred as the “Net Spread.”. Our goal is to maximize the long-term sustainable difference between the yield on our investments and the cost of financing these assets through the following strategies:

- focusing on originating high credit quality residential mortgage loans through NYMC that we believe can either be retained in our portfolio or sold at a profit;
- focusing on maximizing our lending to home buyers rather than to home owners seeking to refinance their mortgage loans, which we believe makes our business less vulnerable to declines in loan origination volume resulting from increases in interest rates;
- leveraging our portfolio to increase its size with the intent to enhance our returns while at the same time managing the increased risk of loss associated with this leverage;
- utilizing hedging strategies that we consider appropriate to minimize exposure to interest rate changes; and
- expanding our retail and wholesale mortgage banking business through the hiring of additional loan officers, the opening of new retail branch offices in new markets and selectively pursuing strategic acquisitions in the mortgage banking industry.

In order to be a full service provider to our customers, we originate mortgage loans through NYMC. Licensed or exempt from licensing in 43 states and the District of Columbia and through a network of 28 full service branch loan origination locations and 26 satellite loan origination locations, NYMC offers a broad range of residential mortgage products, with a primary focus on prime, or high credit quality, residential mortgage loans. We either sell the fixed-rate loans that we originate to third parties and retain and finance in our portfolio selected adjustable-rate and hybrid mortgage loans that we originate or we sell them to third parties. Our portfolio of loans is held at the real estate investment trust (“REIT”) level or by a qualified REIT subsidiary (“QRS”). We rely on our own underwriting criteria with respect to the mortgage loans we retain and rely on the underwriting criteria of the institutions to which we sell our loans with respect to the loans we intend to sell. In either case, we directly perform the underwriting of such loans with our own experienced underwriters.

Upon completion of our initial public offering (“IPO”) in June 2004, we purchased or invested, on a leveraged basis, residential mortgage-backed securities guaranteed by FNMA or FHLMC or rated investment grade-AAA. Over time, as these securities amortize and pay-off, they will be replaced by adjustable-rate and hybrid mortgage loans that we originate or other qualifying loans or securities. We may also supplement our portfolio with loans originated through our correspondent network or purchased from third parties. We believe that our return is enhanced by retaining loans that we originate as the basis for our portfolio. We believe that mortgage investors that do not have their own origination capabilities (a “passive portfolio investor”) must purchase their mortgage loans from third parties at higher premiums than our cost of originating the mortgage loans that we retain.

We finance the purchases and originations of our ARM loans, ARM securities and CMO Floaters (collectively “ARM Assets”) with equity capital, unsecured debt and short-term borrowings such as repurchase agreements, securitizations resulting in floating-rate long-term collateralized debt obligations (“CDOs”) and other collateralized financings. We enter into swap agreements whereby we receive floating rate payments in exchange for fixed rate payments, effectively converting the borrowings to a fixed rate. We believe our exposure and risks related to changes in interest rates can be prudently managed through holding ARM Assets and attempting to match the duration of our liabilities with the duration of our ARM Assets. From a credit risk perspective, we retain high quality assets and follow strict credit underwriting standards.

Unlike banks, savings and loans or most mortgage originators, we are structured as a REIT for federal income tax purposes. We have elected to be taxed as a REIT under Sections 856-860 of the Internal Revenue Code (IRC) of 1986, as amended, commencing with our taxable year ended December 31, 2004, and we operate so as to qualify as a real estate investment trust (“REIT”) for federal income tax purposes. We hold our investment in ARM Assets directly or in a QRS. Accordingly, the net interest income we earn on our ARM Assets is generally not subject to federal income tax as long as we distribute at least 90% of our REIT taxable income in the form of a dividend to our stockholders each year and comply with various other requirements. Failure to qualify as a REIT would subject the Company to federal income tax (including any applicable minimum tax) on its taxable income at regular corporate rates and distributions to its shareholders in any such year would not be deductible by the Company.

Our mortgage banking operations are performed at NYMC, a taxable REIT subsidiary (“TRS”). The activities we conduct through NYMC, including sourcing and selling mortgage loans sold to third parties, are subject to federal and state corporate income tax. We may elect to retain any after tax income generated by NYMC, and, as a result, may increase our consolidated capital and grow our business through retained earnings or distribute all or a portion of our after-tax NYMC earnings to our stockholders.

Access to our Periodic SEC Reports and Other Corporate Information

Our internet website address is www.nymtrust.com. We make available free of charge, through our internet website, our annual report on Form 10-K, our quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments thereto that we file or furnish pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission (the “SEC”). Our Corporate Governance Guidelines and Code of Business Conduct and Ethics and the charters of our Audit, Compensation and Nominating and Corporate Governance Committees are also available on our website and are available in print to any stockholder upon request in writing to New York Mortgage Trust, Inc., c/o Chief Financial Officer and Secretary, 1301 Avenue of the Americas, 7th floor, New York, New York 10019. Information on our website is neither part of nor incorporated into this annual report on Form 10-K.

Corporate Governance

We operate our business with a focus on high standards in business practices and professional conduct. The following are some of the highlights relating to our corporate governance:

- Our board of directors is composed of a super-majority of independent directors. As per guidelines established by the SEC and NYSE, the Audit, Nominating/Governance and Compensation Committees are composed exclusively of independent directors.
- We have adopted a Code of Business Conduct and Ethics and Corporate Governance Guidelines that apply to all officers, directors and employees (as well as a supplemental Code of Ethics for Senior Financial Officers) to promote the highest standard of conduct and ethics in our dealings with our customers, stockholders, vendors, the public and our employees.
- Our Insider Trading Policy prohibits any of the directors, officers or employees of the Company from buying or selling our stock on the basis of material nonpublic information, and in conjunction with our Regulation FD policy, prohibits communicating material nonpublic information to others. Trading of our securities by directors, officers or employees is allowed only during a discreet narrow open period after our quarterly report on Form 10-Q or annual report on Form 10-K is filed with the SEC.
- Generally, we will “early adopt” new accounting standards promulgated by the Financial Accounting Standards Board (“FASB”), the SEC or other standard setting accounting body.
- We have established a formal internal audit function to monitor and test the efficiency of our internal controls and procedures as well as the implementation of Section 404 of the Sarbanes-Oxley Act of 2002.
- We have made publicly available, through our website www.nymtrust.com, the charters of the independent committees of our Board

of Directors (Audit Committee, Compensation Committee, Nominating and Corporate Governance Committee) and other corporate governance materials, including our Code of Business Conduct and Ethics, our Corporate Governance Guidelines, our Insider Trading Policy, and other corporate governance policies.

Company History

We were formed as a Maryland corporation in September 2003. On January 9, 2004, we capitalized New York Mortgage Funding, LLC (“NYMF”) as a wholly-owned subsidiary of our company. NYMF is a qualified REIT subsidiary, or QRS, in which we accumulate mortgage loans that the Company intends to securitize. In June 2004, we sold 15 million shares of our common stock in an IPO at a price to the public of \$9.00 per share, for net proceeds of approximately \$122 million after deducting the underwriters’ discount and other offering expenses. Concurrent with our IPO, we issued 2,750,000 shares of common stock in exchange for the contribution to us of 100% of the equity interests of NYMC. Prior to the IPO, we did not have recurring business operations.

Prior to being acquired by us, NYMC’s business strategy was to sell or broker all of the loans it originated to third parties and the largest component of NYMC’s net income was generated by the gain on sale of such loans. For accounting purposes and reporting purposes, the combination of our company and NYMC is accounted for as a reverse merger and the related transfer of loans originated by NYMC to us is accounted for as a transfer of assets between entities under common control. Accordingly, we have recorded assets and liabilities transferred from NYMC at their carrying amounts in the accounts of NYMC at the date of transfer. The consolidated financial statements include the accounts of our company subsequent to the IPO and also include the accounts of NYMC and NYMF prior to the IPO. As a result, our historical financial results prior to the IPO reflect the financial operations of this prior business strategy of selling virtually all of the loans originated by NYMC to third parties. Furthermore, the ARM loans we originated and securitized in the securitizations completed in 2005 were recorded at cost with no gain on sale recognized, as would be the case if sold to third parties. Since our IPO, our business strategy has been to invest in ARM loans and securitize them to generate net interest income. As a result, our historic operations prior to the IPO and current financial operations are not necessarily comparable.

Our Industry

Generally, the residential mortgage industry is segmented by the size of the mortgage loans and credit characteristics of the borrowers. Mortgage loans that conform to the guidelines of entities such as FHLMC, FNMA or GNMA, for both size and credit characteristics are often referred to as “conforming” mortgage loans. All other mortgage loans are often referred to as non-conforming loans either because the size of the loan exceeds the guideline limit or the credit profiles of the borrowers do not meet the guideline requirements. Our strategy focuses on adjustable- and fixed-rate and hybrid first lien mortgage loans to borrowers with strong credit profiles, which we refer to as prime mortgage loans. We believe the adjustable-rate and hybrid segment of the prime residential mortgage loan industry and our ability to originate such loans provides us the opportunity to build a portfolio of our high quality self-originated prime adjustable-rate and hybrid loans with the goal of generating higher risk-adjusted returns on investment than would be available from a portfolio based either on purchased loans or on fixed-rate or non-prime loans. We believe that our experience as a mortgage loan originator with a comprehensive and sophisticated process for credit evaluation, risk-based pricing and loss mitigation will, over time, provide us with a significant advantage over other portfolio investors who do not have comparable origination capabilities.

We believe changes are continuing to occur in the U.S. mortgage industry, resulting in the shifting of investment capital and mortgage assets out of traditional lending and savings institutions and into new forms of mortgage banking and mortgage investment firms, including those that qualify as REITs under the Internal Revenue Code. We believe that, while traditional mortgage investment companies, such as banks, thrifts and insurance companies, generally have greater diversification in their investments than we have as a REIT, they provide less attractive investment structures for investing in mortgage assets because of the costs associated with regulation, infrastructure and corporate level taxation. As a REIT, we are generally able to pass through our REIT earnings to our stockholders without incurring entity-level federal income tax, thereby allowing us to make relatively larger distributions than institutions with similar investments because they are subject to federal income tax on their earnings.

Additionally, with the development of highly competitive national mortgage markets (which we believe is partly due to the operations of FHLMC, FNMA or GNMA), local and regional mortgage originators have lost market share to more efficient mortgage originators who compete nationally. The growth of the secondary mortgage market, including new securitization techniques, has also resulted in financing structures that can be utilized efficiently to fund leveraged mortgage portfolios and better manage interest rate risk.

Operating Policies, Strategies and Business Segments

The Company operates two segments:

- *Mortgage Portfolio Management* — long-term investment in high-quality, adjustable-rate mortgage loans and residential mortgage-backed securities; and
- *Mortgage Lending* — mortgage loan originations as conducted by NYMC.

Our mortgage portfolio management operations primarily invest in adjustable-rate agency and “AAA”— rated residential mortgage-backed securities and high-quality mortgages that are originated by our mortgage operations or that may be acquired from third parties. Our equity capital and borrowed funds are used to invest in residential mortgage-backed securities and loans held for subsequent securitization, thereby producing net interest income.

Our mortgage lending segment originates residential mortgage loans through our taxable REIT subsidiary, NYMC. Loans are originated through NYMC’s retail and internet branches as well as from independent mortgage brokers and generate gain on sale revenue when the loans are sold to third parties or revenue from brokered loans when the loans are brokered to third parties.

Mortgage Portfolio Management

Prior to the completion of our IPO on June 29, 2004, our operations were limited to the mortgage operations described in the section below entitled “Mortgage Lending.” Beginning in July 2004, we began to implement our business plan of investing in high quality, adjustable rate mortgage loan securities. Our portfolio management strategy is to originate and acquire ARM Assets to hold in our portfolio, fund them using equity capital and borrowings and to generate net interest income from the difference, or net spread, between the yield on these assets and our cost of financing. In order to accomplish this, our:

- Proceeds from equity raising efforts are promptly invested in acquired ARM Assets in order to generate returns on the equity investment.
- Acquired ARM Assets are replaced with high-quality, higher-yielding, lower cost ARM loans self-originated through NYMC retail channels or otherwise acquired.
- Mortgage portfolio management operates with a long-term investment outlook.
- Short-term financing of ARM loans to be securitized is provided by secured warehouse and aggregation lines.
- Ultimate financing for ARM loans is provided by either issuing collateralized debt obligations or by repurchase financing facilities.

We believe we benefit from a cost advantage from self-originating loans and holding these loans in securitized form in the REIT or our QRS:

- through self-origination, we avoid the intermediation costs associated with purchasing mortgage assets in the capital markets; and
- the net interest income generated in the REIT or our QRS generally will not be subject to tax, whereas, had we sold our loans in the capital markets through our TRS, we would have been subject to tax on the gain on sale of loans.

We believe, this strategy, together with prudent leverage to produce the mortgage-backed securities we hold, will produce a greater return for our stockholders in the long term relative to a purchased securities portfolio. This greater return is accomplished by a combination of the recognition of the incremental lower cost to originate such loans and/or the ability to better afford appropriate interest rate hedging strategies in order to provide a similar return to a purchased securities portfolio but with a lower risk profile.

We seek to have a portfolio consisting of high quality mortgage-backed securities and loans. We believe that retaining high quality assets in our portfolio helps us mitigate risks associated with market disruptions. Our investment guidelines define the following classifications for securities we own:

- Category I investments are mortgage-backed securities that are either rated within one of the two highest rating categories by at least one of the Rating Agencies, or have their repayment guaranteed by FHLMC, FNMA or GNMA.
- Category II investments are mortgage-backed securities with an investment grade rating of BBB/Baa or better by at least one of the Rating Agencies.
- Category III investments are mortgage-backed securities that have no rating from, or are rated below investment grade by at least one of the Rating Agencies.

We retain on our balance sheet a majority of the residential first lien adjustable-rate and hybrid mortgage loans originated by NYMC that we believe have a low risk of default and resulting loss and are of the following types:

- 1 month adjustable-rate (various total terms);
- 6 month adjustable-rate (various total terms);
- 1 year adjustable-rate (various total terms);
- 2 year fixed-rate, adjustable-rate hybrid (various total terms);
- 3 year fixed-rate, adjustable-rate hybrid (various total terms);
- 5 year fixed-rate, adjustable-rate hybrid (various total terms); and
- 7 year fixed-rate, adjustable-rate hybrid (various total terms).

The investment policy adopted by our Board of Directors provides, among other things, that:

- no investment shall be made which would cause us to fail to qualify as a REIT;
- no investment shall be made which would cause us to be regulated as an investment company;
- at least 70% of our assets will be Category I investments or loans that back or will back such investments; and
- no more than 7.5% of our assets will be Category III investments.

Our Board of Directors may amend or waive compliance with this investment policy at any time without the consent of our stockholders.

We seek to avoid many of the risks typically associated with companies that purchase mortgage-backed securities in the capital markets.

- For our self-originated loan portfolio, we perform our own underwriting rather than rely on the underwriting of others.
- We attempt to maintain a net duration, or duration gap, of one year or less on our ARM portfolio, related borrowings and hedging instruments.
- We structure our liabilities to mitigate potential negative effects of changes in the relationship between short- and longer-term interest rates.
- We may purchase or structure credit enhancements to mitigate potential losses from borrower defaults.
- Substantially all of the Company's securities are backed by ARM loans. Because we are focused on holding ARM loans rather than fixed-rate loans, we believe we will be adversely affected to a lesser extent by early repayments due to falling interest rates or a

reduction in our net interest income due to rising interest rates.

Our Board of Directors has also established an investment and leverage committee for the purpose of approving certain investment transactions and the incurrence of indebtedness. This committee is comprised of our co-chief executive officers, our chief investment officer and chief operating officer, and our chief financial officer. The committee has the authority to approve, without the need of further approval of our board of directors, the following transactions from time to time, any of which may be entered into by us or any of our subsidiaries:

- the purchase and sale of agency and private label mortgage-backed securities, subject to the limitations described above;
- securitizations of our mortgage loan portfolio;
- the purchase and sale of agency debt;
- the purchase and sale of U.S. Treasury securities;
- the purchase and sale of overnight investments;
- the purchase and sale of money market funds;
- hedging arrangements using:
 - interest rate swaps and Eurodollar contracts;
 - caps, floors and collars;
 - financial futures; and
 - options on any of the above; and
- the incurrence of indebtedness using:
 - repurchase agreements;
 - bank loans, up to an aggregate of \$100 million; and
 - term repurchase agreements.

Initially, the loans held for investment are funded through warehouse facilities and repurchase agreements. We ultimately finance the loans that we retain in our portfolio through securitization transactions. Upon securitization, we expect that a vast majority of the resulting mortgage-backed securities will become eligible for inclusion in Category I.

The only subordinate classes of mortgage-backed securities that we will hold (Category III investments) are subordinate classes that result from securitizations of the mortgage loans in our portfolio. We do not seek to acquire subordinated mortgage-backed securities as investments but instead acquire them only in connection with our mortgage loan securitizations or in order to help us meet our asset tests as a REIT.

We generally maintain an overall debt-to-equity ratio ranging from 8:1 to 12:1 on the financing of our portfolio ARM Assets. Our liabilities are primarily termed repurchase agreements with maturities ranging from one to twelve months. A significant risk to our operations, relating to our portfolio management, is the risk that interest rates on our assets will not adjust at the same times or amounts that rates on our liabilities adjust. Even though we retain and invest in ARM loans, many of the hybrid ARM loans in our portfolio have fixed rates of interest for a period of time ranging from two to seven years. Our funding costs are generally not constant or fixed. As a result, we use interest rate swaps to extend the duration of our liabilities to attempt to match the duration of our assets and we use termed repurchase agreements with laddered maturities to reduce the risk of a disruption in the repurchase market. Since we hold primarily ARM Assets rated AAA and agency securities (FHLMC or FNMA), we believe we are less susceptible to a disruption in the repurchase market as these types of securities have typically been eligible for repurchase market financing even when repurchase financing was not available for other classes of mortgage assets or asset backed bonds.

Mortgage Lending

The origination of mortgage loans through NYMC is significant to our financial results in that it:

- originates many of the high quality mortgage loans that we retain and ultimately collateralize as mortgage securities that we hold in portfolio or issue as collateralized debt obligations;
- allows us to be competitive by offering a broad range of residential mortgage loan products; and
- generates gain on sale income at the TRS with the ability to sell to third parties any fixed-rate and ARM loans that are not eligible for retention and investment in the our portfolio.

Furthermore, we believe our ability to originate ARM loans for securitization benefits us by providing:

- the ability to originate ARM loans at lower cost, so that the amount of premium (net cost over par) to be amortized will be reduced in the event of prepayment;
- generally higher yielding investments as our cost basis is lower; providing the ability to generate a higher return to shareholders and/or the ability to absorb the cost of additional interest rate hedges and thus reduce the inherent interest rate risk in our portfolio;
- greater control over the quality and types of ARM loans in our portfolio as we directly perform our own underwriting of such loans and can encourage our loan officers to focus on certain types of ARM products.

Through NYMC, our loan origination business originates primarily first mortgages on one-to-four family dwellings through our retail loan production offices and is supplemented by our wholesale division and internet channel (www.MortgageLine.com).

We believe that the substantial growth of NYMC's mortgage banking business since its inception has resulted from its commitment to providing exemplary service to its customers and its concentration on retail, referral-based, mortgage banking to borrowers with strong credit profiles. Based on our past experience and our knowledge of the mortgage industry, we believe that referrals from realtors, attorneys, accountants and other professionals and business from repeat customers tend to generate a higher percentage of purchase mortgage loan applications than refinance applications as compared to the loan applications generated by advertising and other mass marketing efforts. For the year ended December 31, 2005, our residential purchase loan originations represented 57.8% of NYMC's total residential mortgage loan originations as measured by principal balance, as compared to an industry-wide percentage of 53.5% for one-to-four family mortgage loans, according to the February 7, 2006 report of the Mortgage Bankers Association, or MBA.

In addition, we believe that the market for mortgage loans for home purchases is less susceptible than the refinance market to downturns during periods of increasing interest rates, because borrowers seeking to purchase a home do not generally base their decision to purchase on changes in interest rates alone, while borrowers that refinance their mortgage loans often make their decision as a direct result of changes in interest rates. Consequently, while our referral-based marketing strategy may cause our overall loan origination volume during periods of declining interest rates to lag our competitors who rely on mass marketing and advertising and who therefore capture a greater percentage of loan refinance applications during those periods, we believe our strategy will enable us to sustain stronger home purchase loan origination volumes than those same competitors during periods of flat to rising interest rates. In addition, we believe that our referral-based business results in relatively higher gross margins and lower advertising costs and loan generation expenses than most other mortgage companies whose business is not referral-based.

The following table details the payment stream, loan purpose and documentation type of our mortgage loan originations for the year ended December 31, 2005:

MORTGAGE LOAN ORIGINATION SUMMARY
For the fiscal year ended December 31, 2005

(Dollar amounts in thousands)	<u>Number of Loans</u>	<u>Dollar Value</u>	<u>% of Total</u>
Payment Stream			
<i>Fixed Rate</i>			
FHA/VA	1,805	\$ 242,258	7.0%
Conventional Conforming	6,031	967,922	28.2%
Conventional Jumbo	581	351,971	10.2%
Total Fixed Rate	8,417	\$ 1,562,151	45.4%
<i>ARMs</i>			
FHA/VA	94	\$ 15,244	0.5%
Conventional	6,202	1,859,976	54.1%
Total ARMs	6,296	1,875,220	54.6%
Annual Total	14,713	\$ 3,437,371	100.0%
Loan Purpose			
Conventional	12,814	\$ 3,179,869	92.5%
FHA/VA	1,899	257,502	7.5%
Total	14,713	\$ 3,437,371	100.0%
Documentation Type			
Full Documentation	9,238	\$ 2,100,239	61.1%
Stated Income	2,489	696,789	20.3%
Stated Income/Stated Assets	1,346	320,624	9.3%
No Documentation	609	145,845	4.2%
No Ratio	437	83,013	2.4%
Stated Assets	13	2,315	0.1%
Other	581	88,546	2.6%
Total	14,713	\$ 3,437,371	100.00%

Retail Loan Origination

Our loan origination strategy is predominantly retail, referral-based, mortgage banking. Our loan officers rely primarily on the various relationships they have established with their clientele, realtors, attorneys and others who routinely interact with those who may need mortgage financing. Retail loan origination allows us to provide a variety of attractive and innovative mortgage products at competitive rates. Unlike many banks and financial institutions which focus solely on loan products to retain in their portfolios, we offer a wide range of products — products that we can retain in portfolio and products that we will sell to third parties if such loans do not meet our investment parameters.

Because we are predominately referral-based, our cost of sourcing potential retail clients is less than an organization that relies heavily on concentrated broadcast, print or internet media advertising. In order to remain compliant with the Real Estate Settlement Procedures Act (“RESPA”), we do not pay referral fees or enter into above market co-branding, co-marketing or shared facilities relationships. By eliminating intermediaries between the borrower and us, we can both originate high quality mortgage loans for retention in our portfolio at attractive yields or offer loans that may be sold to third parties, while at the same time offering our customers a variety of mortgage products at competitive rates and fees.

Wholesale Loan Origination

Our wholesale lending strategy has historically been a small component of our loan origination operations. We have a network of non-affiliated wholesale loan brokers and mortgage lenders who submit loans to us. We maintain relationships with these wholesale brokers and, as with retail loan originations, will underwrite, process, and fund wholesale loans through our centralized facilities and processing systems. In

order to further diversify our origination network, during 2005, we began to expand our wholesale loan origination capacity with the creation of a division specifically for wholesale loan originations.

Correspondent Lending

Through our correspondent lending channels, we may acquire mortgage loans from Company-approved correspondent lenders. We review our correspondents for the soundness of their in-house mortgage lending procedures and their ability to fulfill their representations and warranties to us. Generally, loans acquired from correspondents are originated to our approved specifications including our internally developed loan products, credit and property guidelines, and underwriting criteria. In addition, correspondents may sell their own loan products to us that are originated according to the correspondents' product specifications and underwriting guidelines that we have approved and accepted.

To verify product quality and compliance with our underwriting and investment guidelines, we perform a full review of all of the loans generated by the correspondent prior to the purchase thereof. A full underwriting review of each loan file, including all credit and appraisal information, is performed as well as documentation sufficiency and compliance. Similar to loans originated through our retail and wholesale channels, these loans are also subjected to our quality control reviews.

Underwriting

Historically, NYMC's underwriting philosophy has been to underwrite loans according to the guidelines established by the available purchasers of its loans. However, the Company underwrites to its own guidelines select ARM loans it retains for its investment portfolio. We believe that proper underwriting for such loans is critical to managing the credit risk inherent in a loan portfolio.

Typically, mortgage underwriting guidelines provide a framework for determining whether a proposed mortgage loan to a potential borrower will be approved. The key points in this framework are the borrower's credit scores and other indicia of the borrower's ability and willingness to repay the loan, such as the borrower's employment and income, the amount of the borrower's equity in and the value of the borrower's property securing the loan, the borrower's debt to income and other debt ratios, the loan to value ("LTV") of the loan, the amount of funds available to the borrower for closing and the borrower's post-closing liquidity.

We continue to follow the underwriting guidelines established by available purchasers with respect to the loans we intend to sell. Furthermore, for mortgage loans we intend to retain, we follow a specific underwriting methodology based on the following philosophy — first evaluate the borrower's ability and willingness to repay the loan, and then evaluate the value of the property securing the loan. We seek only to retain mortgage loans that we believe have low risk of default and resultant loss. As underwriting basically seeks to predict future borrower payment patterns and ability based on the borrower's history and current financial information and the lender's ability to be made whole in the future through foreclosure in the event a default does occur, no assurance can be made that every loan originated or purchased will perform as anticipated.

The key aspects of our underwriting guidelines are as follows:

Borrower — In evaluating the borrower's ability and willingness to repay a loan, we review and analyze the following aspects of the borrower: credit score, income and its source, employment history, debt levels in revolving, installment and other mortgage loans, credit history and use of credit in the past, and finally the ability and/or willingness to provide verification for the above. Credit scores, credit history, use of credit in the past and information as to debt levels can be typically obtained from a third party credit report through a credit repository. Those sources are used in all cases, as available. In certain cases, borrowers have little or no credit history that can be tracked by one of the primary credit repositories. In these cases, the reason for the lack of history is considered and taken into account. In our experience, more than 95% of prospective borrowers have accessible credit histories.

Property — In evaluating a potential property to be used as collateral for a mortgage loan, we consider all of the following aspects of the property: the loan balance versus the property value, or LTV, the property type, how the property will be occupied (a primary residence, second home or investment property), if the property's apparent value is supported by recent sales of similar properties in the same or a nearby area, any unique characteristics of the property and our confidence in the above data and their sources.

Other Considerations — Other considerations that impact our decision regarding a borrower's loan application include the borrower's purpose in requesting the loan (purchase of a home as opposed to cashing equity out of the home through a refinancing for example), the loan type (adjustable-rate, including adjustment periods and loan life rate caps, or fixed-rate), and any items unique to a loan that we believe could affect credit performance.

In addition, we work with nationally recognized providers of appraisal, credit, and title insurance. We oversee the activities of these service providers through on-site visits, report monitoring, customer service surveys, post-closing quality control, and periodic direct participation and conversations with our customers. A significant amount of our settlement services are performed by in-house professionals. We have an extensive quality control review process that is contracted with a third party in order to verify that selected loans were properly underwritten, executed and documented. All loans retained in portfolio and a selection of other loans sold to third parties also are quality control reviewed internally as well.

Our Loan Origination Financing Strategy

We finance our loan originations utilizing warehouse agreements as well as other similar financing arrangements. The agreements are each renewable annually, but are not committed, meaning that the counterparties to the agreements may withdraw access to the credit facilities at any time.

Warehouse Facilities — Non-depository mortgage lenders, such as NYMC, typically rely on credit facilities for capital needed to fund new mortgage loans. These facilities are typically lines of credit or master repurchase agreements from other financial institutions that the mortgage banker can draw from in order to fund new mortgage loans. These facilities are referred to as warehouse lines or warehouse facilities.

Warehouse lines are typically collateralized loans made to mortgage bankers that in turn pledge the resulting loans to the warehouse lender. Third-party mortgage custodians, usually large banks, typically hold the mortgage loans, including the notes, mortgages and other important loan documentation, for the benefit of the mortgage lender who is deemed to own the loan and, if there is a default under the warehouse line, for the benefit of the warehouse lender.

We currently have a \$250 million warehouse facility with Greenwich Capital Financial Products, Inc. and a \$200 million warehouse facility with Credit Suisse First Boston Mortgage Capital, LLC. On December 13, 2005 we entered into a master repurchase agreement with Deutsche Bank Structured Products, Inc. under which we can enter into up to \$300 million in loan repurchase arrangements. This facility became operational in January 2006.

Loan Servicing

Loan servicing is the administration function of a mortgage loan whereby an entity collects monthly payments from a mortgage borrower and disburses those funds to the appropriate parties. The servicer has to account for all payments, maintain balances in certain accounts for each loan, maintain escrow accounts for real estate taxes and insurance, remit the correct amount of principal and interest monthly to the holder of the loan and handle foreclosures as required.

Any loans that we originate and retain for our portfolio have their servicing handled by Cenlar Federal Savings Bank (“Cenlar”), a wholesale bank specializing in mortgage sub-servicing nationwide. Under this arrangement, Cenlar acts as an intermediary between us and the borrower. It collects payments from borrowers, handles accounting and remittance of the payments, handles escrow accounts and does certain tax reporting. As our retained loans are securitized, Cenlar continues to service those loans and reports to the securities trustee or master servicer, as appropriate.

For a loan originated and sold to third parties, the servicing rights are sold upon the sale of the loan. We may choose to own, for periods usually not more than 90 days, certain loans designated as held for sale to third parties in order to increase earnings. In these cases, we believe there is a large enough spread between the mortgage loan interest rate and the interest rate paid on the applicable warehouse line to make any additional risk in carrying those loans on our balance sheet worthwhile. In these cases, and during the interim period between the time we fund (and subsequently own) a loan and sell the loan to a third party, we service loans through Cenlar as well.

Loan servicing provided by Cenlar is provided on a private label basis, meaning that Cenlar employees will identify themselves as being our representatives and correspondence regarding loans is on our letterhead. The benefit to us of this arrangement is that we pay for loan services as we use them, without a significant investment in personnel, systems and equipment. In addition, since Cenlar sub-services on our behalf and reports directly to us, we are quickly made aware of any customer wishing for an early payoff of their loan through refinancing or sale of their home. As a result, we can quickly respond to customer needs and make immediate efforts reestablishing customer contact in order to capture the potential payoff of a customer’s loan with another loan product (potential refinancing, modification or new purchase mortgage) that suits their needs.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains certain forward-looking statements. Forward looking statements are those which are not historical in nature. They can often be identified by their inclusion of words such as “will,” “anticipate,” “estimate,” “should,” “expect,” “believe,” “intend” and similar expressions. Any projection of revenues, earnings or losses, capital expenditures, distributions, capital structure or other financial terms is a forward-looking statement. Certain statements regarding the following particularly are forward-looking in nature:

- our business strategy;
- future performance, developments, market forecasts or projected dividends;
- projected acquisitions or joint ventures; and
- projected capital expenditures.

It is important to note that the description of our business in general and our investment in mortgage loans and mortgage-backed securities holdings in particular, is a statement about our operations as of a specific point in time. It is not meant to be construed as an investment policy, and the types of assets we hold, the amount of leverage we use, the liabilities we incur and other characteristics of our assets and liabilities are subject to reevaluation and change without notice.

Our forward-looking statements are based upon our management’s beliefs, assumptions and expectations of our future operations and economic performance, taking into account the information currently available to us. Forward-looking statements involve risks and uncertainties, some of which are not currently known to us that might cause our actual results, performance or financial condition to be materially different from the expectations of future results, performance or financial condition we express or imply in any forward-looking statements. Some of the important factors that could cause our actual results, performance or financial condition to differ materially from expectations are:

- our limited operating history with respect to our portfolio strategy;
- our proposed portfolio strategy may be changed or modified by our management without advance notice to stockholders, and that we may suffer losses as a result of such modifications or changes;
- impacts of a change in demand for mortgage loans on our net income and cash available for distribution;
- our ability to originate prime and high-quality adjustable-rate and hybrid mortgage loans for our portfolio or for sale to third parties;
- risks associated with the use of leverage;
- interest rate mismatches between our mortgage-backed securities and our borrowings used to fund such purchases;
- changes in interest rates and mortgage prepayment rates;
- effects of interest rate caps on our adjustable-rate mortgage-backed securities;
- the degree to which our hedging strategies may or may not protect us from interest rate volatility;
- potential impacts of our leveraging policies on our net income and cash available for distribution;
- our board’s ability to change our operating policies and strategies without notice to you or stockholder approval;
- the other important factors described in this Annual Report on Form 10-K, including those under the captions “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Risk Factors,” and “Quantitative and Qualitative Disclosures about Market Risk.”



We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. In light of these risks, uncertainties and assumptions, the events described by our forward-looking events might not occur. We qualify any and all of our forward-looking statements by these cautionary factors. In addition, you should carefully review the risk factors described in other documents we file from time to time with the Securities and Exchange Commission, including the Company's registration statement on Form S-11 (File No. 333-111668).

This Annual Report on Form 10-K contains market data, industry statistics and other data that have been obtained from, or compiled from, information made available by third parties. We have not independently verified their data.

Seasonality

Loan originations and payoffs are typically at their lowest levels during the first and fourth quarters of the year due to a reduced level of home buying activity during the colder months and while schools are in session. Loan originations and payoffs generally increase during the warmer months, beginning in March and continuing through October. The Company typically experiences higher earnings in the second and third quarters and lower earnings in the first and fourth quarters from its loan origination segment.

Competition

We face intense competition from finance and mortgage banking companies, other mortgage REITs, internet-based lending companies where entry barriers are relatively low, and, to a growing extent, from traditional bank and thrift lenders that have increased their participation in the mortgage industry. As we expand our loan origination business further and build a portfolio of mortgage loans and mortgage-backed securities, we face a significant number of additional competitors, many of whom will be well established in the markets we seek to operate. Some of our competitors are much larger than we are, have better name recognition than we do and have far greater financial and other resources than we do.

We anticipate that the majority of our competition will be in the mortgage industry. In addition to mortgage banking companies, internet-based lending companies, traditional banks and thrift lenders, the government sponsored entities Fannie Mae and Freddie Mac are also expanding their participation in the mortgage industry. While the government sponsored entities presently do not have the legal authority to originate mortgage loans, they do have the authority to buy loans. If as a result of their purchasing practices, these government sponsored entities experience significantly higher-than-expected losses, the experience could adversely affect overall investor perception of the mortgage industry.

Competition in the industry can take many forms, including lower interest rates and fees, less stringent underwriting standards, convenience in obtaining a loan, customer service, amount and term of a loan and marketing and distribution channels. The need to maintain mortgage loan volume in this competitive environment creates a risk of price and quality competition in the mortgage industry. Price competition could cause us to lower the interest rates that we charge borrowers, which could lower the value of our loans we sell or retain in our portfolio. If our competitors adopt less stringent underwriting standards, we will be pressured to do so as well. If we do not relax underwriting standards in response to our competitors, we may lose market share. If we relax our underwriting standards in response to price competition, we may be exposed to higher credit risk without receiving higher pricing to compensate for the higher risk. Any increase in these pricing and underwriting pressures could reduce the volume of our loan originations and sales and significantly harm our business, financial condition, liquidity and results of operations.

Personnel

The Company recruits, hires and retains individuals with the specific skills that complement its corporate growth and business strategies. As of December 31, 2005, we employed 802 people. Of this number, 329 were loan officers dedicated to originating loans. The number of employees at December 31, 2004 was 782, of which 344 were loan officers dedicated to originating loans.

Certain Federal Income Tax Considerations and Our Status as a REIT

We have elected to be taxed as a REIT under the federal income tax laws. As such, we operate in such a manner as to qualify for taxation as a REIT under the federal income tax laws, and we intend to continue to operate in such a manner, but no assurance can be given that we will operate in a manner so as to qualify or remain qualified as a REIT.

As a REIT, we generally will not be subject to federal income tax on the REIT taxable income that we distribute to our stockholders, but taxable income generated by NYMC, our taxable REIT subsidiary, is subject to regular corporate income tax. The benefit of REIT tax status is

a tax treatment that avoids “double taxation,” or taxation at both the corporate and stockholder levels, that generally applies to distributions by a corporation to its stockholders.

Summary Requirements for Qualification

Organizational Requirements

A REIT is a corporation, trust, or association that meets each of the following requirements:

- 1) It is managed by one or more trustees or directors.
- 2) Its beneficial ownership is evidenced by transferable shares, or by transferable certificates of beneficial interest.
- 3) It would be taxable as a domestic corporation, but for the REIT provisions of the federal income tax laws.
- 4) It is neither a financial institution nor an insurance company subject to special provisions of the federal income tax laws.
- 5) At least 100 persons are beneficial owners of its shares or ownership certificates.
- 6) Not more than 50% in value of its outstanding shares or ownership certificates is owned, directly or indirectly, by five or fewer individuals, which the federal income tax laws define to include certain entities, during the last half of any taxable year.
- 7) It elects to be a REIT, or has made such election for a previous taxable year, and satisfies all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status.
- 8) It meets certain other qualification tests, described below, regarding the nature of its income and assets.

We must meet requirements 1 through 4 during our entire taxable year and must meet requirement 5 during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months.

Qualified REIT Subsidiaries. A corporation that is a “qualified REIT subsidiary” is not treated as a corporation separate from its parent REIT. All assets, liabilities, and items of income, deduction, and credit of a “qualified REIT subsidiary” are treated as assets, liabilities, and items of income, deduction, and credit of the REIT. A “qualified REIT subsidiary” is a corporation, all of the capital stock of which is owned by the REIT. Thus, in applying the requirements described herein, any “qualified REIT subsidiary” that we own will be ignored, and all assets, liabilities, and items of income, deduction, and credit of such subsidiary will be treated as our assets, liabilities, and items of income, deduction, and credit.

Taxable REIT Subsidiaries. A REIT is permitted to own up to 100% of the stock of one or more “taxable REIT subsidiaries,” or TRSs. A TRS is a fully taxable corporation that may earn income that would not be qualifying income if earned directly by the parent REIT. Overall, no more than 20% of the value of a REIT’s assets may consist of stock or securities of one or more TRSs.

A TRS will pay income tax at regular corporate rates on any income that it earns. In addition, the TRS rules limit the deductibility of interest paid or accrued by a TRS to its parent REIT to assure that the TRS is subject to an appropriate level of corporate taxation. We have elected for NYMC to be treated as a TRS. NYMC is subject to corporate income tax on its taxable income, which is its net income from loan originations and sales.

Qualified REIT Assets

On the last day of each calendar quarter, at least 75% of the value of our assets (which includes any assets held through a qualified REIT subsidiary) must consist of qualified REIT assets — primarily, real estate, mortgage loans secured by real estate, and certain mortgage-backed securities (“Qualified REIT Assets”), government securities, cash, and cash items. We believe that substantially all of our assets are and will continue to be Qualified REIT Assets. On the last day of each calendar quarter, of the assets not included in the foregoing 75% asset test, the value of securities that we hold issued by any one issuer may not exceed 5% in value of our total assets and we may not own more than 10% of the voting power or value of any one issuer’s outstanding securities (with an exception for securities of a qualified REIT subsidiary or of a taxable REIT subsidiary). In addition, the aggregate value of our securities in taxable REIT subsidiaries cannot exceed 20% of our total assets. We monitor the purchase and holding of our assets for purposes of the above asset tests and seek to manage our portfolio to comply at all times with such tests.



We intend to limit substantially all of the assets that we acquire to Qualified REIT Assets. Our strategy to maintain REIT status may limit the type of assets, including hedging contracts and other assets that we otherwise might acquire.

We may from time to time hold, through one or more taxable REIT subsidiaries, assets that, if we held them directly, could generate income that would have an adverse effect on our qualification as a REIT or on certain classes of our stockholders.

Gross Income Tests

We must meet the following separate income-based tests each year:

1. The 75% Test. At least 75% of our gross income for the taxable year must be derived from Qualified REIT Assets. Such income includes interest (other than interest based in whole or in part on the income or profits of any person) on obligations secured by mortgages on real property, rents from real property, gain from the sale of Qualified REIT Assets, and qualified temporary investment income or interests in real property. The investments that we have made and intend to continue to make will give rise primarily to mortgage interest qualifying under the 75% income test.

2. The 95% Test. At least 95% of our gross income for the taxable year must be derived from the sources that are qualifying for purposes of the 75% test, and from dividends, interest or gains from the sale or disposition of stock or other assets that are not dealer property.

Distributions

We must distribute to our stockholders on a pro rata basis each year an amount equal to at least (i) 90% of our taxable income before deduction of dividends paid and excluding net capital gain, plus (ii) 90% of the excess of the net income from foreclosure property over the tax imposed on such income by the Internal Revenue Code, less (iii) any “excess non-cash income.” We have made and intend to continue to make distributions to our stockholders in sufficient amounts to meet the distribution requirement for REIT qualification.

Item 1A. RISK FACTORS

An investment in our securities involves various risks. You should carefully consider the following risk factors before making an investment decision involving our securities. The risks discussed herein can adversely affect our business, liquidity, operating results, prospects, and financial condition. This could cause the market price of our securities to decline and could cause you to lose all or part of your investment. The risk factors described below are not the only risks that may affect us. Additional risks and uncertainties not presently known to us also may adversely affect our business, liquidity, operating results, prospects, and financial condition.

Our business strategy partially depends on our ability to originate prime adjustable-rate and hybrid mortgage loans for our portfolio.

Our portfolio of prime adjustable-rate and hybrid mortgage loans will, over time, be comprised primarily of mortgage loans that we originate through NYMC. If NYMC is not able to originate prime adjustable-rate and hybrid mortgage loans that meet our investment criteria at the volumes we expect, the time required for, and the cost associated with, building our portfolio may be greater than expected, which could have an adverse effect on our results of operations and our ability to make distributions to our stockholders.

We may experience a decline in the market value of our assets

The market value of the interest-bearing assets that we have acquired and intend to continue to acquire, most notably mortgage-backed securities and originated or purchased residential mortgage loans and any related hedging instruments, may move inversely with changes in interest rates. We anticipate that increases in interest rates will tend to decrease our net income. A decline in the market value of our investments may limit our ability to borrow or result in lenders requiring additional collateral or initiating margin calls under our repurchase agreements. As a result, we could be required to sell some of our investments under adverse market conditions in order to maintain liquidity. If such sales are made at prices lower than the amortized costs of such investments, we will incur losses. A default under our repurchase agreements could also result in the liquidation of the underlying investments used as collateral and result in a loss equal to the difference between the value of the collateral and the amount owed under our repurchase agreements.

Our success will depend on our ability to obtain financing to leverage our equity.

If we are limited in our ability to leverage our assets, the returns on our portfolio may be harmed. A key element of our strategy is our use of leverage to increase the size of our portfolio in an attempt to enhance our returns. As of December 31, 2005, our leverage ratio, defined as total financing facilities less subordinated debentures outstanding divided by total stockholders' equity plus subordinated debentures at December 31, 2005 was 11 to 1. Our repurchase agreements are not currently committed facilities, meaning that the counterparties to these agreements may at any time choose to restrict or eliminate our future access to the facilities and we have no other committed credit facilities through which we may leverage our equity. If we are unable to leverage our equity to the extent we currently anticipate, the returns on our portfolio could be diminished, which may limit or eliminate our ability to make distributions to our stockholders.

Interest rate fluctuations may cause losses.

We believe our primary interest rate exposure relates to our mortgage loans, mortgage-backed securities and variable-rate debt, as well as the interest rate swaps and caps that we utilize for risk management purposes. Changes in interest rates may affect our net interest income, which is the difference between the interest income we earn on our interest-earning assets and the interest expense we incur in financing these assets. Changes in the level of interest rates also can affect our ability to originate or acquire mortgage loans or mortgage-backed securities, the value of our assets and our ability to realize gains from the sale of such assets. In a period of rising interest rates, our interest expense could increase while the interest we earn on our assets would not change as rapidly. This would adversely affect our profitability.

Our operating results depend in large part on differences between income received from our assets, net of credit losses, and our financing costs. We anticipate that in most cases, for any period during which our assets are not match-funded, the income from such assets will adjust more slowly to interest rate fluctuations than the cost of our borrowings. Consequently, changes in interest rates, particularly short-term interest rates, may significantly influence our net income. We anticipate that increases in interest rates will tend to decrease our net income. Interest rate fluctuations resulting in our interest expense exceeding our interest income would result in operating losses for us and may limit or eliminate our ability to make distributions to our stockholders.

Our mortgage loan originations historically have been concentrated in specific geographic regions and any adverse market or economic conditions in those regions may have a disproportionately adverse effect on the ability of our customers to make their loan payments.

Our mortgage loan originations have been and may in the future be concentrated in specific geographic regions — predominantly in the mid-Atlantic, Northeast and New England regions of the United States. Adverse market or economic conditions in a particular region may disproportionately increase the risk that borrowers in that region will be unable to make their mortgage payments. In addition, the market value of the real estate securing those mortgage loans could be adversely affected by adverse market and economic conditions in that region. Any sustained period of increased payment delinquencies, foreclosures or losses caused by adverse market or economic conditions in that geographic region could adversely affect both our net interest income from loans in our portfolio as well as our ability to originate, sell and securitize loans, which would significantly harm our revenues, results of operations, financial condition, and business prospects.

A prolonged economic slowdown, a lengthy or severe recession or declining real estate values could harm our operations.

We believe the risks associated with our business will be more acute during periods of economic slowdown or recession if these periods are accompanied by declining real estate values. Declining real estate values will likely reduce our level of new mortgage loan originations, since borrowers often use increases in the value of their existing home to support the refinancing of their existing mortgage loans or the purchase of new homes at higher levels of borrowings. Further, declining real estate values significantly increase the likelihood that we will incur losses on our loans in the event of default. Any sustained period of increased payment delinquencies, foreclosures or losses could adversely affect both our net interest income from loans in our portfolio as well as our ability to originate, sell and securitize loans, which would significantly harm our revenues, results of operations, financial condition, and business prospects.

Our past operating results have occurred during a period of rapid growth for the residential mortgage industry and may not be indicative of our future operating results.

The growth rate of our origination platform has benefited from low interest rates, a long period of economic growth and strategic acquisitions of mortgage origination platforms. NYMC's loan originations for the year ending December 31, 2005 increased 86% over the prior period, aided in large part to our acquisition of Guaranty Residential Lending, Inc., while according to the MBA's February 7, 2006 Mortgage Finance Forecast, lender origination volume for 2005 was flat versus the prior year. The MBA further projected that overall loan originations will decline in 2006. These projected declines in overall volume of closed loan originations are likely to have a negative effect on our loan origination volume and net income. Accordingly, our historical performance may not be indicative of future results, and our results of

operations may be materially adversely affected as interest rates rise. In addition, NYMC's recent and rapid growth may distort some of its ratios and financial statistics and our change in business strategy to include the development of a portfolio of mortgage loans and mortgage-backed securities makes period-to-period comparisons difficult. In light of this growth and change in business strategy, our historical performance and operating and origination data may be of little relevance in predicting our future performance.

Excessive supply of or reduced demand for mortgage-backed securities in the market for these securities may cause the market to require a higher yield on our mortgage-backed securities and thereby cause a decline in the value of our portfolio.

The mortgage-backed securities we will own are also subject to spread risk. The majority of these securities will be adjustable-rate securities valued based on a market credit spread to U.S. Treasury security yields. In other words, their value is dependent on the yield demanded on such securities by the market based on their credit relative to U.S. Treasury securities. Excessive supply of such securities combined with reduced demand will generally cause the market to require a higher yield on such securities, resulting in the use of a higher or wider spread over the benchmark rate (usually the applicable U.S. Treasury security yield) to value such securities. Under such conditions, the value of our securities portfolio would tend to decline. Conversely, if the spread used to value such securities were to decrease or tighten, the value of our securities portfolio would tend to increase. Such changes in the market value of our portfolio could adversely affect our net equity, net income or cash flow directly through their impact on unrealized gains or losses on available-for-sale securities, and therefore our ability to realize gains on such securities, or indirectly through their impact on our ability to borrow and access capital.

Furthermore, shifts in the U.S. Treasury yield curve, which represents the market's expectations of future interest rates, would also affect the yield required on our securities and therefore their value. This would have similar effects on our portfolio and our financial position and results of operations as a change in spreads would.

Loan prepayment rates may increase, adversely affecting yields on our planned investments.

The value of the assets we have acquired and intend to continue to acquire may be affected by prepayment rates on mortgage loans. Prepayment rates on mortgage loans are influenced by changes in current interest rates and a variety of economic, geographic and other factors beyond our control, and consequently, such prepayment rates cannot be predicted with certainty. In periods of declining mortgage loan interest rates, prepayments on mortgage loans generally increase. If general interest rates decline as well, the proceeds of such prepayments received during such periods are likely to be reinvested by us in assets with lower yields than the yields on the assets that were prepaid. In addition, the market value of any mortgage assets may, because of the risk of prepayment, benefit less than other fixed-income securities from declining interest rates. Conversely, in periods of rising interest rates, prepayments on mortgage loans generally decrease, in which case we would not have the prepayment proceeds available to invest in assets with higher yields. Under certain interest rate and prepayment scenarios, we may fail to recoup fully our cost of acquisition of certain investments.

Our hedging transactions may limit our gains or result in losses.

We use derivatives, primarily interest rate swaps and caps, to hedge our liabilities and this has certain risks, including the risk that losses on a hedging transaction will reduce the amount of cash available for distribution to our stockholders and that such losses may exceed the amount invested in such instruments. Our board of directors has adopted a general policy with respect to the use of derivatives, and which generally allows us to use derivatives when we deem appropriate for risk management purposes, but does not set forth specific guidelines. To the extent consistent with maintaining our status as a REIT, we may use derivatives, including interest rate swaps and caps, options, term repurchase contracts, forward contracts and futures contracts, in our risk management strategy to limit the effects of changes in interest rates on our operations. However, a hedge may not be effective in eliminating the risks inherent in any particular position. Our profitability may be adversely affected during any period as a result of the use of derivatives in a hedging transaction.

The mortgage loans we typically invest in and the mortgage loans underlying the mortgage-backed securities we typically invest in are subject to risks of delinquency, foreclosure and loss, which could result in losses to us.

Residential mortgage loans are secured by residential properties and are subject to risks of delinquency and foreclosure, and risks of loss. The ability of a borrower to repay a loan secured by residential property typically is dependent primarily upon the income or assets of the borrower, but also may be affected by property location and condition, competition and demand for comparable properties, changes in zoning laws, environmental contamination, changes in national, regional or local economic conditions, declines in regional or local real estate values, increases in interest rates, real estate tax rates, changes in governmental rules and regulations and acts of God, terrorism, social unrest and civil disturbances.

In the event of any default under a mortgage loan held directly by us, we will bear a risk of loss of principal to the extent of any deficiency between the value of the collateral that we can realize upon foreclosure and sale and the principal and accrued interest of the mortgage loan. In the event of the bankruptcy of a mortgage loan borrower, the mortgage loan to such borrower will be deemed to be secured only to the extent of the value of the underlying collateral at the time of bankruptcy (as determined by the bankruptcy court), and the lien securing the mortgage loan will be subject to the avoidance powers of the bankruptcy trustee or debtor-in-possession to the extent the lien is unenforceable under state law. Foreclosure of a mortgage loan can be an expensive and lengthy process. The occurrence of an event of default or foreclosure could have a

material adverse effect on our cash flow from operations and could limit the amount we have available for payment of our debt obligations and distribution to our stockholders. Residential mortgage-backed securities evidence interests in or are secured by pools of residential mortgage loans. Accordingly, the mortgage-backed securities we typically invest in are subject to all of the risks of the underlying mortgage loans.

We may be required to repurchase mortgage loans that we have sold or to indemnify holders of our mortgage-backed securities.

If any of the mortgage loans that we originate and sell, or that we pledge to secure mortgage-backed securities that we issue in our securitizations, do not comply with the representations and warranties that we make about the characteristics of the loans, the borrowers and the properties securing the loans, we may be required to repurchase those loans in the case of the loans that we have sold, or replace them with substitute loans or cash in the case of securitized loans. If this occurs, we may have to bear any associated losses directly. In addition, in the case of loans that we have sold, we may be required to indemnify the purchasers of such loans for losses or expenses incurred as a result of a breach of a representation or warranty made by us. Repurchased loans typically require an allocation of working capital to carry on our books, and our ability to borrow against such assets is limited, which could limit the amount by which we can leverage our equity. Any significant repurchases or indemnification payments could significantly harm our cash flow and results of operations and limit our ability to make distributions to our stockholders.

We may be subject to losses due to fraudulent and negligent acts on the part of loan applicants, mortgage brokers, other vendors and our employees.

When we originate mortgage loans, we rely upon information supplied by borrowers and other third parties, including information contained in the applicant's loan application, property appraisal reports, title information and employment and income documentation. If any of this information is misrepresented or falsified and if we do not discover it prior to funding a loan, the actual value of such loan may be significantly lower than anticipated. As a practical matter, we generally bear the risk of loss associated with a misrepresentation whether it is made by the loan applicant, the mortgage broker, another third party or one of our employees. A loan subject to a material misrepresentation is typically unsaleable or is subject to repurchase or substitution if it is sold or securitized prior to detection of the misrepresentation. Although we may have rights against persons and entities who made or knew about the misrepresentation, those persons and entities may be difficult to locate, and it is often difficult to collect any monetary losses from them that we may have suffered.

Our operations are subject to a body of complex laws and regulations at the federal, state and local levels.

We must comply with the laws, rules and regulations, as well as judicial and administrative decisions, of all jurisdictions in which we originate mortgage loans, as well as an extensive body of federal laws, rules and regulations. The volume of new or modified laws, rules and regulations applicable to our business has increased in recent years and individual municipalities have also begun to enact laws, rules and regulations that restrict or otherwise affect loan origination activities, and in some cases loan servicing activities. The laws, rules and regulations of each of these jurisdictions are different, complex and, in some cases, in direct conflict with each other. It may be more difficult to identify comprehensively, to interpret accurately, to program properly our information systems and to effectively train our personnel with respect to all of these laws, rules and regulations, thereby potentially increasing the risks of non-compliance with these laws, rules and regulations.

Our failure to comply with these laws, rules and regulations can lead to:

- civil and criminal liability, including potential monetary penalties;
- loss of state licenses or permits required for continued lending and servicing operations;
- legal defenses causing delay or otherwise adversely affecting our ability to enforce loans, or giving the borrower the right to rescind or cancel the loan transaction;
- demands for indemnification or loan repurchases from purchasers of our loans;
- class action lawsuits; and
- administrative enforcement actions.

We commenced operations as a newly public company in June 2004 and have a limited operating history.

NYMC, our mortgage banking subsidiary, has a substantial operating history, but we were not formed until September 2003 and had no operations prior to closing our IPO on June 29, 2004. As a result, we have a limited history managing a portfolio of mortgage loans or mortgage-backed securities for you to determine the likelihood of our achieving our investment objectives.

Our executive officers have agreements that provide them with benefits in the event their employment is terminated following a change in control.

We have entered into agreements with the members of our senior management team, Messrs. Schnall, Akre, Wirth, Fierro and Mumma, that provide them with severance benefits if their employment ends under specified circumstances following a change in control. These benefits could increase the cost to a potential acquirer of us and thereby prevent or discourage a change in control that might involve a premium price for your shares or otherwise be in your best interest.

Certain provisions of Maryland law and our charter and bylaws could hinder, delay or prevent a change in control which could have an adverse effect on the value of our securities.

Certain provisions of Maryland law, our charter and our bylaws may have the effect of delaying, deferring or preventing transactions that involve an actual or threatened change in control. These provisions include the following, among others:

- our charter provides that, subject to the rights of one or more classes or series of preferred stock to elect one or more directors, a director may be removed with or without cause only by the affirmative vote of holders of at least two-thirds of all votes entitled to be cast by our stockholders generally in the election of directors;
- our bylaws provide that only our board of directors shall have the authority to amend our bylaws;
- under our charter, our board of directors has authority to issue preferred stock from time to time, in one or more series and to establish the terms, preferences and rights of any such series, all without the approval of our stockholders;
- the Maryland Business Combination Act; and
- the Maryland Control Share Acquisition Act.

Although our board of directors has adopted a resolution exempting us from application of the Maryland Business Combination Act and our bylaws provide that we are not subject to the Maryland Control Share Acquisition Act, our board of directors may elect to make the “business combination” statute and “control share” statute applicable to us at any time and may do so without stockholder approval.

Maintenance of our Investment Company Act exemption imposes limits on our operations.

We have conducted and intend to continue to conduct our operations so as not to become regulated as an investment company under the Investment Company Act of 1940, as amended. We believe that there are a number of exemptions under the Investment Company Act that are applicable to us. To maintain the exemption, the assets that we acquire are limited by the provisions of the Investment Company Act and the rules and regulations promulgated under the Investment Company Act. In addition, we could, among other things, be required either (a) to change the manner in which we conduct our operations to avoid being required to register as an investment company or (b) to register as an investment company, either of which could have an adverse effect on our operations and the market price for our securities.

Failure to qualify as a REIT would adversely affect our operations and ability to make distributions.

We have operated and intend to continue to operate so to qualify as a REIT for federal income tax purposes. Our continued qualification as a REIT will depend on our ability to meet various requirements concerning, among other things, the ownership of our outstanding stock, the nature of our assets, the sources of our income, and the amount of our distributions to our stockholders.

In order to qualify as a REIT, we generally are required each year to distribute to our stockholders at least 90% of our REIT taxable income, excluding any net capital gain. To the extent that we distribute at least 90%, but less than 100% of our REIT taxable income, we will be subject to corporate income tax on our undistributed REIT taxable income. In addition, we will be subject to a 4% nondeductible excise tax on the amount, if any, by which certain distributions paid by us with respect to any calendar year are less than the sum of (i) 85% of our ordinary REIT income for that year, (ii) 95% of our REIT capital gain net income for that year, and (iii) 100% of our undistributed REIT taxable income from prior years.

We have made and intend to continue to make distributions to our stockholders to comply with the 90% distribution requirement and to

avoid corporate income tax and the nondeductible excise tax. However, differences in timing between the recognition of REIT taxable income and the actual receipt of cash could require us to sell assets or to borrow funds on a short-term basis to meet the 90% distribution requirement and to avoid corporate income tax and the nondeductible excise tax.

If we fail to qualify as a REIT in any taxable year, we would be subject to federal income tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates. In addition, if we do not qualify for certain statutory relief provisions, we generally would be disqualified from treatment as a REIT for the four taxable years following the year in which we lost our REIT status. Failing to obtain, or losing, our REIT status would reduce our net earnings available for investment or distribution to stockholders because of the additional tax liability, and we would no longer be required to make distributions to stockholders. Additionally, we might be required to borrow funds or liquidate some investments in order to pay the applicable tax.

Item 1B. UNRESOLVED STAFF COMMENTS

None.

Item 2. PROPERTIES

Our principal executive and administrative offices are located at 1301 Avenue of the Americas, 7th floor, New York, New York 10019. We also operate retail loan origination sales offices at 54 (28 branches and 26 branch satellite) locations in 11 states. All of our facilities are leased. The aggregate annual rent for these locations is approximately \$5.0 million.

Further details of our facilities is as follows:

Location	Business Activity	Business Segment
New York City	Corporate Headquarters and Mortgage Origination	Mortgage Portfolio Management and Mortgage Lending
Bridgewater, New Jersey	Wholesale Lending	Mortgage Lending
Various-54 locations in 11 states	Retail Mortgage Origination	Mortgage Lending

Item 3. LEGAL PROCEEDINGS

The Company is at times subject to various legal proceedings arising in the ordinary course of business. The Company does not believe that any of its current legal proceedings, individually or in the aggregate, will have a material adverse effect on its operations or financial condition.

Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

PART II

Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters

Our common stock is traded on the New York Stock Exchange under the trading symbol "NTR". As of March 1, 2006, we had 18,258,221 shares of common stock outstanding, and as of March 6, 2006, there were 88 holders of record. This figure does not reflect the beneficial ownership of shares held in nominee name.

The following table sets forth, for the periods indicated, the high, low and quarter end closing sales prices per share of common stock on the NYSE and the cash dividends paid or payable per share of common stock.

	Common Stock Prices			Cash Dividends		
	High	Low	Close	Declared	Paid or Payable	Amount per Share
Year Ended December 31, 2005						
Fourth quarter	\$ 7.50	\$ 5.51	\$ 6.62	12/09/05	1/26/06	\$ 0.21
Third quarter	9.20	7.00	7.47	9/26/05	10/26/05	0.21
Second quarter	10.23	9.04	9.07	6/02/05	07/26/05	0.25
First quarter	11.30	9.90	10.22	03/11/05	04/26/05	0.25

	Common Stock Prices			Cash Dividends		
	High	Low	Close	Declared	Paid or Payable	Amount per Share
Year Ended December 31, 2004						
Fourth quarter	\$ 11.34	\$ 8.90	\$ 11.20	12/16/04	1/26/05	\$ 0.24
Third quarter	9.90	8.55	9.35	9/16/04	10/26/04	0.16
Second quarter	9.15	8.69	8.86	(1)	(1)	(1)

(1) The Company closed its IPO on June 29, 2004. As a result, no dividend for the two days of the quarter ended June 30, 2004 was declared or paid.

In order to qualify for the tax benefits accorded to a REIT under the Code, we intend to pay quarterly dividends such that all or substantially all of our taxable income each year (subject to certain adjustments) is distributed to our stockholders. All of the distributions that we make will be at the discretion of our Board of Directors and will depend on our earnings and financial condition, maintenance of REIT status and any other factors that the Board of Directors deems relevant.

During 2005, taxable dividend distributions for the Company's common stock were \$0.95 per share. The Company's common stock is currently listed under the CUSIP #649604-10-5 and trades under the NYSE ticker symbol NTR. For tax reporting purposes, the 2005 taxable dividend distributions will be classified as follows: \$0.81532 as ordinary income and \$0.13468 as a return of capital. The following table contains this information on a quarterly basis.

Declaration Date	Record Date	Payment Date	Cash Distribution per share	Income Dividends	Short-term Capital Gain	Total Taxable Ordinary Dividend	Return of Capital
12/16/04	1/6/05	1/26/05	\$ 0.24	\$ 0.21558	\$ 0.02076	\$ 0.23634	\$ 0.00366
3/11/05	4/6/05	4/26/05	\$ 0.25	\$ 0.18931	\$ 0.03005	\$ 0.21936	\$ 0.03064
6/2/05	7/14/05	7/26/05	\$ 0.25	\$ 0.15421	\$ 0.07059	\$ 0.22480	\$ 0.02520
9/26/05	10/6/05	10/26/05	\$ 0.21	\$ 0.13482	\$ —	\$ 0.13482	\$ 0.07518
Total 2005 Cash Distributions			\$ 0.95	\$ 0.69392	\$ 0.12140	\$ 0.81532	\$ 0.13468

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

The Company has not purchased any of its registered equity securities in the twelve months ended December 31, 2005.

Securities Authorized for Issuance Under Equity Compensation Plans

The following table sets forth information as of December 31, 2005 with respect to compensation plans under which equity securities of the Company are authorized for issuance. The Company has no such plans that were not approved by security holders.

Plan Category	Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights	Weighted Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance under Equity Compensation Plans
Equity compensation plans approved by security holders.	566,500	\$ 9.56	139,500

Item 6. *SELECTED FINANCIAL DATA*

The following selected consolidated financial data is derived from our audited consolidated financial statements and the notes thereto for the periods presented and should be read in conjunction with the more detailed information therein and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included elsewhere in this annual report. Operating results are not necessarily indicative of future performance.

The selected financial data as of and for the year ended December 31, 2005 and December 31, 2004 includes the operations of NYMT and its consolidated subsidiaries. Included in the selected financial data for the year ended December 31, 2004 are the results of NYMT for the period beginning June 29, 2004 (the closing date of our IPO) and NYMC for the year-to-date period beginning January 1, 2004. Prior to our IPO, NYMT had no operations and, as a result, for all years prior to 2004, the financial data presented is for NYMC only.

Selected Consolidated Financial and Other Data

	For the Year Ended December 31,				
	2005	2004	2003	2002	2001
	(Dollar amounts in thousands, except per share data)				
Operating Data:					
<i>Revenues:</i>					
Interest income	\$ 77,476	\$ 27,299	\$ 7,609	\$ 2,986	\$ 1,570
Interest expense	60,104	16,013	3,266	1,673	1,289
Net Interest Income	<u>17,372</u>	<u>11,286</u>	<u>4,343</u>	<u>1,313</u>	<u>281</u>
Gains on sales of mortgage loans	26,783	20,835	23,031	9,858	6,429
Brokered loan fees	9,991	6,895	6,683	5,241	3,749
Gain on sale of securities and related hedges	2,207	774	—	—	—
Impairment loss on investment securities	(7,440)	—	—	—	—
Miscellaneous	232	227	45	15	48
Total other income	<u>31,773</u>	<u>28,731</u>	<u>29,759</u>	<u>15,114</u>	<u>10,226</u>
<i>Expenses:</i>					
Salaries and benefits	30,979	17,118	9,247	5,788	3,644
Brokered loan expenses	7,543	5,276	3,734	2,992	2,174
General and administrative expenses	24,512	13,935	7,395	3,897	2,808
Total expenses	<u>63,034</u>	<u>36,329</u>	<u>20,376</u>	<u>12,677</u>	<u>8,626</u>
(Loss)/income before income tax benefit	(13,889)	3,688	13,726	3,750	1,881
Income tax benefit	8,549	1,259	—	—	—
Net (loss)/income	<u>\$ (5,340)</u>	<u>\$ 4,947</u>	<u>\$ 13,726</u>	<u>\$ 3,750</u>	<u>\$ 1,881</u>
Basic (loss)/income per share	\$ (0.30)	\$ 0.28	—	—	—
Diluted (loss)/income per share	\$ (0.30)	\$ 0.27	—	—	—
Balance Sheet Data:					
Cash and cash equivalents	\$ 9,056	\$ 7,613	\$ 4,047	\$ 2,746	\$ 1,549
Mortgage loans held in securitization trusts or held for investment	780,670	190,153	—	—	—
Investment securities available for sale	716,482	1,204,745	—	—	—
Mortgage loans held for sale	108,271	85,385	36,169	34,039	9,894
Due from loan purchasers and escrow deposits pending loan closings	123,247	96,140	58,862	40,621	20,707
Total assets	1,791,293	1,614,762	110,081	83,004	34,561
Financing arrangements	1,391,685	1,470,596	90,425	73,016	29,705
Collateralized debt obligations	228,226	—	—	—	—
Subordinated debentures	45,000	—	—	—	—
Subordinated notes due to members	—	—	14,707	—	—
Total liabilities	1,690,335	1,495,280	110,555	76,504	30,891
Equity (deficit)	100,958	119,482	(474)	6,500	3,670
Investment Portfolio Data:					
Average yield on investment portfolio	4.16	3.90	—	—	—
Net duration of interest earning assets to liabilities	0.91	0.42	—	—	—
Originations Data:					
Purchase originations	\$ 1,985,651	\$ 1,089,499	\$ 803,446	\$ 469,404	\$ 374,454
Refinancing originations	1,451,720	756,006	796,879	407,827	209,748
Total originations	<u>\$ 3,437,371</u>	<u>\$ 1,845,505</u>	<u>\$ 1,600,325</u>	<u>\$ 877,231</u>	<u>\$ 584,202</u>
Fixed-rate originations	\$ 1,562,151	\$ 878,749	\$ 890,172	\$ 518,382	\$ 398,056
Adjustable-rate originations	1,875,220	966,756	710,153	358,849	186,146

Total originations	\$ 3,437,371	\$ 1,845,505	\$ 1,600,325	\$ 877,231	\$ 584,202
Total mortgage sales	\$ 2,875,288	\$ 1,435,340	\$ 1,234,848	\$ 633,223	\$ 404,470
Brokered originations	562,083	410,165	365,477	244,008	179,732
Total originations	\$ 3,437,371	\$ 1,845,505	\$ 1,600,325	\$ 877,231	\$ 584,202
Originated Mortgage Loans Retained for Investment:					
Par amount	\$ 555.2	\$ 95.1	n/a	n/a	n/a
Weighted average middle credit score	734	743	n/a	n/a	n/a
Weighted average LTV	69.62%	66.58%	n/a	n/a	n/a
Mortgage Loans Sold:					
Weighted average whole loan sales price over par - non-FHA ⁽¹⁾	1.34%	1.70%	1.75%	1.51%	1.34%
Weighted average whole loan sales price over par - FHA ⁽¹⁾	3.63%	2.96%	4.10%	3.46%	3.10%
Weighted average whole loan sales price over par - all mortgage loans sold	1.52%	2.02%	1.75%	1.52%	1.37%
Weighted average middle credit score non-FHA ⁽¹⁾	704	715	—	—	—
Weighted average middle credit score FHA ⁽¹⁾	633	631	629	668	650
Weighted average middle credit score all mortgage loans sold	696	703	719	716	713
Weighted average LTV non-FHA ⁽¹⁾	74.58%	71.95%	68.47%	67.23%	71.38%
Weighted average LTV FHA ⁽¹⁾	92.76%	92.12%	88.82%	91.78%	86.82%
Weighted average LTV all mortgage loans sold	76.65%	75.88%	68.67%	67.42%	71.71%
Operational/Performance Data:					
Salaries, general and administrative expense as a percentage of total loans originated	1.61%	1.68%	1.04%	1.10%	1.10%
Number of state licensed or exempt from licensing at period end	43	40	15	13	7
Number of locations at period end	54	66	15	13	7
Number of employees at period end	802	782	335	184	147
Dividends declared per common share	\$ 0.92	\$ 0.40	—	—	—

(1) Beginning near the end of the first quarter of 2004, our volume of FHA loans increased; prior to such time the volume of FHA loan originations was immaterial. Generally, FHA loans have lower average balances and FICO scores which are reflected in the statistics above. All FHA loans are currently and will be in the future sold or brokered to third parties.

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

General

New York Mortgage Trust, Inc. ("NYMT," the "Company," "we," "our" and "us") is a self-advised residential mortgage finance company that originates, acquires, retains and securitizes mortgage loans and mortgage-backed securities. Our wholly-owned taxable REIT subsidiary ("TRS"), The New York Mortgage Company, LLC ("NYMC"), is a residential mortgage banking company that originates a wide range of mortgage loans, with a particular focus on prime adjustable- and fixed-rate, first lien, residential purchase mortgage loans. Prior to the simultaneous completion of our acquisition of NYMC and our initial public offering ("IPO") in 2004, NYMC sold all of the loans it originated to third parties, and also brokered loans to other mortgage lenders prior to funding. NYMC, which originates residential mortgage loans through a network of 28 full-service loan origination locations and 26 satellite loan origination locations, is presently licensed or authorized to do business in 43 states and the District of Columbia.

Strategic Overview

We are considered an "active" mortgage REIT in that NYMC, our TRS, originates loans that may either be held in portfolio, aggregated and subsequently securitized for long-term investment or sold to third parties for gain on sale revenue. When we aggregate and securitize residential mortgage loans for investment, the leveraged portfolio is comprised largely of prime adjustable-rate mortgage loans that we originate and that meet our investment objectives and portfolio requirements, including adjustable-rate loans that have an initial fixed-rate period, which we refer to as hybrid mortgage loans. We believe that our ability to originate mortgage loans as the basis for our portfolio will enable us to build a portfolio that generates a higher return than the returns realized by "passive" mortgage investors that do not have their own origination capabilities, because the cost to originate and retain such mortgage loans for securitization is generally less than the premiums paid to purchase similar assets from third parties. Our portfolio loans are held at the REIT level or by New York Mortgage Funding, LLC ("NYMF"), our qualified REIT subsidiary ("QRS").

We aggregate a portfolio comprised mainly of high credit quality, adjustable-rate mortgage loans until the portfolio reaches a size sufficient for us to securitize such loans. We obtain the loans we securitize from either our TRS, NYMC, or from third parties. Our first securitization occurred on February 25, 2005 and we completed our second and third loan securitizations on July 28, 2005 and December 20, 2005, respectively. These securitization transactions, through which we financed the adjustable-rate and hybrid mortgage loans that we retained, were structured as financings for both tax and financial accounting purposes. Therefore, we do not expect to generate a gain or loss on sales from these activities, and, following the securitizations, the loans are classified on our consolidated balance sheet as assets. For our first two securitizations, we retained all of the resultant securities and financed such securities with repurchase agreements; for our third securitization we sold investment grade securities and the securitization debt is recorded as a liability.

NYMC also originates and sells loans to third parties for gain on sale revenue rather than aggregating lower cost assets, depending on market conditions. We also, depending on market conditions, retain in our portfolio selected adjustable-rate and hybrid mortgage loans that we originate. Generally, we sell the fixed-rate loans and any adjustable-rate and hybrid mortgage loans that do not meet our investment criteria or portfolio requirements that we originate to third parties. We rely on our own underwriting criteria with respect to the mortgage loans we retain and rely on the underwriting criteria of the institutions to which we sell our loans with respect to the loans we sell. The ability to originate and sell loans for gain on sale revenue is another advantage of being an active mortgage REIT.

We earn net interest income from purchased residential mortgage-backed securities and adjustable-rate mortgage loans and securities originated through NYMC. We have acquired and will seek to acquire additional assets that will produce competitive returns, taking into consideration the amount and nature of the anticipated returns from the investment, our ability to pledge the investment for secured, collateralized borrowings and the costs associated with originating, financing, managing, securitizing and reserving for these investments.

Funding Diversification. We strive to maintain and achieve a balanced and diverse funding mix to finance our investment portfolio and assets. As a mortgage lender, we rely primarily on secured warehouse lines of credit for our funding needs on loans held for sale to third parties. Since our IPO in June 2004, we rely primarily on repurchase agreements in order to finance our investment portfolio of residential loans and mortgage-backed securities. As of December 31, 2005, we have \$5.4 billion of commitments to provide repurchase agreement financing through 23 different counterparties. During 2005, we further diversified our sources of financing with the issuance of \$45 million of trust preferred securities classified as subordinated debentures.

On our first two securitizations (collateralized debt obligations, or "CDO") of mortgage loans, we retained 100% of the issued securities and financed such securities with repurchase agreements. The creation of mortgage-backed securities of our self-originated mortgage loans in this manner provides an asset with better liquidity and longer-term financing at better rates as opposed to financing whole loans through warehouse lines. In December, 2005 we completed our third securitization of \$235.0 million of self-originated ARM loans and sold the majority of the securities to third parties. Because we did not retain all of the resultant securities as in prior CDOs, this securitization eliminated the risk of short-term financing (reducing the asset to liability duration gap, which is the difference between the estimated maturities or lives of our earning assets and related financing facilities) and the mark-to-market pricing risk inherent in financing through repurchase agreements or warehouse lines of credit; as a result of this permanent financing we are not subject to margin calls on the assets of this CDO.

Risk Management. As a mortgage lender and a manager of mortgage loan investments, we must mitigate key risks inherent in these businesses, principally credit risk and interest rate risk.

Exceptional Investment Portfolio Credit Quality. We retain in our portfolio only selected, high-quality loans that we originate or may opportunistically acquire. As a result, our investment portfolio consists of high-quality loans that we have either securitized for our own portfolio or that collateralize our CDO financings. High credit quality creates significant portfolio liquidity and provides for financing opportunities that are readily available on generally favorable terms. When we retain loans for investment, either whole loans being aggregated for securitization or CDOs in which we retain all resultant securities or below A-rated tranches, we retain the risk of potential credit losses relative to the agency or higher rated securities we may purchase from time-to-time. Since we began our portfolio investment operations, we have not experienced any credit losses in our portfolio.

We believe that our credit performance is reflective of the high credit quality of the loans we originate or acquire for securitization, our prudent in-house underwriting, property valuation methods and review, our overall investment policies and prudent management of our delinquent loan portfolio. We believe that our delinquencies of 0.25% of the total par balance of our investment portfolio of residential loans at December 31, 2005 reflect strong credit characteristics and the credit culture of our underwriting and investment philosophy. The weighted average seasoning of loans in our investment portfolio of mortgage loans was approximately 12 months at December 31, 2005.

Interest Rate Risk Management. Another primary risk to our investment portfolio of mortgage loans and mortgage-backed securities is interest rate risk. We have a match funding philosophy in which we use hedging instruments to fix or cap the interest rates on our short-term, CDO and other financing arrangements that finance our investment portfolio of mortgage loans and securities. We hedge our financing costs in an attempt to maintain a net duration gap of less than one year; as of December 31, 2005, our net duration gap was approximately 11 months.

As we originate loans held for investment or acquire mortgage-backed securities or loans, we seek to employ our match funding strategy in order to stabilize net asset values and earnings during periods of rising interest rates. To do so, we use hedging instruments in conjunction with our borrowings to approximate the repricing characteristics of such assets. The Company utilizes a model based risk analysis system to assist in projecting portfolio performances over a scenario of different interest rates and market stresses. The model incorporates shifts in interest rates, changes in prepayments and other factors impacting the valuations of our financial securities, including mortgage-backed securities, repurchase agreements, interest rate swaps and interest rate caps. However, given the prepayment uncertainties on our mortgage assets, it is not possible to definitively lock-in a spread between the earnings yield on our investment portfolio and the related cost of borrowings. Nonetheless, through active management and the use of evaluative stress scenarios of the portfolio, we believe that we can mitigate a significant amount of both value and earnings volatility. See further discussion of interest rate risk at the “Quantitative And Qualitative Disclosures About Market Risk - Interest Rate Risk” section of this document.

Other Risk Considerations: Our business is affected by a variety of economic and industry factors. Management periodically reviews and assesses these factors and their potential impact on our business. The most significant risk factors management considers while managing the business and which could have a material adverse effect on our financial condition and results of operations are:

- a decline in the market value of our assets due to rising interest rates;
- an adverse impact on our earnings from a decrease in the demand for mortgage loans due to, among other things, a period of rising interest rates;
- our ability to originate prime adjustable-rate and hybrid mortgage loans for our portfolio;
- increasing or decreasing levels of prepayments on the mortgages underlying our mortgage-backed securities;
- our ability to obtain financing to fund and hold mortgage loans prior to their sale or securitization;
- the overall leverage of our portfolio and the ability to obtain financing to leverage our equity;
- the potential for increased borrowing costs and its impact on net income;
- the concentration of our mortgage loans in specific geographic regions;
- our ability to use hedging instruments to mitigate our interest rate and prepayment risks;
- a prolonged economic slow down, a lengthy or severe recession or declining real estate values could harm our operations;
- if our assets are insufficient to meet the collateral requirements of our lenders, we might be compelled to liquidate particular assets at inopportune times and at disadvantageous prices;
- if we are disqualified as a REIT, we will be subject to tax as a regular corporation and face substantial tax liability; and
- compliance with REIT requirements might cause us to forgo otherwise attractive opportunities.

Financial Overview

Income . Our primary sources of income are net interest income on our loans and residential investment securities and gain on sale of mortgage loans. Net interest income is the difference between interest income, which is the income that we earn on our loans and residential investment securities and interest expense, which is the interest we pay on borrowings and subordinated debt. Net interest income is also earned on the bankered loan origination production of our TRS for the period of time from when a loan is closed to the sale of such loan to a third party.

Income from the gain on sale of mortgage loans to third parties is the difference between the sales price and the adjusted cost basis of originated loans when title transfers. The adjusted cost basis of the loans includes the original principal amount adjusted for deferrals of origination and commitment fees received, net of direct loan origination costs (including commissions and salaries for employees directly responsible for such originations) paid.

Other significant sources of income include fees received on brokered loans and income from the sale of securities and related hedges.

Expenses . Non-interest expenses we incur in operating our business consist primarily of salary and employee benefits, brokered loan expenses, occupancy and equipment expenses, marketing and promotion expenses, and other general and administrative expenses.

Salary and employee benefits consist primarily of the salaries and wages paid to our employees (exclusive of salaries and wages allocated to net gain on sale of mortgage loans), payroll taxes and expenses for health insurance, retirement plans and other employee benefits.

Brokered loan expenses are primarily direct commissions and other costs associated with brokered loans when such loans are closed with the borrower. Costs associated with brokered loans are expensed when incurred.

Occupancy and equipment expenses, which are the fixed and variable costs of buildings and equipment, consist of building lease expenses, furniture and equipment expenses, maintenance, real estate taxes and other associated costs of occupancy.

Marketing and promotion expenses include the cost of print, radio and internet advertisements, promotions, third-party marketing services, public relations and sponsorships.

Other general and administrative expenses include expenses for professional fees, office supplies, postage and shipping, telephone, insurance, travel and entertainment and other miscellaneous operating expenses.

Many of our expenses are variable in nature and are relative to our loan origination production volumes. Variable expenses include commissions on loan originations, brokered loan costs and, to a lesser degree, office supplies, marketing and promotion and other miscellaneous expenses. Fixed expenses are primarily occupancy and equipment lease expenses and data processing and communications expenses.

Description of Businesses

Mortgage Lending

Our mortgage lending operations are important to our financial results as they either produce the loans that will ultimately collateralize the mortgage securities that we will hold in our portfolio or provide us the flexibility to sell the loans for gain on sale revenue. We primarily originate prime, first-lien, residential mortgage loans and, to a lesser extent, second lien mortgage loans, home equity lines of credit, and bridge loans. We originate a wide range of mortgage loan products including adjustable-rate mortgage (“ARM”) loans which may have an initial fixed rate period, and fixed-rate mortgages. Since the completion of our IPO, we sell or retain and aggregate our self-originated, high-quality, shorter-term ARM loans in order to pool them into mortgage securities. The fixed rate loans we originate and any ARM loans not meeting our investment criteria continue to be sold to third parties. For the years ended December 31, 2005 and 2004, we originated \$2.9 billion and \$1.4 billion in mortgage loans for sale to third parties, respectively. We recognized gains on sales of mortgage loans totaling \$26.8 million and \$20.8 million for the years ended December 31, 2005 and 2004, respectively.

Subsequent to our IPO in June 2004, we have sold or retained for our portfolio the high quality, adjustable-rate mortgage loans that we originate. For the years ended December 31, 2005 and 2004, we originated and retained \$555.2 million and \$95.1 million of such loans, respectively. When we retain mortgage loans that we originate, we record such assets at GAAP (“GAAP” means generally accepted accounting principles) cost. The GAAP cost is then amortized on the effective interest method over the estimated lives of the retained loans. For the years ended December 31, 2005 and 2004, the GAAP cost of loans was approximately 58 and 45 basis points over par, respectively. Furthermore, when we retain loans that we originate, we are not able to recognize gain on sale revenues (and thus higher GAAP net income) as we would have if such loans were sold to third parties. Instead, the value of the gain on sale revenue inures to the benefit of our investment portfolio in the form of a lower cost asset and thus incrementally higher yield during the lives of retained loans. We estimate that the foregone premium we would have otherwise received had retained loans been sold to third parties is approximately \$7.5 million and \$2.0 million for the years ended December 31, 2005 and 2004, respectively.

Our wholesale lending strategy has historically been a small component of our loan origination operations. We have a network of non-affiliated wholesale loan brokers and mortgage lenders who submit loans to us. We maintain relationships with these wholesale brokers and, as with retail loan originations, will underwrite, process, and fund wholesale loans through our centralized facilities and processing systems. In order to further diversify our origination network, during 2005, we began to expand our wholesale loan origination capacity with the creation of a division specifically for wholesale loan originations.

We also sold broker loans to third party mortgage lenders for which we receive a broker fee. For the years ended December 31, 2005 and 2004, we originated \$562.1 million and \$410.1 million in brokered loans, respectively. We recognized net brokering income totaling \$2.4 million and \$1.6 million during the years ended December 31, 2005 and 2004, respectively.

NYMC originates all of the mortgage loans we sell or broker and some of the loans that we retain for investment. On mortgages to be sold, we underwrite, process and fund the mortgages originated by NYMC.

A significant risk to our mortgage lending operations is liquidity risk - the risk that we will not have financing facilities and cash available to fund and hold loans prior to their sale or securitization. We maintain lending facilities with large banking and investment institutions to reduce this risk. On a short-term basis, we finance mortgage loans using warehouse lines of credit and repurchase agreements. Details regarding available financing arrangements and amounts outstanding under those arrangements are included in "Liquidity and Capital Resources" below.

Mortgage Portfolio Management

Prior to the completion of our IPO on June 29, 2004, our operations were limited to the mortgage operations described in the preceding section. Beginning in July 2004, we began to implement our business plan of investing in high-quality, adjustable rate mortgage related securities and residential loans. Our mortgage portfolio, consisting primarily of residential mortgage-backed securities and mortgage loans held for investment, currently generates a substantial portion of our earnings. In managing our investment in a mortgage portfolio, we:

- invest in assets generated primarily from our self-origination of high-credit quality, single-family, residential mortgage loans;
- invest in mortgage-backed securities originated by others, including ARM securities and collateralized mortgage obligation floaters ("CMO Floaters");
- generally operate as a long-term portfolio investor;
- finance our portfolio by entering into repurchase agreements and as we aggregate mortgage loans for investment, issuing mortgage-backed bonds from time to time; and
- generate earnings from the return on our mortgage securities and spread income from our mortgage loan portfolio.

A significant risk to our operations, relating to our portfolio management, is the risk that interest rates on our assets will not adjust at the same times or amounts that rates on our liabilities adjust. Even though we retain and invest in ARMs, many of the hybrid ARM loans in our portfolio have fixed rates of interest for a period of time ranging from two to seven years. Our funding costs are generally not constant or fixed. As a result, we use derivative instruments (interest rate swaps and interest rate caps) to mitigate, but not eliminate, the risk of our cost of funding increasing or decreasing at a faster rate than the interest on our investment assets.

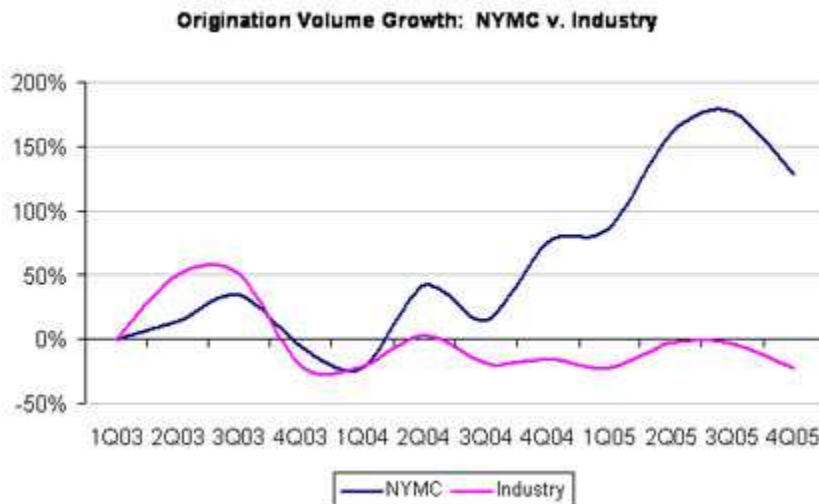
As of December 31, 2005, our mortgage securities portfolio consisted of 100% AAA- rated or Fannie Mae, Freddie Mac or Ginnie Mae-guaranteed ("FNMA/FHLMC/GNMA") mortgage securities. This allows the company to obtain excellent financing rates as well as enhanced liquidity. The loans held in securitization trusts and mortgage loans held for investment consisted of high-credit quality prime adjustable rate mortgages with initial reset periods of no greater than seven years with 99.7% with initial reset periods of five years or less. The loan portfolio has had no credit losses to date. Our portfolio strategy for ARM loan originations is to acquire only high-credit quality ARM loans for our securitization process thereby limiting future potential losses.

Such assets are evaluated for impairment on a quarterly basis or, if events or changes in circumstances indicate that these assets or the underlying collateral may be impaired, on a more frequent basis. We evaluate whether these assets are considered impaired, whether the impairment is other-than-temporary and, if the impairment is other-than-temporary, recognize an impairment loss equal to the difference between the asset's amortized cost basis and its fair value. We recorded an impairment loss of \$7.4 million in the fourth quarter of 2005

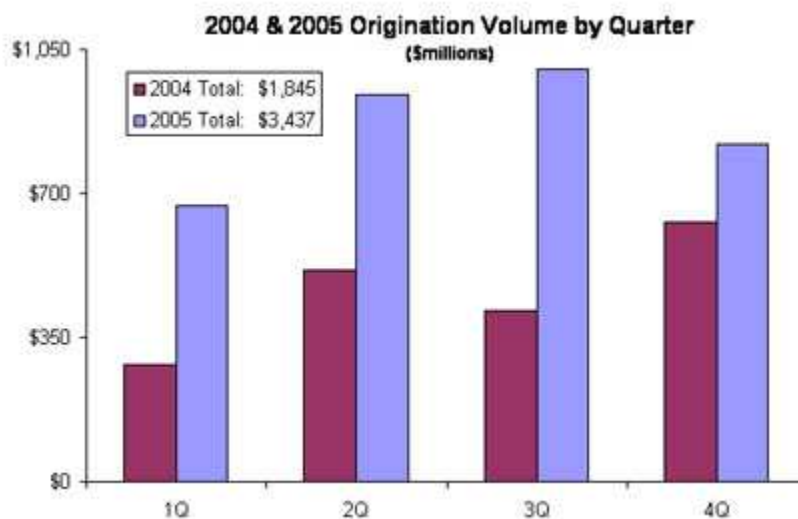
because we concluded that we no longer had the intent to hold certain lower-yielding mortgage-backed securities until their values recovered. This impairment was not due to any underlying credit issues but was related to our intent to no longer hold identified lower-yield securities and to re-position our portfolio by selling such securities and replacing them with higher yield securities with similar credit characteristics in order to earn higher net interest spread in the future.

Known Material Trends and Commentary

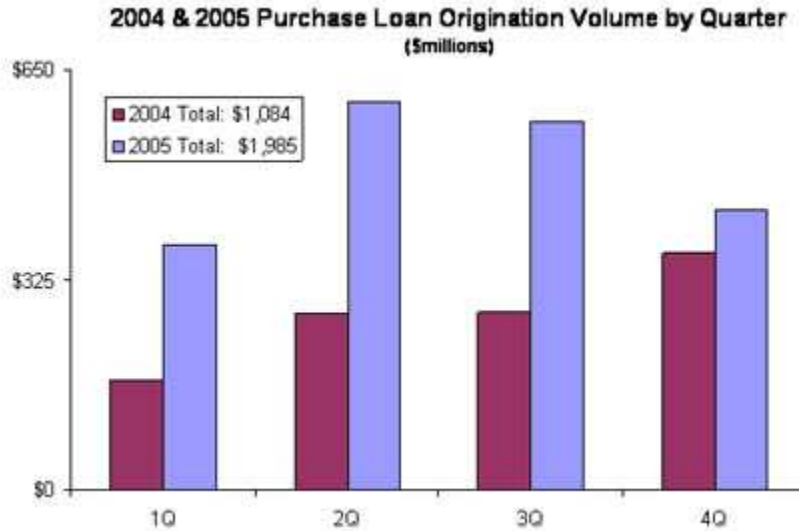
Mortgage Lending. The U.S. residential mortgage market has experienced considerable growth during the past ten years according to The Bond Market Association and the Federal Reserve. According to the MBA's February 7, 2006 Mortgage Finance Forecast, lenders originated \$2.8 trillion in 2005, unchanged from the amount originated in 2004. However, the mix of origination volume changed substantially. In 2004, purchase mortgages comprised 47% of total originations while in 2005; purchase mortgages represented 58% of total originations. The chart below illustrates our origination volume growth for the past two years relative to the MBA industry projections:



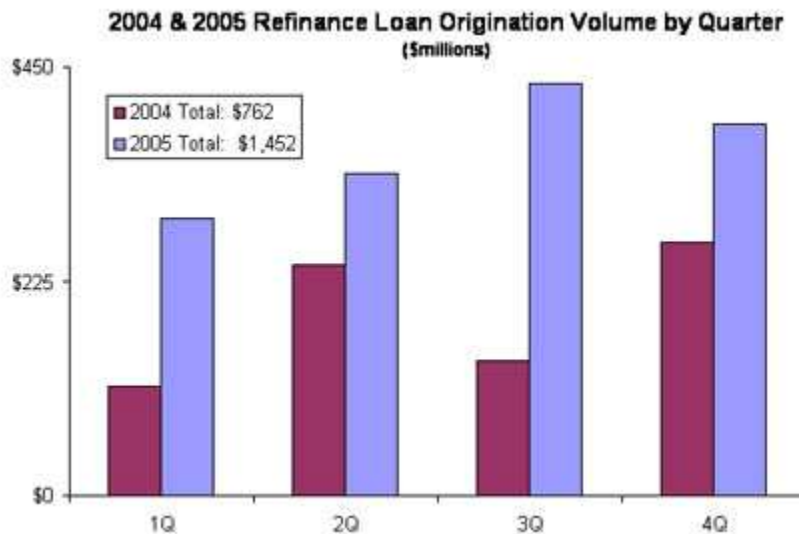
For the year ended December 31, 2005, our total originations of residential mortgage loans, aided in part by our acquisition of selected Guaranteed Residential Lending (“GRL”) branches, increased by \$1.6 billion, or 86%, versus the comparable period for the prior year. This 86% increase in our mortgage originations compares favorably to the marginal change for total U.S. 1-to-4-family mortgage originations for the period estimated in the February 7, 2006 Mortgage Finance Forecast. The following chart summarizes the our loan origination volume and characteristics for each of the four quarters of 2005 relative to our 2004 historical origination production:



With regard to purchase mortgage originations, statistics from the MBA indicate that since 1990, the volume of purchase mortgages year-after-year steadily increases throughout various economic and interest rate cycles. While management is unable to predict borrowing habits, we believe that historical trends indicate that the purchase mortgage market is relatively stable and our focus on retail based purchase origination volume contributes to consistent originations growth. For the year ended December 31, 2005, our purchase mortgage originations, aided in part by our acquisition of GRL, have increased by \$896.2 million, or 82%, over the comparable period for the prior year. This increase presently exceeds the 13% increase forecasted in the MBA's February 7, 2006 Mortgage Finance Forecast for total U.S. 1-to-4-family purchase mortgage originations for the period. The following chart summarizes the our purchase loan origination volume and characteristics for each of the four quarters of 2005 relative to our prior year purchase loan historical origination production:



For the year ended December 31, 2005, our originations of mortgage refinancings, aided in part by our acquisition of GRL, have increased by \$695.7, million or 92%, versus the comparable period for the prior year. This 92% increase in our origination of mortgage refinancings compares favorably to the 12% decrease for total U.S. 1-to-4-family refinance mortgage originations for the period estimated in the MBA's February 7, 2006 Mortgage Finance Forecast.



In the February 7, 2006 forecast, the MBA projected that mortgage loan volumes will decrease to \$2.2 trillion in 2006, primarily due to an expected continued decline in the volume of loan refinancings. For the year ended December 31, 2005, NYMC's residential purchase loan originations represented 58% of NYMC's total residential mortgage loan originations as measured by principal balance, as compared to an industry-wide percentage of 54% for one-to-four family mortgage loans as estimated in the MBA's February 7, 2006 Mortgage Finance Forecast. We believe that our concentration on purchase loan originations has caused our loan origination volume to be less susceptible to the industry-wide decline in origination volume that has resulted from rising interest rates. We believe that the market for mortgage loans for home purchases is less susceptible than the refinance market to downturns during periods of increasing interest rates, because borrowers seeking to purchase a home do not generally base their decision to purchase on changes in interest rates alone, while borrowers that refinance their mortgage loans often make their decision as a direct result of changes in interest rates. Consequently, while our referral-based marketing strategy may cause our overall loan origination volume during periods of declining interest rates to lag our competitors who rely on mass marketing and advertising and who therefore capture a greater percentage of loan refinance applications during those periods, we believe this strategy enables us to sustain stronger home purchase loan origination volumes than those same competitors during periods of flat to rising interest rates. In addition, we believe that our referral-based business results in relatively higher gross margins and lower advertising costs and loan generation expenses than most other mortgage companies whose business is not referral-based.

State and local governing bodies are focused on certain practices engaged in by certain participants in the mortgage lending business relating to fees borrowers incur in obtaining a mortgage loan - generally termed "predatory lending" within the mortgage industry. In several instances, states or local governing bodies have imposed strict laws on lenders to curb such practices. To date, these laws have had an insignificant impact on our business. We have capped fee structures consistent with those adopted by federal mortgage agencies and have implemented rigid processes to ensure that our lending practices are not predatory in nature.

Liquidity. We depend on the capital markets to finance the mortgage loans we originate. In the short-term, we finance our mortgage loans using "warehouse" lines of credit and "aggregation" lines provided by commercial and investment banks. As we execute our business plan of securitizing self-originated or purchased mortgage loans, we have issued bonds from our loan securitizations and will own such bonds although we may sell the bonds to large, institutional investors at some point in the future. These bonds and some of our mortgage loans may be financed with repurchase agreements with well capitalized commercial and investment banks. Commercial and investment banks have provided significant liquidity to finance our operations through these various financing facilities. While management cannot predict the future liquidity environment, we are currently unaware of any material reason to prevent continued liquidity support in the capital markets for our business. See "Liquidity and Capital Resources" below for further discussion of liquidity risks and resources available to us.

The mortgage REIT industry has seen a significant increase in capital raising in the public markets. Additionally, there have been several new entrants, to the mortgage REIT business and other mortgage lender conversions (or proposed conversions) to REIT status. While many of these entrants focus on sub-prime and nonconforming mortgage lending, there are also entrants which will compete with our focus on the high-quality and prime mortgage marketplace. This increased activity may impact the pricing and underwriting guidelines within the high-quality and prime marketplace. We have not changed our guidelines or pricing in response to this activity nor do we have any plans to make such changes at this time.

Significance of Estimates and Critical Accounting Policies

We prepare our financial statements in conformity with accounting principles generally accepted in the United States of America, or GAAP, many of which require the use of estimates, judgments and assumptions that affect reported amounts. These estimates are based, in part, on our judgment and assumptions regarding various economic conditions that we believe are reasonable based on facts and circumstances existing at the time of reporting. The results of these estimates affect reported amounts of assets, liabilities and accumulated other comprehensive income at the date of the consolidated financial statements and the reported amounts of income, expenses and other comprehensive income during the periods presented.

Changes in the estimates and assumptions could have a material effect on these financial statements. Accounting policies and estimates related to specific components of our consolidated financial statements are disclosed in the notes to our financial statements. In accordance with SEC guidance, those material accounting policies and estimates that we believe are most critical to an investor's understanding of our financial results and condition and which require complex management judgment are discussed below.

Revenue Recognition. Interest income on our residential mortgage loans and mortgage-backed securities is a combination of the interest earned based on the outstanding principal balance of the underlying loan/security, the contractual terms of the assets and the amortization of yield adjustments, principally premiums and discounts, using generally accepted interest methods. The net GAAP cost over the par balance of self-originated loans held for investment and premium and discount associated with the purchase of mortgage-backed securities and loans are amortized into interest income over the lives of the underlying assets using the effective yield method as adjusted for the effects of estimated

prepayments. Estimating prepayments and the remaining term of our interest yield investments require management judgment, which involves, among other things, consideration of possible future interest rate environments and an estimate of how borrowers will react to those environments, historical trends and performance. The actual prepayment speed and actual lives could be more or less than the amount estimated by management at the time of origination or purchase of the assets or at each financial reporting period.

Fair Value. Generally, the financial instruments we utilize are widely traded and there is a ready and liquid market in which these financial instruments are traded. The fair values for such financial instruments are generally based on market prices provided by five to seven dealers who make markets in these financial instruments. If the fair value of a financial instrument is not reasonably available from a dealer, management estimates the fair value based on characteristics of the security that the Company receives from the issuer and on available market information.

In the normal course of our mortgage loan origination business, we enter into contractual interest rate lock commitments, or (“IRLCs”), to extend credit to finance residential mortgages. Mark-to-market adjustments on IRLCs are recorded from the inception of the interest rate lock through the date the underlying loan is funded. The fair value of the IRLCs is determined by an estimate of the ultimate gain on sale of the loans net of estimated net costs to originate the loan. To mitigate the effect of the interest rate risk inherent in issuing an IRLC from the lock-in date to the funding date of a loan, we generally enter into forward sale loan contracts, or (“FSLCs”). Since the FSLCs are committed prior to mortgage loan funding and thus there is no owned asset to hedge, the FSLCs in place prior to the funding of a loan are undesignated derivatives under SFAS No. 133 and are marked to market with changes in fair value recorded to current earnings.

Impairment of and Basis Adjustments on Securitized Financial Assets. As previously described herein, we regularly securitize our mortgage loans and retain the beneficial interests created. In addition, we may purchase such beneficial interests from third parties. Such assets are evaluated for impairment on a quarterly basis or, if events or changes in circumstances indicate that these assets or the underlying collateral may be impaired, on a more frequent basis. We evaluate whether these assets are considered impaired, whether the impairment is other-than-temporary and, if the impairment is other-than-temporary, recognize an impairment loss equal to the difference between the asset’s amortized cost basis and its fair value. These evaluations require management to make estimates and judgments based on changes in market interest rates, credit ratings, credit and delinquency data and other information to determine whether unrealized losses are reflective of credit deterioration and our ability and intent to hold the investment to maturity or recovery. This other-than-temporary impairment analysis requires significant management judgment and we deem this to be a critical accounting estimate. We recorded an impairment loss of \$7.4 million during 2005, because we concluded that we no longer had the intent to hold certain lower-yielding mortgage-backed securities until their values recovered. At December 31, 2005, we have an unrealized loss of \$4.1 million on the remaining securities in our portfolio, which we do not consider to represent an other than temporary impairment.

Loan Loss Reserves on Mortgage Loans. We evaluate a reserve for loan losses based on management’s judgment and estimate of credit losses inherent in our portfolio of residential mortgage loans held for sale and mortgage loans held in securitization trusts. The estimation involves the consideration of various credit-related factors including, but not limited to, current economic conditions, the credit diversification of the portfolio, loan-to-value ratios, delinquency status, historical credit losses, purchased mortgage insurance and other factors deemed to warrant consideration. If the credit performance of our mortgage loans held for investment or held in the securitization trusts deviates from expectations, the allowance for loan losses is adjusted to a level deemed appropriate by management to provide for estimated probable losses in the portfolio. Two critical assumptions used in estimating the loan loss reserve are frequency and severity. Frequency is the assumed rate of default or the expected rate at which loans may go into foreclosure over the life of the loans. Severity represents the expected rate of realized loss upon disposition/resolution of the collateral that has gone into foreclosure. Based on the performance and credit characteristics of the loan portfolio as of December 31, 2005, management established a loan loss reserve of \$12.1 thousand.

Securitizations. We create securitization entities as a means of either:

- creating securities backed by mortgage loans which we will continue to hold and finance that will be more liquid than holding whole loan assets; or
- securing long-term collateralized financing for our residential mortgage loan portfolio and matching the income earned on residential mortgage loans with the cost of related liabilities, otherwise referred to as a match funding our balance sheet.

Residential mortgage loans are transferred to a separate bankruptcy-remote legal entity from which private-label multi-class mortgage-backed notes are issued. On a consolidated basis, securitizations are accounted for as secured financings as defined by SFAS No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, and, therefore, no gain or loss is recorded in connection with the securitizations. Each securitization entity is evaluated in accordance with Financial Accounting Standards Board Interpretation, or FIN, 46(R), *Consolidation of Variable Interest Entities*, and we have determined that we are the primary beneficiary of the securitization entities. As such, the securitization entities are consolidated into our consolidated balance sheet subsequent to securitization. Residential mortgage loans transferred to securitization entities collateralize the mortgage-backed notes issued, and, as a result, those investments are not available to us, our creditors or stockholders. All discussions relating to securitizations are on a consolidated basis and do not necessarily reflect the separate legal ownership of the loans by the related bankruptcy-remote legal entity.

Derivative Financial Instruments - The Company has developed risk management programs and processes, which include investments in derivative financial instruments designed to manage market risk associated with its mortgage banking and its mortgage-backed securities

investment activities.

All derivative financial instruments are reported as either assets or liabilities in the consolidated balance sheet at fair value. The gains and losses associated with changes in the fair value of derivatives not designated as hedges are reported in current earnings. If the derivative is designated as a fair value hedge and is highly effective in achieving offsetting changes in the fair value of the asset or liability hedged, the recorded value of the hedged item is adjusted by its change in fair value attributable to the hedged risk. If the derivative is designated as a cash flow hedge, the effective portion of change in the fair value of the derivative is recorded in OCI and is recognized in the income statement when the hedged item affects earnings. The Company calculates the effectiveness of these hedges on an ongoing basis, and, to date, has calculated effectiveness of approximately 100%. Ineffective portions, if any, of changes in the fair value or cash flow hedges are recognized in earnings.

New accounting pronouncements - In May 2005, the FASB issued SFAS 154, "Accounting Changes and Error Corrections." SFAS 154 changes the requirements for the accounting for and reporting of a change in accounting principle. Previous guidance required that most voluntary changes in accounting principle be recognized by including in net income of the period of the change the cumulative effect of changing to the new accounting principle. SFAS 154 requires retrospective application to prior periods' financial statements of changes in accounting principle, unless it is impracticable to determine either the period-specific effects or the cumulative effect of the change. Management believes SFAS 154 will have no impact on the Company's financial statements.

In February 2006, the FASB issued SFAS 155, "Accounting for Certain Hybrid Financial Instruments". Key provisions of SFAS 155 include: (1) a broad fair value measurement option for certain hybrid financial instruments that contain an embedded derivative that would otherwise require bifurcation; (2) clarification that only the simplest separations of interest payments and principal payments qualify for the exception afforded to interest-only strips and principal-only strips from derivative accounting under paragraph 14 of FAS 133 (thereby narrowing such exception); (3) a requirement that beneficial interests in securitized financial assets be analyzed to determine whether they are freestanding derivatives or whether they are hybrid instruments that contain embedded derivatives requiring bifurcation; (4) clarification that concentrations of credit risk in the form of subordination are not embedded derivatives; and (5) elimination of the prohibition on a QSPE holding passive derivative financial instruments that pertain to beneficial interests that are or contain a derivative financial instrument. In general, these changes will reduce the operational complexity associated with bifurcating embedded derivatives, and increase the number of beneficial interests in securitization transactions, including interest-only strips and principal-only strips, required to be accounted for in accordance with FAS 133. Management does not believe that SFAS 155 will have a material effect on the financial condition, results of operations, or liquidity of the Company.

Overview of Performance

For the year ended December 31, 2005, we reported a net loss of \$5.3 million, as compared to net income of \$4.9 million for the year ended December 31, 2004. Our revenues were driven largely from increases in interest income on investments in mortgage loans and mortgage securities (our "mortgage portfolio management" segment) and gain on sale income from loan originations sold to third parties (our "mortgage lending" segment) during the period. The change in net income is attributed to an increase in gain on sale revenues and net interest income from our investment portfolio. These gains were offset by an impairment charge of \$7.4 million in the fourth quarter related to \$388.3 million of available for sale securities that we anticipate selling in 2006 in order to rebalance our portfolio with higher yielding assets, one-time severance charges of \$3.0 million, and increased expenses incurred for and subsequent to the acquisition of multiple retail loan origination locations during 2004. Also, the execution of our core business strategy to retain selected self-originated loans in our portfolio (this involves foregoing the gain on sale premiums we would have otherwise received when such loans are sold to third parties), which reduced the growth in gain on sale income from what it otherwise would have been.

As upfront expenses related to the acquisition and/or infrastructure enhancements of our loan origination capacity begin to result in higher production volume and lowered stabilized costs, the mortgage lending segment is expected to become a more meaningful contributor to our financial performance in the future. For the year ended December 31, 2005, total residential originations, including brokered loans, were \$3.4 billion as compared to \$1.8 billion and \$1.6 billion for the same period of 2004 and 2003, respectively. The increase in our loan origination levels for the year ended December 31, 2005 as compared to the same period of 2004 and 2003 is the result of the addition of sales personnel and branch offices primarily in new and underserved markets. Total employees increased to 802 at December 31, 2005 from 782 at December 31, 2004; for 2005 we also had the benefit of a full year's service from 275 employees related to our GRL acquisition in November 2004. Included in the total number of employees, the number of loan officers dedicated to originating loans decreased to 329 at December 31, 2005 from 344 at December 31, 2004. Full-service loan origination locations decreased to 28 offices and 26 satellite loan origination locations at December 31, 2005 from an aggregate of 66 locations at December 31, 2004.

Summary of Operations and Key Performance Measurements

For the year ended December 31, 2005, our net income was dependent upon our mortgage portfolio management operations and the net interest (interest income on portfolio assets net of the interest expense and hedging costs associated with the financing of such assets) generated from our portfolio of mortgage loans held for investment, mortgage loans held in the securitization trusts and residential mortgage-backed securities in our portfolio management segment. The following table presents the components of our net interest income from our investment portfolio of mortgage securities and loans for the year ended December 31, 2005:

	<u>Amount</u>	<u>Average Outstanding Balance</u>	<u>Effective Rate</u>
	(Dollar s in Millions)		
Net Interest Income Components:			
Interest Income			
Investment securities and loans held in the securitization trusts	\$ 60,988	\$ 1,361.2	4.48%
Mortgage loans held for investment	7,778	146.6	5.31%
Amortization of premium	(6,041)	—	(0.40)%
Total interest income	<u>\$ 62,725</u>	<u>\$ 1,507.8</u>	<u>4.16%</u>
Interest Expense			
Repurchase agreements	\$ 43,107	\$ 1,283.3	3.31%
Warehouse borrowings	5,847	142.7	4.04%
Interest rate swaps and caps	(1,106)	—	(0.08)%
Total interest expense	<u>\$ 47,848</u>	<u>\$ 1,426.0</u>	<u>3.31%</u>
Net Interest Income	<u><u>\$ 14,877</u></u>		<u><u>0.85%</u></u>

The key performance measures for our portfolio management activities are:

- net interest spread on the portfolio;
- characteristics of the investments and the underlying pool of mortgage loans including but not limited to credit quality, coupon and prepayment rates; and
- return on our mortgage asset investments and the related management of interest rate risk.

For the year ended December 31, 2005, our net income was also dependent upon our mortgage lending operations and originations from our mortgage lending segment, which include the mortgage loan sales ("mortgage banking") and mortgage brokering activities on residential mortgages sold or brokered to third parties. Our mortgage banking activities generate revenues in the form of gains on sales of mortgage loans to third parties and ancillary fee income and interest income from borrowers. Our mortgage brokering operations generate brokering fee revenues from third party buyers. When we retain a portion of our loan originations for our investment portfolio, we do not realize the gain on sale premiums we would have otherwise recognized had these loans been sold to third parties and such loans retained on our balance sheet at cost. As a result, revenues in our mortgage banking segment are lower and the book value of these assets on our balance sheet, which are accounted for on a cost basis, may differ from their fair market value.

A breakdown of our loan originations for the year ended December 31, 2005 follows:

Description	Number of Loans	Aggregate Principal Balance (\$000's)	Percentage of Total Principal	Weighted Average Interest Rate	Average Loan Size
Purchase mortgages	9,174	\$ 1,985.7	57.8%	6.33%	\$ 216,443
Refinancings	5,539	1,451.7	42.2%	5.99%	262,091
Total	14,713	\$ 3,437.4	100.0%	6.19%	233,628
Adjustable rate or hybrid	6,296	\$ 1,875.2	54.6%	6.00%	297,843
Fixed rate	8,417	1,562.2	45.4%	6.41%	185,595
Total	14,713	\$ 3,437.4	100.0%	6.19%	233,628
Bankered	12,654	\$ 2,875.3	83.6%	6.25%	227,224
Brokered	2,059	562.1	16.4%	5.84%	272,988
Total	14,713	\$ 3,437.4	100.0%	6.19%	\$ 233,628

The key performance measures for our origination activities are:

- dollar volume of mortgage loans originated;
- relative cost of the loans originated;
- characteristics of the loans, including but not limited to the coupon and credit quality of the loan, which will indicate their expected yield; and
- return on our mortgage asset investments and the related management of interest rate risk.

Management's discussion and analysis of financial condition and results of operations, along with other portions of this report, are designed to provide information regarding our performance and these key performance measures.

Year Ended December 31, 2005 Financial Highlights

- Net income for the Company's Mortgage Portfolio Management segment totaled \$6.2 million for the year ended December 31, 2005 after recognition of an impairment loss on investment securities of \$7.4 million.
- Consolidated net loss totaled \$5.3 million for the year ended December 31, 2005.
- Completion of three securitizations totaling \$896.9 million in residential mortgage loans, respectively.
- Issuance of \$45.0 million of trust preferred securities.
- Total assets increased to \$1.8 billion as of December 31, 2005 from \$1.6 billion as of December 31, 2004.
- Aided in part by the GRL acquisition, 89% growth in loan originations of \$3.4 billion for the year ended December 31, 2005 as compared to \$1.8 million for the year ended December 31, 2004 and relative to an overall industry increase of 0.7% for the year ended December 31, 2005 as projected by the MBA.
- During the second quarter the Company undertook cost-cutting initiatives which reduced its overall recurring annual compensation expenses by an estimated \$3.7 million.
- The Company's new wholesale lending division began operations.

Financial Condition

Balance Sheet Analysis - Asset Quality

Investment Portfolio Related Assets

Mortgage Loans Held in Securitization Trusts and Mortgage Loans Held for Investment. We retain in our portfolio substantially all of the adjustable-rate mortgage loans that we originate and that meet our investment criteria and portfolio requirements. These loans are classified as “mortgage loans held for investment” during a period of aggregation and until the portfolio reaches a size sufficient for us to securitize such loans. Once securitized into sequentially rated classes, loans are classified as “mortgage loans held in securitization trusts.”

The following table details Mortgage Loans Held for Investment at December 31, 2005 (dollar amounts in thousands):

<u>Category</u>	<u>Par Value</u>	<u>Coupon</u>	<u>Carrying Value</u>	<u>Yield</u>
Mortgage Loans Held for Investment	\$ 4,054	5.84%	\$ 4,060	5.56%

During 2005, we securitized loan investments in three different securitizations:

- New York Mortgage Trust 2005-1 (“NYMT ’05-1”), February 25, 2005; \$419.0 million of loans
- New York Mortgage Trust 2005-2 (“NYMT ’05-2”), July 28, 2005; \$242.9 million of loans
- New York Mortgage Trust 2005-3 (“NYMT ’05-3”), December 20, 2005; \$235.0 of loans

The following table details Mortgage Loans Held in Securitization Trusts (dollar amounts in thousands):

<u>Category</u>	<u>Par Value</u>	<u>Coupon</u>	<u>Carrying Value</u>	<u>Yield</u>
Mortgage Loans Held in Securitization Trusts	\$ 771,451	5.17%	\$ 776,610	5.49%

At December 31, 2005 mortgage loans held for investment and mortgage loans held in securitization trusts totaled \$780.7 million, or 44% of total assets. Of this mortgage loan investment portfolio 100% are traditional or hybrid ARMs and 74.9% are ARM loans that are interest only. On our hybrid ARMs, interest rate reset periods are predominately seven years or less and the interest-only/amortization period is typically 10 years, which mitigates the “payment shock” at the time of interest rate reset. No loans in our investment portfolio of mortgage loans are option-ARMs or ARMs with negative amortization.

Prior to 2005, we had no loans held in securitization trusts. The following table sets forth the composition of our loans held for investment and in securitization trusts as of December 31, 2005:

Characteristics of Our Mortgage Loans Held for Investment and Securitization (dollar amounts in thousands):

	<u># of Loans</u>	<u>Par Value</u>	<u>Carrying Value</u>
Loan Characteristics:			
Mortgage loans held in securitization trusts	1,609	\$ 771,451	\$ 776,610
Mortgage loans held for investment	11	4,054	4,060
Total Loans Held	1,620	\$ 775,505	\$ 780,670
	<u>Average</u>	<u>High</u>	<u>Low</u>
General Loan Characteristics:			
Original Loan Balance	\$ 486	\$ 3,500	\$ 25
Coupon Rate	5.26%	7.75%	3.00%
Gross Margin	2.40%	7.01%	1.13%
Lifetime Cap	11.08%	13.75%	9.00%
Original Term (Months)	360	360	359
Remaining Term (Months)	348	360	319

	<u>Percentage</u>
<i>Arm Loan Type</i>	
Traditional ARMs	4.7%
2/1 Hybrid ARMs	5.3%
3/1 Hybrid ARMs	32.4%
5/1 Hybrid ARMs	57.3%
7/1 Hybrid ARMs	0.3%
Total	<u>100.0%</u>
Percent of ARM loans that are Interest Only	74.9%
Weighted average length of interest only period	<u>8.2 years</u>

	<u>Percentage</u>
<i>Traditional ARMs - Periodic Caps</i>	
None	64.5%
1%	19.4%
Over 1%	16.1%
Total	<u>100.0%</u>

	<u>Percentage</u>
<i>Hybrid ARMs - Initial Cap</i>	
3.00% or less	29.6%
3.01%-4.00%	10.7%
4.01%-5.00%	58.2%
5.01%-6.00%	1.5%
Total	<u>100.0%</u>

	<u>Percentage</u>
<i>FICO Scores</i>	
650 or less	5.0%
651 to 700	18.0%
701 to 750	35.4%
751 to 800	38.2%
801 and over	3.4%
Total	<u>100.0%</u>
Average FICO Score	<u>733</u>

	<u>Percentage</u>
<i>Loan to Value (LTV)</i>	
50% or less	9.5%
50.01%-60.00%	9.4%
60.01%-70.00%	28.6%
70.01%-80.00%	49.7%
80.01% and over	2.8%
Total	<u>100.0%</u>
Average LTV	<u>69.3%</u>

	<u>Percentage</u>
<i>Property Type</i>	
Single Family	53.7%
Condominium	23.1%
Cooperative	10.1%
Planned Unit Development	9.2%
Two to Four Family	3.9%
Total	<u>100.0%</u>

	<u>Percentage</u>
<i>Occupancy Status</i>	
Primary	84.2%
Secondary	10.7%
Investor	5.1%
Total	<u>100.0%</u>

	<u>Percentage</u>
<i>Documentation Type</i>	
Full Documentation	61.8%
Stated Income	24.1%
Stated Income/ Stated Assets	11.8%
No Documentation	1.6%
No Ratio	0.7%
Total	<u>100.0%</u>

	<u>Percentage</u>
Loan Purpose	
Purchase	60.0%
Cash out refinance	25.2%
Rate & term refinance	14.8%
Total	<u>100.0%</u>

	<u>Percentage</u>
Geographic Distribution: 5% or more in any one state	
NY	32.7%
MA	19.4%
CA	14.1%
NJ	5.8%
FL	5.4%
Other (less than 5% individually)	22.6%
Total	<u>100.0%</u>

Delinquency Status

As of December 31, 2005, we had four delinquent loans totaling \$2.0 million categorized as Mortgage Loans Held in Securitization Trusts. The table below shows delinquencies in our loan portfolio as of December 31, 2005 (dollar amounts in thousands):

<u>Days Late</u>	<u>Number of Delinquent Loans</u>	<u>Total Dollar Amount</u>	<u>% of Loan Portfolio</u>
30-60	1	\$ 193.1	0.02%
61-90	—	—	—
90+	3	\$ 1,771.0	0.23%

Interest is recognized as revenue when earned according to the terms of the mortgage loans and when, in the opinion of management, it is collectible. The accrual of interest on loans is discontinued when, in management's opinion, the interest is not collectible in the normal course of business, but in no case beyond when payment on a loan becomes 90 days delinquent. Interest collected on loans for which accrual has been discontinued is recognized as income upon receipt.

We establish an allowance for loan losses based on our estimate of credit losses inherent in the Company's investment portfolio of residential loans held for investment. Our portfolio of mortgage loans held for investment is collectively evaluated for impairment as the loans are homogeneous in nature. The allowance is based upon management's assessment of various factors affecting our mortgage loan portfolio, including current economic conditions, the makeup of the portfolio based on credit grade, loan-to-value ratios, delinquency status, historical credit losses, purchased mortgage insurance and other factors that management believes warrant consideration. The allowance is maintained through ongoing provisions charged to operating income and is reduced by loans that are charged off. Determining the allowance for loan losses is subjective in nature due to the estimation required and the potential for imprecision. As of December 31, 2005 and 2004 our allowance for loan losses totaled \$12,000 and zero, respectively.

Investment Securities - Available for Sale. Our securities portfolio consists of agency securities or AAA-rated residential mortgage-backed securities. At December 31, 2005, we had no investment securities in a single issuer or entity (other than a government sponsored agency of the U.S. Government) that had an aggregate book value in excess of 10% of our total assets. The following table sets forth the credit characteristics of our securities portfolio as of December 31, 2005.

Characteristics of Our Investment Securities (dollar amounts in thousands):

	<u>Sponsor or Rating</u>	<u>Par Value</u>	<u>Carrying Value</u>	<u>% of Portfolio</u>	<u>Coupon</u>	<u>Yield</u>
Credit						
Agency REMIC CMO Floating						

Rate	FNMA/FHLMC/GNMA	\$ 13,505	\$ 13,535	2%	5.56%	5.45%
FHLMC Agency ARMs	FHLMC	91,835	91,217	13%	4.28%	3.82%
FNMA Agency ARMs	FNMA	298,526	297,048	41%	4.18%	3.91%
Private Label ARMs	AAA	315,835	314,682	44%	4.74%	4.51%
Total/Weighted Average		<u>\$ 719,701</u>	<u>\$ 716,482</u>	<u>100%</u>	<u>4.47%</u>	<u>4.19%</u>

The following table sets forth the interest rate repricing characteristics of our securities portfolio as of December 31, 2005 (dollar amounts in thousands):

	<u>Carrying Value</u>	<u>% of Portfolio</u>	<u>Weighted Average Coupon</u>
Interest Rate Repricing			
< 6 Months	\$ 13,535	2%	5.56%
< 24 Months	445,870	62%	4.28%
< 60 Months	257,077	36%	4.73%
Total	\$ 716,482	100%	4.47%

The following table sets forth the stated reset periods and weighted average yields of our investment securities at December 31, 2005 (dollar amounts in thousands):

	<u>Less than 6 Months</u>		<u>More than 6 Months To 24 Months</u>		<u>More than 24 Months To 60 Months</u>		<u>Total</u>	
	<u>Carrying Value</u>	<u>Weighted Average Yield</u>	<u>Carrying Value</u>	<u>Weighted Average Yield</u>	<u>Carrying Value</u>	<u>Weighted Average Yield</u>	<u>Carrying Value</u>	<u>Weighted Average Yield</u>
Agency REMIC CMO								
Floating Rate	\$ 13,535	5.45%	\$ —		\$ —		\$ 13,535	5.45%
FHLMC Agency ARMs	—		91,217	3.82%	—		91,217	3.82%
FNMA Agency ARMs	—		297,048	3.91%	—		297,048	3.91%
Private Label ARMs	—		57,605	4.22%	257,077	4.57%	314,682	4.51%
Total	\$ 13,535	5.45%	\$ 445,870	3.93%	\$ 257,077	4.57%	\$ 716,482	4.19%

Mortgage Lending Related Assets

Mortgage Loans Held for Sale. Mortgage loans that we have originated but do not intend to hold for investment and are held pending sale to investors are classified as “mortgage loans held for sale.” We had mortgage loans held for sale of \$108.3 million at December 31, 2005 as compared to \$85.4 million at December 31, 2004. We use warehouse lines of credit and loan aggregation facilities to finance our mortgage loans held for sale. Fluctuations in mortgage loans held for sale, warehouse lines of credit, due to/from loan purchasers and related accounts are dependent on factors such as loan production, seasonality and our investor’s ability to purchase loans on a timely basis.

Due from Purchasers. We had amounts due from loan purchasers totaling \$121.8 million at December 31, 2005 as compared to \$79.9 million at December 31, 2004. Amounts due from loan purchasers are a receivable for the principal and premium due to us for loans that have been shipped but for which payment has not yet been received at period end.

Escrow Deposits - Pending Loan Closings. We had escrow deposits pending loan closing of \$1.4 million at December 31, 2005 as compared to \$16.2 million at December 31, 2004. Escrow deposits pending loan closing are advance cash fundings by us to escrow agents to be used to close loans within the next one to three business days.

Non-Loan or Investment Assets

Cash and Cash Equivalents . We had unrestricted cash and cash equivalents of \$9.1 million at December 31, 2005 versus \$7.6 million at December 31, 2004.

Prepaid and Other Assets. Prepaid and other assets totaled \$16.5 million as of December 31, 2005. Prepaid and other assets consist primarily of a deferred tax benefit of \$10.2 million and loans held by us which are pending remedial action (such as updating loan documentation) or which do not currently meet third-party investor criteria.

Property and Equipment, Net - Property and equipment totaled \$6.9 million as of December 31, 2005 and have estimated lives ranging from three to ten years, and are stated at cost less accumulated depreciation and amortization. Depreciation is determined in amounts sufficient to charge the cost of depreciable assets to operations over their estimated service lives using the straight-line method. Leasehold improvements are amortized over the lesser of the life of the lease or service lives of the improvements using the straight-line method.

Balance Sheet Analysis - Financing Arrangements

Financing Arrangements, Mortgage Loans Held for Sale/for Investment. We had debt outstanding on our financing facilities which finance our mortgage loans held for sale and mortgage loans held for investment of \$225.2 million at December 31, 2005 as compared to \$359.2 million at December 31, 2004. As of December 31, 2005, the current weighted average borrowing rate on these financing facilities is 5.09%. The fluctuations in mortgage loans - held-for-sale and short-term borrowings are dependent on loans we have originated during the period as well as loans we have sold outright.

Financing Arrangements, Portfolio Investments. We have arrangements to enter into repurchase agreements, a form of collateralized borrowings, with 23 different financial institutions having a total line capacity of \$5.4 billion. As of December 31, 2005 and December 31, 2004, there were \$1.2 billion and \$1.1 billion, respectively, of repurchase borrowings outstanding. Our repurchase agreements typically have terms of less than one year. As of December 31, 2005, the current weighted average borrowing rate on these financing facilities is 4.37%.

Collateralized Debt Obligations. On December 20, 2005 we issued CDOs secured by ARM loans and restricted cash placed as collateral for prefunded loans which will be replaced by ARM loans within 30 days. For financial reporting purposes, the ARM loans and restricted cash held as collateral are recorded as assets of the Company and the CDO is recorded as the Company's debt. The transaction includes interest rate caps and are held by the trust and recorded as an asset or liability of the Company. The interest rate cap limits the interest rate exposure on these transactions. As of December 31, 2005 we have CDO outstanding of \$228.2 million with an average interest rate of 4.68%.

Subordinated Debentures . As of December 31, 2005, we have trust preferred securities outstanding of \$45.0 million. The securities are fully guaranteed by the Company with respect to distributions and amounts payable upon liquidation, redemption or repayment. These securities are classified as subordinated debentures in the liability section of the Company's consolidated balance sheet.

\$25.0 million of our subordinated debentures have a floating interest rate equal to three-month LIBOR plus 3.75%, resetting quarterly (7.77% at December 31, 2005). These securities mature on March 15, 2035 and may be called at par by the Company any time after March 15, 2010. NYMC entered into an interest rate cap agreement to limit the maximum interest rate cost of the trust preferred securities to 7.5%. The term of the interest rate cap agreement is five years and resets quarterly in conjunction with the reset periods of the trust preferred securities.

\$20 million of our subordinated debentures have a fixed interest rate equal to 8.35% up to and including July 30, 2010, at which point the interest rate is converted to a floating rate equal to one-month LIBOR plus 3.95% until maturity. The securities mature on October 30, 2035 and may be called at par by the Company any time after October 30, 2010.

Derivative Assets and Liabilities. We generally hedge only the risk related to changes in the benchmark interest rate used in the variable rate index, usually a London Interbank Offered Rate, known as LIBOR, or a U.S. Treasury rate.

In order to reduce these risks, we enter into interest rate swap agreements whereby we receive floating rate payments in exchange for fixed rate payments, effectively converting the borrowing to a fixed rate. We also enter into interest rate cap agreements whereby, in exchange for a fee, we are reimbursed for interest paid in excess of a contractually specified capped rate.

Derivative financial instruments contain credit risk to the extent that the institutional counterparties may be unable to meet the terms of the agreements. We minimize this risk by using multiple counterparties and limiting our counterparties to major financial institutions with good credit ratings. In addition, we regularly monitor the potential risk of loss with any one party resulting from this type of credit risk. Accordingly, we do not expect any material losses as a result of default by other parties.

We enter into derivative transactions solely for risk management purposes. The decision of whether or not a given transaction (or portion thereof) is hedged is made on a case-by-case basis, based on the risks involved and other factors as determined by senior management, including the financial impact on income and asset valuation and the restrictions imposed on REIT hedging activities by the Internal Revenue Code, among others. In determining whether to hedge a risk, we may consider whether other assets, liabilities, firm commitments and anticipated transactions already offset or reduce the risk. All transactions undertaken as a hedge are entered into with a view towards minimizing the potential for economic losses that could be incurred by us. Generally, all derivatives entered into are intended to qualify as hedges in accordance with GAAP, unless specifically precluded under SFAS No. 133 *Accounting for Derivative Instruments and Hedging Activities*. To this end, terms of the hedges are matched closely to the terms of hedged items.

We have also developed risk management programs and processes designed to manage market risk associated with normal mortgage banking and mortgage-backed securities investment activities.

In the normal course of our mortgage loan origination business, we enter into contractual interest rate lock commitments, or IRLCs, to extend credit to finance residential mortgages. These commitments, which contain fixed expiration dates, become effective when eligible borrowers lock-in a specified interest rate within time frames established by our origination, credit and underwriting practices. Interest rate risk arises if interest rates change between the time of the lock-in of the rate by the borrower and the sale of the loan.

To mitigate the effect of the interest rate risk inherent in issuing an IRLC from the lock-in date to the funding date of a loan, we generally enter into forward sale loan contracts, or FSLCs. Once a loan has been funded, our risk management objective for our mortgage loans held for sale is to protect earnings from an unexpected charge due to a decline in value of such mortgage loans. Our strategy is to engage in a risk management program involving the designation of FSLCs (the same FSLCs entered into at the time of the IRLC) to hedge most of our mortgage loans held for sale.

The following table summarizes the estimated fair value of derivative assets and liabilities as of December 31, 2005 and December 31, 2004 (dollar amounts in thousands):

	<u>December 31,</u> <u>2005</u>	<u>December 31,</u> <u>2004</u>
Derivative Assets:		
Interest rate caps	\$ 3,340	\$ 411
Interest rate swaps	6,383	3,229
Interest rate lock commitments - loan commitments	123	5
Interest rate lock commitments - mortgage loans held for sale	—	33
Total derivative assets	\$ 9,846	\$ 3,678
Derivative Liabilities:		
Forward loan sale contracts - loan commitments	(38)	(24)
Forward loan sale contracts - mortgage loans held for sale	(18)	(2)
Forward loan sale contracts - TBA securities	(324)	(139)
Interest rate lock commitments - mortgage loans held for sale	(14)	—
Total derivative liabilities	\$ (394)	\$ (165)

Balance Sheet Analysis - Stockholders' Equity

Stockholders' equity at December 31, 2005 was \$101.0 million and included \$1.9 million of net unrealized gains on available for sale securities and cash flow hedges presented as accumulated other comprehensive income.

Asset Acquisitions

Since our IPO in June 2004, we have originated and acquired high quality residential mortgage loans or securities for our investment portfolio. Nearly all our investment asset acquisitions have been hybrid ARM Assets with reset periods of less than five years or traditional ARM Assets generally indexed to LIBOR. The following table illustrates our origination and acquisition activity of such assets since our IPO.

Investment Portfolio Asset Originations and Acquisitions
(Dollar amounts in thousands)

	2005	2004
ARM Loans		
Direct retail originations	\$ 525,699	\$ 95,077
Wholesale originations ¹	29,490	—
Correspondent originations	165,442	93,901
Total	\$ 720,631	\$ 188,978
ARM Securities		
Agency securities	\$ 388,265	\$ 598,290
AAA-rated	314,682	540,897
Other privately issued	13,535	65,558
Total	\$ 716,482	\$ 1,204,745

¹ Our wholesale division began origination operations in the fourth quarter of 2005. A significant portion of this division's product is expected to be high-quality, portfolio eligible product in future periods.

Securitizations

During 2005, we completed three CDO transactions in which we securitized \$896.9 million of our residential mortgage loans into a series of multi-class adjustable rate securities. In the first two CDOs, we elected to retain 100% of the resultant securities and finance them through repurchase agreements. The creation of mortgage-backed securities of our mortgage loans in this manner provides an asset with better liquidity and longer-term financing at better rates as opposed to financing whole loans through warehouse lines. Beginning with our third CDO of self-originated mortgage loans in December 2005, \$235 million of ARM loans were permanently financed through the issuance of securities to third parties. Because we did not retain all of the resultant securities as in prior CDOs, this securitization eliminated the risk of short-term financing (eliminating the asset to liability duration gap) and the mark-to-market pricing risk inherent in financing through repurchase agreements or warehouse lines of credit; as a result of this permanent financing we are not subject to margin calls.

We did not account for these securitizations as sales because the transactions are secured borrowings under SFAS 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities." A summary of the three CDOs completed in 2005 follows.

New York Mortgage Trust 2005-1. February 25, 2005 - securitization of approximately \$419.0 million of high-credit quality, first-lien, adjustable rate mortgage and hybrid adjustable rate mortgages. The amount of each class of notes, together with the interest rate and credit ratings for each class as rated by S&P, are set forth below (dollar amounts in thousands):

Class	Approximate Principal Amount	Interest Rate	S&P Rating
A	\$ 391,761	LIBOR + 27%	AAA
M-1	\$ 18,854	LIBOR + 50%	AA
M-2	\$ 6,075	LIBOR + 85%	A

At the time of securitization, the weighted average loan-to-value of the mortgage loans in the trust was approximately 68.8% and the weighted average FICO score was approximately 729. The weighted average current loan rate of the pool of mortgage loans is approximately 4.56% and the weighted average maximum loan rate (after periodic rate resets) is 10.63%.

New York Mortgage Trust 2005-2. July 29, 2005 - securitization of approximately \$242.9 million of high-credit quality, first-lien, adjustable rate mortgage and hybrid adjustable rate mortgages. The amount of each class of notes, together with the interest rate and credit ratings for each class as rated by S&P, are set forth below (dollar amounts in thousands):

Approximate

Class	Principal Amount	Interest Rate	S&P Rating
A	\$ 217,126	LIBOR + 33%	AAA
M-1	\$ 16,029	LIBOR + 60%	AA
M-2	\$ 6,314	LIBOR + 100%	A

At the time of securitization, the weighted average loan-to-value of the mortgage loans in the trust was approximately 69.8% and the weighted average FICO score was approximately 736. The weighted average current loan rate of the pool of mortgage loans is approximately 5.46% and the weighted average maximum loan rate (after periodic rate resets) is 11.22%.

New York Mortgage Trust 2005-3. December 20, 2005 - securitization of approximately \$235.0 million of high-credit quality, first-lien, adjustable rate mortgage and hybrid adjustable rate mortgages. The amount of each class of notes, together with the interest rate and credit ratings for each class as rated by S&P and Moody's, are set forth below (dollar amounts in thousands):

Class	Approximate Principal Amount	Interest Rate	S&P/Moody's Rating
A-1	\$ 70,000	LIBOR + 24%	AAA / Aaa
A-2	\$ 98,267	LIBOR + 23%	AAA / Aaa
A-3	\$ 10,920	LIBOR + 32%	AAA / Aaa
M-1	\$ 25,380	LIBOR + 45%	AA+ / Aa2
M-2	\$ 24,088	LIBOR + 68%	AA / A2

At the time of securitization, the weighted average loan-to-value of the mortgage loans in the Trust was approximately 69.5% and the weighted average FICO score was approximately 732. The weighted average current loan rate of the pool of mortgage loans is approximately 5.79% and the weighted average maximum loan rate (after periodic rate resets) is 11.58%.

Prepayment Experience

The cumulative prepayment rate ("CPR") on our mortgage loan portfolio averaged approximately 27% during 2005 as compared to 20% during 2004. CPRs on our purchased portfolio of investment securities averaged approximately 29% while the CPRs on loans held for investment or held in our securitization trusts averaged approximately 24% during 2005. When prepayment expectations over the remaining life of assets increase, we have to amortize premiums over a shorter time period resulting in a reduced yield to maturity on our investment assets. Conversely, if prepayment expectations decrease, the premium would be amortized over a longer period resulting in a higher yield to maturity. We monitor our prepayment experience on a monthly basis and adjust the amortization of our net premiums accordingly.

Results of Operations

Our results of operations for our mortgage portfolio management segment during a given period typically reflect the net interest spread earned on our investment portfolio of residential mortgage loans and mortgage-backed securities. The net interest spread is impacted by factors such as our cost of financing, the interest rate our investments are earning and our interest hedging strategies. Furthermore, the cost of originating loans held in our portfolio, the amount of premium or discount paid on purchased portfolio investments and the prepayment rates on portfolio investments will impact the net interest spread as such factors will be amortized over the expected term of such investments.

Our results of operations for our mortgage lending segment during a given period typically reflect the total volume of loans originated and closed by us during that period. The volume of closed loan originations generated by us in any period is impacted by a variety of factors. These factors include:

- *The demand for new mortgage loans* . Reduced demand for mortgage loans causes closed loan origination volume to decline. Demand for new mortgage loans is directly impacted by current interest rate trends and other economic conditions. Rising interest rates tend to reduce demand for new mortgage loans, particularly loan refinancings, and falling interest rates tend to increase demand for new mortgage loans, particularly loan refinancings.
- *Loan refinancing and home purchase trends* . As discussed above, the volume of loan refinancings tends to increase following declines in interest rates and to decrease when interest rates rise. The volume of home purchases is also affected by interest rates, although to a lesser extent than refinancing volume. Home purchase trends are also affected by other economic changes such as inflation, improvements in the stock market, unemployment rates and other similar factors.
- *Seasonality* . Historically, according to the MBA, loan originations during late November, December, January and February of each year are typically lower than during other months in the year due, in part, to inclement weather, fewer business days (due to holidays and the short month of February), and the fact that home buyers tend to purchase homes during the warmer months of the year. As a result, loan volumes tend to be lower in the first and fourth quarters of a year than in the second and

third quarters.

- *Occasional spikes in volume resulting from isolated events* . Mortgage lenders may experience spikes in loan origination volume from time to time due to non-recurring events or transactions, such as a large mass closing of a condominium project for which a bulk end-loan commitment was negotiated.

The mortgage banking industry witnessed record levels of closed loan originations beginning in mid-2002 and continuing throughout 2003, due primarily to the availability of historically low interest rates during that period. These historically low interest rates caused existing home owners to refinance their mortgages at record levels and induced many first-time home buyers to purchase homes and many existing home owners to purchase new homes. We, like most industry participants, enjoyed a record increase in our volume of closed loan originations during that period. During the first quarter of 2004, the Federal Reserve Bank of the United States signaled that moderate increases in interest rates were likely to occur during and after the second quarter of 2004 and followed up its first increase in interest rates in four years with measured, continued increases to-date.

In its February 7, 2006 Mortgage Finance Forecast, the MBA estimated that closed loan originations in the industry declined to \$2.77 trillion in 2004 and remained static in 2005. Our origination volumes to date have continued to trend upward, due in part to the GRL acquisition. Although not forecast, a decline in the overall volume of closed loan originations may have a negative effect on our loan origination volume and net income. We believe that our concentration on purchase loan originations has caused our loan origination volume to be less susceptible to the industry-wide decline in origination volume.

The volume and cost of our loan production is critical to our financial results. The loans we produce generate gains as they are sold to third parties. Loans we retain for securitization serve as collateral for our mortgage securities. We do not recognize gain on sale income on loans originated by us and retained in our investment portfolio as they are recorded at cost and will generate revenues through their maturity and ultimate repayment. As the cost basis of a retained loan is typically lower than loans purchased from third parties or already placed in a securitization, we would expect an incremental yield increase on these loans relative to their purchased counterparts.

The cost of our production is also critical to our financial results as it is a significant factor in the gains we recognize. In addition, the type of loan production is an important factor in recognizing gain on sale premiums. Beginning near the end of the first quarter of 2004, our volume of FHA loans increased. Generally, FHA loans have lower average balances and FICO scores which are reflected in the statistics above. All FHA loans are currently and will be in the future sold or brokered to third parties. The following table summarizes our loan production for each quarter of 2005, 2004 and 2003.

	Number of Loans	Aggregate Principal Balance (\$ in millions)	Percentage Of Total Principal	Weighted Average Interest Rate	Average Principal Balance	Weighted Average LTV	Weighted Average FICO
2005:							
<i>Fourth Quarter</i>							
ARM	1,321	\$ 452.5	55.0%	6.33%	\$ 342,551	71.9	700
Fixed-rate	1,617	343.7	41.8%	6.79%	212,524	72.2	712
Subtotal-non-FHA	2,938	\$ 796.2	96.8%	6.53%	\$ 270,987	72.1	705
FHA - ARM	1	\$ 0.2	0.0%	5.80%	\$ 157,545	84.6	655
FHA - fixed-rate	194	26.5	3.2%	6.06%	136,820	93.5	639
Subtotal - FHA	195	\$ 26.7	3.2%	6.06%	\$ 136,927	93.4	639
Total ARM	1,322	\$ 452.7	55.0%	6.33%	\$ 342,411	72.0	700
Total fixed-rate	1,811	370.2	45.0%	6.74%	204,414	73.7	707
Total Originations	3,133	\$ 822.9	100.0%	6.52%	\$ 262,643	72.7	703
Purchase mortgages	1,949	\$ 426.8	51.9%	6.73%	\$ 218,995	78.5	716
Refinancings	989	369.4	44.9%	6.29%	373,447	64.5	692
Subtotal-non-FHA	2,938	\$ 796.2	96.8%	6.53%	\$ 270,987	72.1	705
FHA - purchase	38	\$ 6.1	0.7%	6.40%	\$ 161,278	97.4	649
FHA - refinancings	157	20.6	2.5%	5.95%	131,033	92.1	636
Subtotal - FHA	195	\$ 26.7	3.2%	6.06%	\$ 136,927	93.4	639
Total purchase	1,987	\$ 433.0	52.6%	6.72%	\$ 217,891	78.8	715
Total refinancings	1,146	389.9	47.4%	6.28%	340,237	66.0	689
Total Originations	3,133	\$ 822.9	100.0%	6.52%	\$ 262,643	72.7	703

<i>Third Quarter</i>								
ARM	1,727	\$ 513.3	51.2%	6.10%	\$ 297,213	73.8	705	
Fixed-rate	1,946	392.2	39.1%	6.43%	201,537	73.2	717	
Subtotal-non-FHA	3,673	\$ 905.5	90.3%	6.25%	\$ 246,522	73.5	710	
FHA - ARM	4	\$ 0.8	0.1%	5.80%	\$ 217,202	94.7	642	
FHA - fixed-rate	700	95.9	9.6%	5.72%	136,954	92.9	633	
Subtotal - FHA	704	\$ 96.7	9.7%	5.72%	\$ 137,410	93.0	633	
Total ARM	1,731	\$ 514.1	51.3%	6.10%	\$ 297,028	73.8	705	
Total fixed-rate	2,646	488.1	48.7%	6.29%	184,451	77.1	700	
Total Originations	4,377	\$ 1,002.2	100.0%	6.19%	\$ 228,973	75.4	703	
<i>Purchase mortgages</i>								
	2,568	\$ 558.1	55.7%	6.39%	\$ 217,314	78.1	719	
<i>Refinancings</i>								
	1,105	347.4	34.6%	6.01%	314,402	66.2	696	
Subtotal-non-FHA	3,673	\$ 905.5	90.3%	6.25%	\$ 246,522	73.5	710	
FHA - purchase	71	\$ 11.7	1.2%	6.05%	\$ 165,045	96.3	659	
FHA - refinancings	633	85.0	8.5%	5.67%	134,310	92.5	630	
Subtotal - FHA	704	\$ 96.7	9.7%	5.72%	\$ 137,410	93.0	633	
Total purchase	2,639	\$ 569.8	56.9%	6.38%	\$ 215,908	78.5	718	
Total refinancings	1,738	432.4	43.1%	5.94%	248,811	71.4	683	
Total Originations	4,377	\$ 1,002.2	100.0%	6.19%	\$ 228,973	75.4	703	
<i>Second Quarter</i>								
ARM	1,839	\$ 537.9	57.2%	5.90%	\$ 292,482	72.7	709	
Fixed-rate	1,777	337.1	35.9%	6.47%	189,732	72.7	718	
Subtotal-non-FHA	3,616	\$ 875.0	93.1%	6.12%	\$ 241,988	72.7	712	
FHA - ARM	30	\$ 4.8	0.5%	5.34%	\$ 159,088	93.7	611	
FHA - fixed-rate	449	59.9	6.4%	5.97%	133,408	92.6	624	
Subtotal - FHA	479	\$ 64.7	6.9%	5.92%	\$ 135,016	92.7	623	
Total ARM	1,869	\$ 542.7	57.7%	5.89%	\$ 290,341	72.8	708	
Total fixed-rate	2,226	397.0	42.3%	6.39%	178,371	75.7	704	
Total Originations	4,095	\$ 939.7	100.0%	6.10%	\$ 229,475	74.0	706	
<i>Purchase mortgages</i>								
	2,652	\$ 587.8	62.6%	6.21%	\$ 221,657	76.4	720	
<i>Refinancings</i>								
	964	287.2	30.5%	5.94%	297,918	65.1	695	
Subtotal-non-FHA	3,616	\$ 875.0	93.1%	6.12%	\$ 241,988	72.7	712	
FHA - purchase	85	\$ 13.9	1.5%	5.99%	\$ 163,693	96.3	644	
FHA - refinancings	394	50.8	5.4%	5.91%	128,829	91.7	617	
Subtotal - FHA	479	\$ 64.7	6.9%	5.92%	\$ 135,016	92.7	623	
Total purchase	2,737	\$ 601.7	64.1%	6.20%	\$ 219,857	76.8	719	
Total refinancings	1,358	338.0	35.9%	5.93%	248,860	69.1	684	
Total Originations	4,095	\$ 939.7	100.0%	6.10%	\$ 228,973	74.0	706	
<i>First Quarter</i>								
ARM	1,313	\$ 355.3	52.8%	5.61%	\$ 270,603	72.7	708	
Fixed-rate	1,274	247.8	36.9%	6.31%	194,541	71.4	719	
Subtotal-non-FHA	2,587	\$ 603.1	89.7%	5.90%	\$ 233,145	72.2	712	
FHA - ARM	59	\$ 9.5	1.4%	5.10%	\$ 160,093	93.8	648	
FHA - fixed-rate	462	59.9	8.9%	5.85%	129,756	92.2	635	
Subtotal - FHA	521	\$ 69.4	10.3%	5.75%	\$ 133,191	92.4	637	

Total ARM	1,372	\$ 364.8	54.2%	5.60%	\$ 265,851	73.2	706
Total fixed-rate	1,736	307.7	45.8%	6.22%	177,299	75.5	703
Total Originations	3,108	\$ 672.5	100.0%	5.88%	\$ 216,390	74.3	705
Purchase mortgages	1,717	\$ 365.9	54.4%	6.03%	\$ 213,081	76.2	723
Refinancings	870	237.2	35.3%	5.69%	272,743	66.0	696
Subtotal-non-FHA	2,587	\$ 603.1	89.7%	5.90%	\$ 233,145	72.2	712
FHA - purchase	95	\$ 15.1	2.2%	5.66%	\$ 158,699	97.2	672
FHA - refinancings	426	54.3	8.1%	5.78%	127,503	91.0	627
Subtotal - FHA	521	\$ 69.4	10.3%	5.75%	\$ 133,191	92.4	637
Total purchase	1,812	\$ 381.0	56.6%	6.02%	\$ 210,230	77.0	721
Total refinancings	1,296	291.5	43.4%	5.71%	225,002	70.7	683
Total Originations	3,108	\$ 672.5	100.0%	5.88%	\$ 216,390	74.3	705

2004:

<i>Fourth Quarter</i>								
ARM	1,094	\$ 330.1	52.2%	5.23%	\$ 301,765	71.1	714	
Fixed-rate	956	206.8	32.7%	6.32%	216,266	72.1	714	
Subtotal-non-FHA	2,050	\$ 536.9	84.9%	5.65%	\$ 261,893	71.5	714	
FHA - ARM	150	\$ 19.5	3.1%	5.20%	\$ 130,215	92.7	627	
FHA - fixed-rate	599	76.2	12.0%	6.04%	127,281	92.0	622	
Subtotal - FHA	749	\$ 95.7	15.1%	5.87%	\$ 127,868	92.1	623	
Total ARM	1,244	\$ 349.6	55.3%	5.23%	\$ 281,080	72.3	709	
Total fixed-rate	1,555	283.0	44.7%	6.24%	181,988	77.5	689	
Total Originations	2,799	\$ 632.6	100.0%	5.68%	\$ 226,029	74.6	700	
<i>Third Quarter</i>								
Purchase mortgages	1,426	\$ 353.3	55.8%	5.65%	\$ 247,722	75.1	724	
Refinancings	624	183.6	29.1%	5.65%	294,278	64.4	694	
Subtotal-non-FHA	2,050	\$ 536.9	84.9%	5.65%	\$ 261,893	71.5	714	
FHA - purchase	82	\$ 13.3	2.1%	5.93%	\$ 162,494	96.4	647	
FHA - refinancings	667	82.4	13.0%	5.86%	123,611	91.4	619	
Subtotal - FHA	749	\$ 95.7	15.1%	5.87%	\$ 127,868	92.1	623	
Total purchase	1,508	\$ 366.6	57.9%	5.66%	\$ 243,088	75.9	721	
Total refinancings	1,291	266.0	42.1%	5.71%	206,102	72.8	671	
Total Originations	2,799	\$ 632.6	100.0%	5.68%	\$ 226,029	74.6	700	
<i>Third Quarter</i>								
ARM	692	\$ 208.9	50.3%	5.06%	\$ 301,879	70.7	718	
Fixed-rate	639	145.7	35.1%	6.70%	228,013	71.0	714	
Subtotal-non-FHA	1,331	\$ 354.6	85.4%	5.73%	\$ 266,416	70.8	716	
FHA - ARM	52	\$ 6.8	1.6%	5.29%	\$ 130,769	92.2	597	
FHA - fixed-rate	429	54.0	13.0%	6.33%	125,874	92.2	612	
Subtotal - FHA	481	\$ 60.8	14.6%	6.21%	\$ 126,403	92.2	610	
Total ARM	744	\$ 215.7	51.9%	5.07%	\$ 289,919	71.4	714	
Total fixed-rate	1,068	199.7	48.1%	6.60%	186,985	76.7	687	
Total Originations	1,812	\$ 415.4	100.0%	5.80%	\$ 229,249	73.9	701	
<i>Third Quarter</i>								
Purchase mortgages	1,019	\$ 265.9	64.0%	5.78%	\$ 260,942	73.4	725	
Refinancings	312	88.7	21.4%	5.59%	284,295	63.1	691	
Subtotal-non-FHA	1,331	\$ 354.6	85.4%	5.73%	\$ 266,416	70.8	716	
FHA - purchase	54	\$ 8.7	2.1%	6.36%	\$ 161,111	95.0	637	
FHA - refinancings	427	52.1	12.5%	6.18%	122,014	91.8	605	
Subtotal - FHA	481	\$ 60.8	14.6%	6.21%	\$ 126,403	92.2	610	
Total purchase	1,073	\$ 274.6	66.1%	5.80%	\$ 255,918	74.1	722	
Total refinancings	739	140.8	33.9%	5.81%	190,528	73.7	660	
Total Originations	1,812	\$ 415.4	100.0%	5.80%	\$ 229,249	73.9	701	

Second Quarter

ARM	781	\$ 253.4	49.3%	4.91%	\$ 324,456	69.8	722
Fixed-rate	797	167.2	32.5%	6.31%	209,787	70.6	720
Subtotal-non-FHA	1,578	\$ 420.6	81.8%	5.47%	\$ 266,540	70.1	721
FHA - ARM	29	\$ 4.1	0.8%	4.37%	\$ 141,379	93.5	653
FHA - fixed-rate	764	89.3	17.4%	5.87%	116,885	91.9	655
Subtotal - FHA	793	\$ 93.4	18.2%	5.81%	\$ 117,781	92.0	654
Total ARM	810	\$ 257.5	50.1%	4.90%	\$ 317,901	70.1	721
Total fixed-rate	1,561	256.5	49.9%	6.16%	164,318	78.0	697
Total Originations	2,371	\$ 514.0	100.0%	5.53%	\$ 216,786	74.1	709
Purchase mortgages	1,021	\$ 262.7	51.1%	5.46%	\$ 257,297	74.8	728
Refinancings	557	157.9	30.7%	5.48%	283,483	62.2	711
Subtotal-non-FHA	1,578	\$ 420.6	81.8%	5.47%	\$ 266,540	70.1	721
FHA - purchase	71	\$ 10.6	2.1%	6.25%	\$ 149,296	96.1	633
FHA - refinancings	722	82.8	16.1%	5.75%	114,681	91.4	657
Subtotal - FHA	793	\$ 93.4	18.2%	5.81%	\$ 117,781	92.0	654
Total purchase	1,092	\$ 273.3	53.2%	5.49%	\$ 250,275	75.6	724
Total refinancings	1,279	240.7	46.8%	5.57%	188,194	72.3	693
Total Originations	2,371	\$ 514.0	100.0%	5.53%	\$ 216,786	74.1	709

First Quarter

ARM	458	\$ 121.8	43.0%	5.55%	\$ 265,982	83.8	839
Fixed-rate	578	151.8	53.5%	5.43%	262,547	60.1	611
Subtotal-non-FHA	1,036	\$ 273.6	96.5%	5.48%	\$ 264,066	70.7	713
FHA - ARM	—	—	—	—	—	—	—
FHA - fixed-rate	35	\$ 9.8	3.5%	4.48%	281,445	68.0	445
Subtotal - FHA	35	\$ 9.8	3.5%	4.48%	\$ 281,445	68.0	445
Total ARM	458	\$ 121.8	43.0%	5.55%	\$ 265,982	83.8	839
Total fixed-rate	613	161.6	57.0%	5.38%	263,626	60.6	601
Total Originations	1,071	\$ 283.4	100.0%	5.45%	\$ 264,633	70.6	703
Purchase mortgages	623	\$ 164.2	57.9%	5.42%	\$ 263,586	74.1	711
Refinancings	413	109.4	38.6%	5.58%	264,789	65.5	715
Subtotal-non-FHA	1,036	\$ 273.6	96.5%	5.48%	\$ 264,066	70.7	713
FHA - purchase	27	\$ 7.8	2.8%	4.73%	\$ 289,221	73.2	462
FHA - refinancings	8	2.0	0.7%	3.55%	255,200	48.3	380
Subtotal - FHA	35	\$ 9.8	3.5%	4.48%	\$ 281,445	68.0	445
Total purchase	650	\$ 172.0	60.7%	5.39%	\$ 264,651	74.1	700
Total refinancings	421	111.4	39.3%	5.54%	264,607	65.2	708
Total Originations	1,071	\$ 283.4	100.0%	5.45%	\$ 264,633	70.6	703

2003:

Fourth Quarter

ARM	502	\$ 181.1	53.3%	4.79%	\$ 360,691	69.8	708
Fixed-rate	705	158.7	46.7%	6.57%	225,127	69.5	707
Total Originations	1,207	\$ 339.8	100.0%	5.62%	\$ 281,509	69.7	707
Purchase mortgages	749	\$ 203.2	59.8%	5.66%	\$ 271,209	75.8	712
Refinancings	458	136.6	40.2%	5.58%	298,353	61.2	699
Total Originations	1,207	\$ 339.8	100.0%	5.62%	\$ 281,509	69.7	707

Third Quarter

ARM	585	\$ 224.1	46.1%	4.76%	\$ 383,018	67.6	714
Fixed-rate	1,062	262.2	53.9%	6.17%	246,880	66.5	707
Total Originations	1,647	\$ 486.3	100.0%	5.53%	\$ 295,235	67.0	711
Purchase mortgages	772	\$ 218.2	44.9%	5.73%	\$ 282,537	75.3	717
Refinancings	875	268.1	55.1%	5.35%	306,439	59.8	706
Total Originations	1,647	\$ 486.3	100.0%	5.53%	\$ 295,235	67.0	711

Second Quarter

ARM	452	\$ 158.1	38.3%	4.77%	\$ 349,624	66.5	691
Fixed-rate	1,051	254.8	61.7%	6.12%	242,478	66.6	714
Total Originations	1,503	\$ 412.9	100.0%	5.60%	\$ 274,700	66.6	705
Purchase mortgages	647	\$ 173.7	42.1%	5.73%	\$ 268,487	74.3	690
Refinancings	856	239.2	57.9%	5.50%	279,397	60.9	716
Total Originations	1,503	\$ 412.9	100.0%	5.60%	\$ 274,700	66.6	705

First Quarter

ARM	399	\$ 144.1	39.9%	5.13%	\$ 361,230	69.5	720
Fixed-rate	948	217.3	60.1%	6.46%	229,203	70.7	707
Total Originations	1,347	\$ 361.4	100.0%	5.93%	\$ 268,311	70.3	712
Purchase mortgages	845	\$ 208.5	57.7%	6.09%	\$ 246,758	77.9	721
Refinancings	502	152.9	42.3%	5.72%	304,590	59.8	699
Total Originations	1,347	\$ 361.4	100.0%	5.93%	\$ 268,311	70.3	712

Our increase in loan origination volume and other operational and financial performance results was primarily dependent on the number of offices and our level of staffing these offices. Our personnel costs are largely variable in that loan origination personnel are paid commissions on loan production volume and the related operations personnel are somewhat variable in terms of have flexibility to scale operations based on volume levels. Our staffing levels also have a high correlation to levels of expense for marketing and promotion expense, office supplies, data processing and travel and entertainment expenses. Likewise, the number of offices and branches which we operate has a high correlation to occupancy and equipment expense.

Other Operational Information

For the Year Ended December 31,

	2005	2004	% Change	2003	% Change
Loan officers	329	344	(4.4)%	142	142.3%
Other employees	473	438	8.0%	193	126.9%

Total employees	<u>802</u>	<u>782</u>	2.6%	<u>335</u>	133.4%
Number of sales locations	54	66	(18.2)%	15	340.0%

To supplement our organic growth in originations, we acquired eight branches with 134 employees of Staten Island Bank (“SIB”) in March 2004 and 15 branches with 275 employees of GRL in November 2004. During the course of 2004 and 2005, these acquisitions have been fully integrated within our structural framework of operations.

Results of Operations - Comparison of Years Ended December 31, 2005, 2004 and 2003

Net Income - Overview

Comparative Net Income

(\$ in thousands)	For the Year Ended December 31,				
	2005	2004	% Change	2003	% Change
Net (loss)/income	\$ (5,340)	\$ 4,947	(207.9)%	\$ 13,726	(64.0)%
EPS (Basic)	\$ (0.30)	\$ 0.28	(207.1)%	\$ —	—
EPS (Diluted)	\$ (0.30)	\$ 0.27	(211.1)%	\$ —	—

For the year ended December 31, 2005, we reported net loss of \$5.3 million, as compared to net income of \$4.9 million for the year ended December 31, 2004. Our revenues were driven largely from interest income on investments in mortgage loans and mortgage securities (our “mortgage portfolio management” segment) and gain on sale income from loan originations sold to third parties (our “mortgage lending” segment) during the period. The change in net income is attributed to an increase in gain on sale income and net interest income from our investment portfolio. These gains were offset by the execution of our core business strategy to retain selected originated loans in our portfolio (thus forgoing the gain on sale premiums we would have otherwise received when such loans are sold to third parties), an impairment charge of \$7.4 million in the fourth quarter related to \$388.3 million of available for sale securities that we now anticipate selling in 2006 in order to rebalance our portfolio with higher yielding assets, one-time severance charges of \$3.0 million, and increased expenses incurred for and subsequent to the acquisition of multiple retail loan origination locations during 2004.

Net income in 2003 was reflective of our pre-IPO operation as only a mortgage originator. 2003 was a year of record earnings for many mortgage originators due to low interest rates and record mortgage lending volumes. Subsequent to our IPO in June 2004, and after a ramp-up period of approximately three months, our mortgage portfolio operations became a significant contributor to our net income. During 2004, our mortgage lending segment began to feel the effects of higher interest rates and reduced net interest and gain on sale margin on mortgage loans that we bankered and sold to third parties. Furthermore, as part of our self-origination strategy, loans originated and retained for investment, further contribute to the decline in GAAP net income in that we forgo the gain on sale premiums we would have otherwise received had those loans been sold to a third party.

Comparative Net Interest Income

(\$ in thousands)	For the Year Ended December 31,				
	2005	2004	% Change	2003	% Change
Interest income	\$ 77,476	\$ 27,299	183.8%	\$ 7,609	258.8%
Interest expense	60,104	16,013	275.3%	3,266	390.3%
Net interest income	\$ 17,372	\$ 11,286	53.9%	\$ 4,343	159.9%

Net interest income contributed \$17.4 million, \$11.3 million and \$4.3 million to total revenues for the years ended December 31, 2005, 2004, and 2003, respectively. Our portfolio investment strategy was initiated in the third quarter of 2004; prior to that period net interest income was earned on mortgage loans held for sale during the interim period of funding a loan to a borrower and the ultimate sale of the loan to a third party.

Non-interest related expenses were higher for the year ended December 31, 2005, relative to 2004 and 2003 as a result of our new business strategies implemented with the completion of our IPO in mid-year 2004. Incremental expenses primarily include higher salaries for management of the portfolio management segment and increased professional fee expenses for audit and implementation costs of Sarbanes-Oxley 404 compliance. With regard to our mortgage lending operations in place during all three past years, we incurred incremental expenses associated with new or consolidating branch offices and satellite locations and increased personnel costs associated with an expansion of NYMC’s information technology, accounting, operations and marketing departments in connection with these new branches and locations and business strategies. In addition, during the year ended December 31, 2005, a charge of \$2.3 million in compensation expense was recorded primarily for the prior issuance of performance shares and accrued bonuses issued in connection with our hiring and retention of former GRL branch employees. As a result of our acquisition of the GRL branches in mid-November 2004, we incurred upfront expenses, with little offsetting revenues, through the mid-point of the first quarter due to lag time in closing the new originations associated with the assumption of these branches.

Comparative Other Non-Interest Related Expense

(\$ in thousands)	For the Year Ended December 31,				
	2005	2004	% Change	2003	% Change
Other non-interest related expenses	\$ 63,034	\$ 36,329	73.5%	\$ 20,376	78.3%

Revenues

Net Interest Income. The following table summarizes the changes in net interest income for 2005, 2004 and 2003:

Yields Earned on Mortgage Loans and Securities and Rates on Financial Arrangements

(\$ in thousands)	2005			2004			2003		
	Average Balance	Amount	Yield/Rate	Average Balance	Amount	Yield/Rate	Average Balance	Amount	Yield/Rate
	(\$Millions)			(\$Millions)			(\$Millions)		
Interest Income:									
Investment securities and loans held in the securitization trusts	\$ 1,347.4	\$ 60,988	4.53%	\$ 1,006.8	\$ 21,338	4.24%	—	—	—
Loans held for investment	145.7	7,778	5.34%	32.9	723	4.09%	—	—	—
Loans held for sale	238.7	14,751	6.19%	122.6	6,905	5.63%	134.5	7,609	5.66%
Amortization of net premium	14.7	\$ (6,041)	(0.46)%	\$ 11.5	\$ (1,667)	(0.46)%	—	—	\$ —%
Interest income	\$ 1,746.5	\$ 77,476	4.44%	\$ 1,173.8	\$ 27,299	4.65%	134.5	\$ 7,609	5.66%
Interest Expense:									
Investment securities and loans held in the securitization trusts	\$ 1,283.3	\$ 42,001	3.23%	\$ 930.1	\$ 11,982	4.09%	—	\$ —	—
Loans held for investment	142.7	5,847	4.04%	32.7	488	2.72%	—	—	—
Loans held for sale	233.3	10,252	4.39%	103.3	3,543	2.65%	117.0	3,266	2.54%
Subordinated debentures	26.6	2,004	7.54%	—	—	—	—	—	—
Interest expense	\$ 1,685.9	\$ 60,104	3.52%	\$ 1,066.1	\$ 16,013	3.0%	\$ 117.0	\$ 3,266	2.54%
Net interest income	\$ 60.6	\$ 17,372	0.92%	\$ 107.7	\$ 11,286	1.65%	\$ 17.5	\$ 4,344	3.12%

For our portfolio investments of investment securities, mortgage loans held for investments and loans held in securitization trusts, our net interest spread for each quarter since we began our portfolio investment activities follows:

As of the Quarter Ended	Average Interest Earning Assets (\$ millions)	Historical Weighted Average Coupon	Yield on Interest Earning Assets	Cost of Funds	Net Interest Spread
December 31, 2005	\$ 1,499.0	4.84%	4.43%	3.81%	0.62%
September 30, 2005	\$ 1,494.0	4.69%	4.08%	3.38%	0.70%
June 30, 2005	\$ 1,590.0	4.50%	4.06%	3.06%	1.00%
March 31, 2005	\$ 1,447.9	4.39%	4.01%	2.86%	1.15%
December 31, 2004	\$ 1,325.7	4.29%	3.84%	2.58%	1.26%
September 30, 2004	\$ 776.5	4.04%	3.86%	2.45%	1.41%

Gain on Sales of Mortgage Loans. The following table summarizes the gain on sales of mortgage loans for 2005, 2004 and 2003:

Gain on Sales of Mortgage Loans

(\$ in thousands)	For the Year Ended December 31,				
	2005	2004	% Change	2003	% Change
Total bankered loan volume	\$ 2,875,288	\$ 1,435,340	100.32%	\$ 1,234,848	16.24%
Total bankered loan volume - units	12,654	6,882	83.87%	4,770	44.28%

Bankered originations retained in portfolio	\$	555,189	\$	95,077	483.94%	—	—
Bankered originations retained in portfolio - units		1,249		187	567.91%	—	—
Net bankered loan volume	\$	2,320,099	\$	1,340,263	73.11%	\$	1,234,848
Net bankered loan volume - units		11,405		6,695	70.35%		4,770
Gain on sales of mortgage loans	\$	26,783	\$	20,835	28.55%	\$	23,031
Average gain on sale spread		0.51%		0.44%	15.91%		0.30%
							(9.53)%
							46.67%

The increase in bankered loan volumes during the years ended 2005 and 2004 is due to increased loan origination personnel and branch offices as compared to each prior year. The year ended 2005 includes full year utilization of increased personnel and branches while the increases for year ended 2004 primarily occurred in the latter half of the year.

While bankered loan volumes have increased, the gain on sales of mortgage loans have not had a correlating increase due to lower net market spreads as a result of lower premiums when sold to third parties in 2005 and a higher cost of origination, in part due to the upfront and incremental costs of the GRL acquisition that were expensed in 2005. Such costs, such as amortization of the pipeline premium paid to GRL and retention compensation for GRL employees were primarily expensed in 2005.

Furthermore, gain on sale revenues in 2005 and 2004 are impacted by the execution of our core business strategy: retaining selected adjustable rate mortgages for our investment portfolio. The execution of this strategy, which began in the third quarter of 2004 after our IPO, requires that we forgo the gain on sale premiums (revenues) we would otherwise receive when we sell these loans to third-parties. Instead, the cost basis of these loans, which is far lower than the loan and its associated third-party premium, is retained in our investment portfolio with the inherent value of the loan realized over time. For the years ended December 31, 2005 and 2004, we originated and retained \$555.2 million and \$95.1 million respectively, of loans in our investment portfolio and estimate that the forgone gain on sale premium, net of the cost basis of these loans when retained in our investment portfolio, was \$7.5 million and \$2.0 million, respectively.

Brokered Loan Fees. The following table summarizes brokered loan volume, fees and related expenses for the fiscal years ended 2005, 2004 and 2003:

Brokered Loan Fees and Brokered Loan Expense

(\$ in thousands)	For the Year Ended December 31,					
	2005	2004	% Change	2003	% Change	
Total brokered loan volume	\$ 562.1	\$ 410.1	37.1%	\$ 365.5	12.2%	
Total brokered loan volume - units	2,059	1,171	75.8%	934	25.4%	
Brokered loan fees	\$ 9,991	\$ 6,895	44.9%	\$ 6,683	3.2%	
Brokered loan expenses	\$ 7,543	\$ 5,276	43.0%	\$ 3,734	41.3%	

The increase in brokered loan volume during the years ended 2005 and 2004 is due to increased loan origination personnel and branch offices as compared to each prior year. The year ended 2005 includes full year utilization of increased personnel and branches while the increases for year ended 2004 primarily occurred in the latter half of the year.

While brokered loan volumes have increased, brokered loan revenues have not had a correlating increase due to lower lender rebates/premiums. Broker loan expenses, as a percentage of brokered loan revenues have increased in 2005, relative to 2004 and 2003, due to higher costs of origination, in part due to the upfront and incremental costs of the GRL acquisition that were directed allocated and expensed in 2005.

Gain on sale of securities and related hedges. During the year ended December 31, 2005, the gain on the sale of securities and related hedges was \$2.2 million as compared to \$0.8 million and zero for the years ended 2004 and 2003, respectively.

Impairment loss on investment securities. During the year ended December 31, 2005 we recognized an impairment loss on investment securities of \$7.4 million as compared to zero for the same period of 2004 and 2003, respectively. This loss, recognized in the fourth quarter of 2005, relates to \$388 million of securities classified as available for sale securities for which we changed our intent to hold, and now plan to liquidate as part of our portfolio restructuring.

Expenses

Most of our expenses are directly correlated to our staffing levels and our number of offices:

(\$ in thousands)	For the Year Ended December 31,				
	2005	2004	% Change	2003	% Change
Loan officers	329	344	(4.4)%	142	142.3%
Other employees	473	438	8.0%	193	126.9%
Total employees	802	782	2.6%	335	133.4%
Number of sales locations	54	66	(18.2)%	15	340.0%
Salaries and benefits	\$ 30,979	\$ 17,118	81.0%	\$ 9,247	85.1%
Occupancy and equipment	6,127	3,529	73.6%	2,018	74.9%
Marketing and promotion	4,861	3,190	52.4%	1,008	216.5%
Data processing and communications	2,371	1,598	48.4%	608	162.8%
Office supplies and expenses	2,333	1,519	53.6%	803	89.2%
Travel and entertainment	840	612	37.3%	666	(8.1)%
Depreciation and amortization	1,716	690	148.7%	412	67.5%

The category increases noted above are in direct correlation to the 86% and 13% increases in loan origination volume exhibited for the fiscal years ended December 31, 2005 and December 31, 2004, respectively. Additionally, increased expenses in the fiscal year ended December 31, 2004 over the same period of 2003 were due to the ramp up of additional key staff and costs necessary for our transition to a public company following our IPO in June of that year as well as the integration of the GRL acquisition in the latter half of 2004. Fiscal year end December 31, 2005 reflects a full year of these expenses.

Professional Fees Expense. During the year ended December 31, 2005, we had professional fees expense of \$4.7 million compared to \$2.0 million and \$1.0 million for the same periods of 2004 and 2003, an increase of 135% and 100% for the respective periods. This increase was primarily due to the increased costs of compliance with various regulatory and public company requirements, such as the Sarbanes-Oxley Act of 2002 and increases in dues, licenses and permits in states where NYMC has a new presence.

Off-Balance Sheet Arrangements

Since inception, we have not maintained any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. Further, we have not guaranteed any obligations of unconsolidated entities nor do we have any commitment or intent to provide funding to any such entities. Accordingly, we are not materially exposed to any market, credit, liquidity or financing risk that could arise if we had engaged in such relationships.

Liquidity and Capital Resources

Liquidity is a measure of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain investments, pay dividends to our stockholders and other general business needs. We recognize the need to have funds available for our operating businesses and our investment in mortgage loans until the settlement or sale of mortgages with us or with other investors. It is our policy to have adequate liquidity at all times to cover normal cyclical swings in funding availability and mortgage demand and to allow us to meet abnormal and unexpected funding requirements. We plan to meet liquidity through normal operations with the goal of avoiding unplanned sales of assets or emergency borrowing of funds.

We believe our existing cash balances and funds available under our credit facilities and cash flows from operations will be sufficient for our liquidity requirements for at least the next 12 months. Unused borrowing capacity will vary as the market values of our securities vary. Our investments and assets will also generate liquidity on an ongoing basis through mortgage principal and interest payments, pre-payments and net earnings held prior to payment of dividends. Should our liquidity needs ever exceed these on-going or immediate sources of liquidity discussed above, we believe that our securities could be sold to raise additional cash in most circumstances. We do, however, expect to expand our mortgage origination operations and may have to arrange for additional sources of capital through the issuance of debt or equity or additional bank borrowings to fund that expansion. At December 31, 2005, we had no commitments for any additional financings, and we cannot ensure

that we will be able to obtain any future additional financing at the times required and on terms and conditions acceptable to us.

To finance our investment portfolio, we generally seek to borrow between eight and 12 times the amount of our equity. Our leverage ratio, defined as total financing facilities outstanding divided by total stockholders' equity, at December 31, 2005, was 16 to 1. We, and the providers of our finance facilities, generally view our \$45.0 million of subordinated trust preferred debentures outstanding at December 31, 2005 as a form of equity which would result in an adjusted leverage ratio of 11 to 1.

We have arrangements to enter into repurchase agreements, a form of collateralized short-term borrowing, with 23 different financial institutions with total borrowing capacity of \$5.4 billion; as of December 31, 2005 we had borrowed from eight of these firms. These agreements are secured by our mortgage-backed securities and bear interest rates that have historically moved in close relationship to LIBOR. As of December 31, 2005 we had \$1.2 billion in outstanding repurchase agreements. Under these repurchase agreements the financial institutions lend money versus the market value of our mortgage-backed securities portfolio, and, accordingly, an increase in interest rates can have a negative impact on the valuation of these securities, resulting in a potential margin call from the financial institution. We monitor the market valuation fluctuation as well as other liquidity needs to ensure there is adequate collateral available to meet any additional margin calls or liquidity requirements.

We enter into interest rate swap agreements to extend the maturity of our repurchase agreements as a mechanism to reduce the interest rate risk of the securities portfolio. At December 31, 2005 we had \$645.0 million in interest rate swaps outstanding with six different financial institutions. The weighted average maturity of the swaps was 334 days at December 31, 2005. The impact of the interest swaps extends the maturity of the repurchase agreements to one year.

To originate a mortgage loan, we may draw against a \$200.0 million repurchase facility with Credit Suisse First Boston Mortgage Capital, LLC, or CSFB. This facility is secured by the mortgage loans owned by us. Advances drawn under this facility bear interest at rates that vary depending on the type of mortgage loans securing the advances. This facility is subject to sub-limits, advance rates and terms that vary depending on the type of mortgage loans securing these financings and the ratio of our liabilities to our tangible net worth. As of December 31, 2005, the aggregate outstanding balance under this facility was \$144.0 million and the aggregate maximum amount available for additional borrowings was \$56.0 million. This agreement is not a committed facility and may be terminated at any time at the discretion of the counterparty.

In addition to this facility, we may also draw against a master loan and security agreement with Greenwich Capital for \$250 million and \$300 million with Deutsche Bank Structured Products, Inc. Under these agreements, the counterparty provides financing to us for the origination or acquisition of certain mortgage loans, which then will be sold to third parties or contributed for future securitization to one or more trusts or other entities sponsored by us or an affiliate. We will repay advances under this credit facility with a portion of the proceeds from the sale of all mortgage-backed securities issued by the trust or other entity, along with a portion of the proceeds resulting from permitted whole loan sales. Advances under this facility bear interest at a floating rate initially equal to LIBOR plus a spread (starting at 0.62%) that varies depending on the types of mortgage loans securing these facilities. Advances under this facility are subject to lender approval of the mortgage loans intended for origination or acquisition, advance rates and the then ratio of our liabilities to our tangible net worth. This facility is not a committed facility and may be terminated at any time at the discretion of the counterparties. As of December 31, 2005 the outstanding balance of the Greenwich facility was \$81.6 million and the Deutsche Bank facility was zero with the maximum aggregate amount available for additional borrowings of \$168.4 million.

The documents governing these facilities contain a number of compensating balance requirements and restrictive financial and other covenants that, among other things, require us to maintain a maximum ratio of total liabilities to tangible net worth, of 20 to 1 in the case of each of the CSFB facility, 20 to 1 and 20 to 1 in the case of the Greenwich Capital facility and 15 to 1 in the case of Deutsche Bank, as well as to comply with applicable regulatory and investor requirements. These facilities also contain various covenants pertaining to, among other things, the maintenance of certain periodic income thresholds and working capital. The lines contain various covenants pertaining to, among other things, maintenance of certain amounts of net worth, periodic income thresholds and working capital. As of December 31, 2005, the Company was in compliance with all covenants with the exception of the net income covenant on the CSFB and Greenwich facilities and waivers have been obtained from these institutions. As these annual agreements are negotiated for renewal, these covenants may be further modified. The agreements are each renewable annually, but are not committed, meaning that the counterparties to the agreements may withdraw access to the credit facilities at any time.

The agreements also contain covenants limiting the ability of our subsidiaries to:

- transfer or sell assets;
- create liens on the collateral; or
- incur additional indebtedness, without obtaining the prior consent of the lenders, which consent may not be unreasonably withheld.

These limits may in turn restrict our ability to pay cash or stock dividends on our stock. In addition, under our warehouse facilities, we cannot continue to finance a mortgage loan that we hold through the warehouse facility if:

- the loan is rejected as “unsatisfactory for purchase” by the ultimate investor and has exceeded its permissible warehouse period which varies by facility;
- we fail to deliver the applicable note, mortgage or other documents evidencing the loan within the requisite time period;
- the underlying property that secures the loan has sustained a casualty loss in excess of 5% of its appraised value; or
- the loan ceases to be an eligible loan (as determined pursuant to the warehouse facility agreement).

We expect that these credit facilities will be sufficient to meet our capital and financing needs during the next twelve months. The balances of these facilities fluctuate based on the timing of our loan closings (at which point we may draw upon the facilities) and the near-term subsequent sale of these loans to third parties or the alternative financing thereof through repurchase agreements or, in the future, securitizations for mortgage loans we intend to retain (at which point these facilities are paid down). The current availability under these facilities and our current and projected levels of loan origination volume are consistent with our historic ability to manage our pipeline of mortgage loans, the subsequent sale thereof and the related pay down of the facilities.

As of December 31, 2005, our aggregate warehouse and repurchase facility borrowings under these facilities were \$225.2 million and \$1.2 billion, respectively, at an average interest rate of approximately 4.89%.

Our financing arrangements are short-term facilities secured by the underlying investment in residential mortgage loans, the value of which may move inversely with changes in interest rates. A decline in the market value of our investments in the future may limit our ability to borrow under these facilities or result in lenders requiring additional collateral or initiating margin calls under our repurchase agreements. As a result, we could be required to sell some of our investments under adverse market conditions in order to maintain liquidity. If such sales are made at prices lower than the amortized costs of such investments, we will incur losses.

Our ability to originate loans depends in large part on our ability to sell the mortgage loans we originate at cost or for a premium in the secondary market so that we may generate cash proceeds to repay borrowings under our warehouse facilities and our repurchase agreement. The value of our loans depends on a number of factors, including:

- interest rates on our loans compared to market interest rates;
- the borrower credit risk classification;
- loan-to-value ratios, loan terms, underwriting and documentation; and
- general economic conditions.

We make certain representations and warranties, and are subject to various affirmative and negative financial and other covenants, under the agreements covering the sale of our mortgage loans regarding, among other things, the loans' compliance with laws and regulations, their conformity with the ultimate investors' underwriting standards and the accuracy of information. In the event of a breach of these representations, warranties or covenants or in the event of an early payment default, we may be required to repurchase the loans and indemnify the loan purchaser for damages caused by that breach. We have implemented strict procedures to ensure quality control and conformity to underwriting standards and minimize the risk of being required to repurchase loans. We have been required to repurchase loans we have sold from time to time; however, these repurchases have not had a material impact on our results of operations.

We intend to make distributions to our stockholders to comply with the various requirements to maintain our REIT status and to minimize or avoid corporate income tax and the nondeductible excise tax. However, differences in timing between the recognition of REIT taxable income and the actual receipt of cash could require us to sell assets or to borrow funds on a short-term basis to meet the REIT distribution requirements and to avoid corporate income tax and the nondeductible excise tax.

Certain of our assets may generate substantial mismatches between REIT taxable income and available cash. These assets could include mortgage-backed securities we hold that have been issued at a discount and require the accrual of taxable income in advance of the receipt of cash. As a result, our REIT taxable income may exceed our cash available for distribution and the requirement to distribute a substantial portion of our net taxable income could cause us to:

- sell assets in adverse market conditions;
- borrow on unfavorable terms; or
- distribute amounts that would otherwise be invested in future acquisitions, capital expenditures or repayment of debt, in order to comply with the REIT distribution requirements.

Inflation

For the periods presented herein, inflation has been relatively low and we believe that inflation has not had a material effect on our results of operations. The impact of inflation is primarily reflected in the increased costs of our operations. Virtually all our assets and liabilities are financial in nature. Our consolidated financial statements and corresponding notes thereto have been prepared in accordance with GAAP, which require the measurement of financial position and operating results in terms of historical dollars without considering the changes in the relative purchasing power of money over time due to inflation. As a result, interest rates and other factors influence our performance far more than inflation. Inflation affects our operations primarily through its effect on interest rates, since interest rates typically increase during periods of high inflation and decrease during periods of low inflation. During periods of increasing interest rates, demand for mortgages and a borrower's ability to qualify for mortgage financing in a purchase transaction may be adversely affected. During periods of decreasing interest rates, borrowers may prepay their mortgages, which in turn may adversely affect our yield and subsequently the value of our portfolio of mortgage assets.

Contractual Obligations

The Company had the following contractual obligations (excluding derivative financial instruments) at December 31, 2005:

(\$ in thousands)	<u>Total</u>	<u>Less Than 1 Year</u>	<u>1 to 3 Years</u>	<u>4 to 5 Years</u>	<u>After 5 Years</u>
Reverse repurchase agreements	\$ 1,166,499	\$ 1,166,499	—	—	—
Warehouse facilities	225,186	225,186	—	—	—
Operating leases	16,768	4,685	9,967	2,116	—
Collateralized debt obligations(1)	228,226	33,233	95,949	36,122	62,922
Subordinated debentures	45,000	—	—	—	45,000
Employment agreements(2)	7,385	1,846	5,539	—	—
	<u>\$ 1,689,064</u>	<u>\$ 1,431,449</u>	<u>\$ 111,455</u>	<u>\$ 38,238</u>	<u>\$ 107,922</u>

(1) Maturities of our CDOs are dependent upon cash flows received from the underlying loans receivable. Our estimate of their repayment is based on scheduled principal payments on the underlying loans receivable. This estimate will differ from actual

amounts to the extent prepayments and/or loan losses are experienced.

(2) Represents base cash compensation of executive officers.

New Accounting Pronouncements

In December, 2004 the Financial Accounting Standards Board (“FASB”) issued SFAS No. 123R, “Share-Based payment,” (“SFAS No. 123R”) which will require all companies to measure compensation costs for all share-based payments, including employee stock options, at fair value. This statement will be effective for our company with the quarter beginning January 1, 2006. We have elected to expense share based compensation in accordance with SFAS No. 123, therefore proactively adopting the requirements of SFAS No. 123R.

Item 7A. *QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK*

Market risk is the exposure to loss resulting from changes in interest rates, credit spreads, foreign currency exchange rates, commodity prices and equity prices. Because we are invested solely in U.S.-dollar denominated instruments, primarily residential mortgage instruments, and our borrowings are also domestic and U.S. dollar denominated, we are not subject to foreign currency exchange, or commodity and equity price risk; the primary market risk that we are exposed to is interest rate risk and its related ancillary risks. Interest rate risk is highly sensitive to many factors, including governmental monetary and tax policies, domestic and international economic and political considerations and other factors beyond our control. All of our market risk sensitive assets, liabilities and related derivative positions are for non-trading purposes only.

Management recognizes the following primary risks associated with our business and the industry in which we conduct business:

- Interest rate and market (fair value) risk
- Credit spread risk
- Liquidity and funding risk
- Prepayment risk
- Credit risk

Interest Rate Risk

Our primary interest rate exposure relates to the portfolio of adjustable-rate mortgage loans and mortgage-backed securities we acquire, as well as our variable-rate borrowings and related interest rate swaps and caps. Interest rate risk is defined as the sensitivity of our current and future earnings to interest rate volatility, variability of spread relationships, the difference in re-pricing intervals between our assets and liabilities and the effect that interest rates may have on our cash flows, especially the speed at which prepayments occur on our residential mortgage related assets.

Changes in the general level of interest rates can affect our net interest income, which is the difference between the interest income earned on interest earning assets and our interest expense incurred in connection with our interest bearing debt and liabilities. Changes in interest rates can also affect, among other things, our ability to originate and acquire loans and securities, the value of our loans, mortgage pools and mortgage-backed securities, and our ability to realize gains from the resale and settlement of such originated loans.

In our investment portfolio, our primary market risk is interest rate risk. Interest rate risk can be defined as the sensitivity of our portfolio, including future earnings potential, prepayments, valuations and overall liquidity. We attempt to manage interest rate risk by adjusting portfolio compositions, liability maturities and utilizing interest rate derivatives including interest rate swaps and caps. Management’s goal is to maximize the earnings potential of the portfolio while maintaining long term stable portfolio valuations.

We utilize a model based risk analysis system to assist in projecting portfolio performances over a scenario of different interest rates. The model incorporates shifts in interest rates, changes in prepayments and other factors impacting the valuations of our financial securities, including mortgage-backed securities, repurchase agreements, interest rate swaps and interest rate caps.

Based on the results of this model, as of December 31, 2005, an instantaneous shift of 100 basis points in interest rates would result in an approximate decrease in the net interest spread by 30-35 basis points as compared to our base line projections over the next year.

The following tables set forth information about financial instruments (dollar amounts in thousands):

	December 31, 2005		
	Notional Amount	Carrying Amount	Estimated Fair Value
Investment securities available for sale	\$ 719,701	\$ 716,482	\$ 716,482
Mortgage loans held for investment	4,054	4,060	4,079
Mortgage loans held in the securitization trusts	771,451	776,610	775,311
Mortgage loans held for sale	108,244	108,271	109,252
Commitments and contingencies:			
Interest rate lock commitments - loan commitments	130,320	123	123
Interest rate lock commitments - mortgage loans held for sale	108,109	(14)	(14)
Forward loan sales contracts	51,763	(380)	(380)
Interest rate swaps	645,000	6,383	6,383
Interest rate caps	1,858,860	3,340	3,340

	December 31, 2004		
	Notional Amount	Carrying Amount	Estimated Fair Value
Investment securities available for sale	\$ 1,194,055	\$ 1,204,745	\$ 1,204,745
Mortgage loans held for investment	188,859	190,153	190,608
Mortgage loans held for sale	85,105	85,385	86,098
Commitments and contingencies:			
Interest rate lock commitments	156,110	38	38
Forward loan sales contracts	97,080	(165)	(165)
Interest rate swaps	670,000	3,228	3,228
Interest rate caps	250,000	411	411

The impact of changing interest rates may be mitigated by portfolio prepayment activity that we closely monitor and the portfolio funding strategies we employ. First, our adjustable rate borrowings may react to changes in interest rates before our adjustable rate assets because the weighted average next repricing dates on the related borrowings may have shorter time periods than that of the adjustable rate assets. Second, interest rates on adjustable rate assets may be limited to a “periodic cap” or an increase of typically 1% or 2% per adjustment period, while our borrowings do not have comparable limitations. Third, our adjustable rate assets typically lag changes in the applicable interest rate indices by 45 days, due to the notice period provided to adjustable rate borrowers when the interest rates on their loans are scheduled to change.

In a period of declining interest rates or nominal differences between long-term and short-term interest rates, the rate of prepayment on our mortgage assets may increase. Increased prepayments would cause us to amortize any premiums paid for our mortgage assets faster, thus resulting in a reduced net yield on our mortgage assets. Additionally, to the extent proceeds of prepayments cannot be reinvested at a rate of interest at least equal to the rate previously earned on such mortgage assets, our earnings may be adversely affected.

Conversely, if interest rates rise or if the differences between long-term and short-term interest rates increase the rate of prepayment on our mortgage assets may decrease. Decreased prepayments would cause us to amortize the premiums paid for our ARM assets over a longer time period, thus resulting in an increased net yield on our mortgage assets. Therefore, in rising interest rate environments where prepayments are declining, not only would the interest rate on the ARM Assets portfolio increase to re-establish a spread over the higher interest rates, but the yield also would rise due to slower prepayments. The combined effect could significantly mitigate other negative effects that rising short-term interest rates might have on earnings.

Interest rates can also affect our net return on hybrid adjustable rate (“hybrid ARM”) securities and loans net of the cost of financing hybrid ARMs. We continually monitor and estimate the duration of our hybrid ARMs and have a policy to hedge the financing of the hybrid ARMs such that the net duration of the hybrid ARMs, our borrowed funds related to such assets, and related hedging instruments are less than one year. During a declining interest rate environment, the prepayment of hybrid ARMs may accelerate (as borrowers may opt to refinance at a lower rate) causing the amount of fixed-rate financing to increase relative to the amount of hybrid ARMs, possibly resulting in a decline in our net return on hybrid ARMs as replacement hybrid ARMs may have a lower yield than those being prepaid. Conversely, during an increasing interest rate environment, hybrid ARMs may prepay slower than expected, requiring us to finance a higher amount of hybrid ARMs than originally forecast and at a time when interest rates may be higher, resulting in a decline in our net return on hybrid ARMs. Our exposure to

changes in the prepayment speed of hybrid ARMs is mitigated by regular monitoring of the outstanding balance of hybrid ARMs and adjusting the amounts anticipated to be outstanding in future periods and, on a regular basis, making adjustments to the amount of our fixed-rate borrowing obligations for future periods.

Interest rate changes can also affect the availability and pricing of adjustable rate assets, which affects our origination activity and investment opportunities. During a rising interest rate environment, there may be less total loan origination activity, particularly for refinancings. At the same time, a rising interest rate environment may result in a larger percentage of adjustable rate products being originated, mitigating the impact of lower overall loan origination activity. In addition, our focus on purchase mortgages as opposed to refinancings also mitigates the volatility of our origination volume as refinancing volume is typically a function of lower interest rates, whereas, purchase mortgage volume has historically remained relatively static during interest rate cycles. Conversely, during a declining interest rate environment total loan origination activity may rise with many of the borrowers desiring fixed-rate mortgage products. Although adjustable rate product origination as a percentage of total loan origination may decline during these periods, the increased loan origination and refinancing volume in the industry may produce sufficient investment opportunities. Additionally, a flat yield curve may be an adverse environment for adjustable rate products because the incentive for a borrower to choose an adjustable rate product over a longer term fixed-rate mortgage loan is minimized and, conversely, in a steep yield curve environment, adjustable rate products may enjoy an above average advantage over longer term fixed-rate mortgage loans, increasing our investment opportunities.

As the rate environment changes, the impact on origination volume and the type of loan product that is favored is mitigated, in part, by our ability to operate in our two business segments. In periods where adjustable rate product is favored, our mortgage portfolio management segment, which invests in such mortgage loans, will benefit from a larger selection of loan product for its portfolio and the inherent lower cost basis and resultant wider net margin. Our mortgage lending segment, regardless of whether adjustable rate or fixed rate product is favored, will continue to originate such loans and will continue to sell to third parties all fixed rate product; as a result, in periods where fixed rate product is favored, our origination segment may see increased revenues as such fixed product is sold to third parties.

Interest rate changes may also impact our net book value as our securities, certain mortgage loans and related hedge derivatives are marked-to-market each quarter. Generally, as interest rates increase, the value of our fixed income investments, such as mortgage loans and mortgage-backed securities, decreases and as interest rates decrease, the value of such investments will increase. We seek to hedge to some degree changes in value attributable to changes in interest rates by entering into interest rate swaps and other derivative instruments. In general, we would expect that, over time, decreases in value of our portfolio attributable to interest rate changes will be offset to some degree by increases in value of our interest rate swaps, and vice versa. However, the relationship between spreads on securities and spreads on swaps may vary from time to time, resulting in a net aggregate book value increase or decline. However, unless there is a material impairment in value that would result in a payment not being received on a security or loan, changes in the book value of our portfolio will not directly affect our recurring earnings or our ability to make a distribution to our stockholders.

In order to minimize the negative impacts of changes in interest rates on earnings and capital, we closely monitor our asset and liability mix and utilize interest rate swaps and caps, subject to the limitations imposed by the REIT qualification tests.

Movements in interest rates can pose a major risk to us in either a rising or declining interest rate environment. We depend on substantial borrowings to conduct our business. These borrowings are all made at variable interest rate terms that will increase as short term interest rates rise. Additionally, when interest rates rise, mortgage loans held for sale and any applications in process with interest rate lock commitments, or IRLCs, decrease in value. To preserve the value of such loans or applications in process with IRLCs, we may enter into forward sale loan contracts, or FSLCs, to be settled at future dates with fixed prices.

When interest rates decline, loan applicants may withdraw their open applications on which we have issued an IRLC. In those instances, we may be required to purchase loans at current market prices to fulfill existing FSLCs, thereby incurring losses upon sale.

We monitor our mortgage loan pipeline closely and on occasion may choose to renegotiate locked loan terms with a borrower to prevent withdrawal of open applications and mitigate the associated losses.

In the event that we do not deliver the FSLCs or exercise our option contracts, the instruments can be settled on a net basis. Net settlement entails paying or receiving cash based upon the change in market value of the existing instrument. All FSLCs and option contracts to buy securities are to be contractually settled within six months of the balance sheet date. FSLCs and options contracts for individual loans generally must be settled within 60 days.

Our hedging transactions using derivative instruments also involve certain additional risks such as counterparty credit risk, the enforceability of hedging contracts and the risk that unanticipated and significant changes in interest rates will cause a significant loss of basis in the contract. The counterparties to our derivative arrangements are major financial institutions and securities dealers that are well capitalized with high credit ratings and with which we may also have other financial relationships. While we do not anticipate nonperformance by any counterparty, we are exposed to potential credit losses in the event the counterparty fails to perform. Our exposure to credit risk in the event of default by a counterparty is the difference between the value of the contract and the current market price. There can be no assurance that we will be able to adequately protect against the forgoing risks and will ultimately realize an economic benefit that exceeds the related expenses incurred in connection with engaging in such hedging strategies.

While we have not experienced any significant credit losses, in the event of a significant rising interest rate environment and/or economic downturn, mortgage and loan defaults may increase and result in credit losses that would adversely affect our liquidity and operating results.

Credit Spread Exposure

The mortgage-backed securities we currently, and will in the future, own are also subject to spread risk. The majority of these securities will be adjustable-rate securities that are valued based on a market credit spread to U.S. Treasury security yields. In other words, their value is dependent on the yield demanded on such securities by the market based on their credit relative to U.S. Treasury securities. Excessive supply of such securities combined with reduced demand will generally cause the market to require a higher yield on such securities, resulting in the use of a higher or wider spread over the benchmark rate (usually the applicable U.S. Treasury security yield) to value such securities. Under such conditions, the value of our securities portfolio would tend to decline. Conversely, if the spread used to value such securities were to decrease or tighten, the value of our securities portfolio would tend to increase. Such changes in the market value of our portfolio may affect our net equity, net income or cash flow directly through their impact on unrealized gains or losses on available-for-sale securities, and therefore our ability to realize gains on such securities, or indirectly through their impact on our ability to borrow and access capital.

Furthermore, shifts in the U.S. Treasury yield curve, which represents the market's expectations of future interest rates, would also affect the yield required on our securities and therefore their value. These shifts, or a change in spreads, would have a similar effect on our portfolio, financial position and results of operations.

Market (Fair Value) Risk

For certain of the financial instruments that we own, fair values will not be readily available since there are no active trading markets for these instruments as characterized by current exchanges between willing parties. Accordingly, fair values can only be derived or estimated for these investments using various valuation techniques, such as computing the present value of estimated future cash flows using discount rates commensurate with the risks involved. However, the determination of estimated future cash flows is inherently subjective and imprecise. Minor changes in assumptions or estimation methodologies can have a material effect on these derived or estimated fair values. These estimates and assumptions are indicative of the interest rate environments as of December 31, 2005 and do not take into consideration the effects of subsequent interest rate fluctuations.

We note that the values of our investments in mortgage-backed securities, and in derivative instruments, primarily interest rate hedges on our debt, will be sensitive to changes in market interest rates, interest rate spreads, credit spreads and other market factors. The value of these investments can vary and has varied materially from period to period. Historically, the values of our mortgage loan portfolio have tended to vary inversely with those of its derivative instruments.

The following describes the methods and assumptions we use in estimating fair values of our financial instruments:

Fair value estimates are made as of a specific point in time based on estimates using present value or other valuation techniques. These techniques involve uncertainties and are significantly affected by the assumptions used and the judgments made regarding risk characteristics of various financial instruments, discount rates, estimates of future cash flows, future expected loss experience and other factors.

Changes in assumptions could significantly affect these estimates and the resulting fair values. Derived fair value estimates cannot be substantiated by comparison to independent markets and, in many cases, could not be realized in an immediate sale of the instrument. Also, because of differences in methodologies and assumptions used to estimate fair values, the fair values used by us should not be compared to those of other companies.

The fair values of the Company's residential mortgage-backed securities are generally based on market prices provided by five to seven dealers who make markets in these financial instruments. If the fair value of a security is not reasonably available from a dealer, management estimates the fair value based on characteristics of the security that the Company receives from the issuer and on available market information.

The fair value of loans held for investment are determined by the loan pricing sheet which is based on internal management pricing and third party competitors in similar products and markets.

The fair value of commitments to fund with agreed upon rates are estimated using the fees and rates currently charged to enter into similar agreements, taking into account the remaining terms of the agreements and the present creditworthiness of the counterparties. For fixed rate loan commitments, fair value also considers the difference between current market interest rates and the existing committed rates.

The fair value of commitments to deliver mortgages is estimated using current market prices for dealer or investor commitments relative to our existing positions.

The market risk management discussion and the amounts estimated from the analysis that follows are forward-looking statements that assume that certain market conditions occur. Actual results may differ materially from these projected results due to changes in our ARM portfolio and borrowings mix and due to developments in the domestic and global financial and real estate markets. Developments in the financial markets include the likelihood of changing interest rates and the relationship of various interest rates and their impact on our ARM portfolio yield, cost of funds and cash flows. The analytical methods that we use to assess and mitigate these market risks should not be considered projections of future events or operating performance.

As a financial institution that has only invested in U.S.-dollar denominated instruments, primarily residential mortgage instruments, and has only borrowed money in the domestic market, we are not subject to foreign currency exchange or commodity price risk. Rather, our market risk exposure is largely due to interest rate risk. Interest rate risk impacts our interest income, interest expense and the market value on a large portion of our assets and liabilities. The management of interest rate risk attempts to maximize earnings and to preserve capital by minimizing the negative impacts of changing market rates, asset and liability mix, and prepayment activity.

The table below presents the sensitivity of the market value of our portfolio using a discounted cash flow simulation model. Application of this method results in an estimation of the percentage change in the market value of our assets, liabilities and hedging instruments per 100 basis point ("bp") shift in interest rates expressed in years - a measure commonly referred to as duration. Positive portfolio duration indicates that the market value of the total portfolio will decline if interest rates rise and increase if interest rates decline. The closer duration is to zero, the less interest rate changes are expected to affect earnings. Included in the table is a "Base Case" duration calculation for an interest rate scenario that assumes future rates are those implied by the yield curve as of December 31, 2005. The other two scenarios assume interest rates are instantaneously 100 and 200 bps higher than those implied by market rates as of December 31, 2005.

The use of hedging instruments is a critical part of our interest rate risk management strategies, and the effects of these hedging instruments on the market value of the portfolio are reflected in the model's output. This analysis also takes into consideration the value of options embedded in our mortgage assets including constraints on the repricing of the interest rate of ARM Assets resulting from periodic and lifetime cap features, as well as prepayment options. Assets and liabilities that are not interest rate-sensitive such as cash, payment receivables, prepaid expenses, payables and accrued expenses are excluded. The duration calculated from this model is a key measure of the effectiveness of our interest rate risk management strategies.

Changes in assumptions including, but not limited to, volatility, mortgage and financing spreads, prepayment behavior, defaults, as well as the timing and level of interest rate changes will affect the results of the model. Therefore, actual results are likely to vary from modeled results.

Net Portfolio Duration
December 31, 2005

	Basis point increase		
	Base	+100	+200
Mortgage Portfolio	1.20 years	1.56 years	1.69 years
Borrowings (including hedges)	0.29	0.29	0.29
Net	0.91 years	1.27 years	1.40 years

It should be noted that the model is used as a tool to identify potential risk in a changing interest rate environment but does not include any changes in portfolio composition, financing strategies, market spreads or changes in overall market liquidity.

Based on the assumptions used, the model output suggests a very low degree of portfolio price change given increases in interest rates, which implies that our cash flow and earning characteristics should be relatively stable for comparable changes in interest rates.

Although market value sensitivity analysis is widely accepted in identifying interest rate risk, it does not take into consideration changes that may occur such as, but not limited to, changes in investment and financing strategies, changes in market spreads, and changes in business volumes. Accordingly, we make extensive use of an earnings simulation model to further analyze our level of interest rate risk.

There are a number of key assumptions in our earnings simulation model. These key assumptions include changes in market conditions that affect interest rates, the pricing of ARM products, the availability of ARM products, and the availability and the cost of financing for ARM products. Other key assumptions made in using the simulation model include prepayment speeds and management's investment, financing and hedging strategies, and the issuance of new equity. We typically run the simulation model under a variety of hypothetical business scenarios that may include different interest rate scenarios, different investment strategies, different prepayment possibilities and other scenarios that provide us with a range of possible earnings outcomes in order to assess potential interest rate risk. The assumptions used represent our estimate of the likely effect of changes in interest rates and do not necessarily reflect actual results. The earnings simulation model takes into account periodic and lifetime caps embedded in our ARM Assets in determining the earnings at risk.

Liquidity and Funding Risk

Liquidity is a measure of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain investments, pay dividends to our stockholders and other general business needs. We recognize the need to have funds available for our operating businesses and our investment in mortgage loans until the settlement or sale of mortgages with us or with other investors. It is our policy to have adequate liquidity at all times to cover normal cyclical swings in funding availability and mortgage demand and to allow us to meet abnormal and unexpected funding requirements. We plan to meet liquidity through normal operations with the goal of avoiding unplanned sales of assets or emergency borrowing of funds.

Our mortgage lending operations require significant cash to fund loan originations. Our warehouse lending arrangements, including repurchase agreements, support the mortgage lending operation. Generally, our warehouse mortgage lenders allow us to borrow between 96% and 100% of the outstanding principal. Funding for the difference - generally 2% of the principal - must come from other cash inflows. Our operating cash inflows are predominately from cash flow from mortgage securities, principal and interest on mortgage loans, third party sales of originated loans that do not fit our portfolio investment criteria, and fee income from loan originations. Other than access to our financing facilities, proceeds from equity offerings have been used to support operations.

Loans financed with warehouse, aggregation and repurchase credit facilities are subject to changing market valuations and margin calls. The market value of our loans is dependent on a variety of economic conditions, including interest rates (and borrower demand) and end investor desire and capacity. There is no certainty that market values will remain constant. To the extent the value of the loans declines significantly, we would be required to repay portions of the amounts we have borrowed. The derivative financial instruments we use also subject us to "margin call" risk based on their market values. Under our interest rate swaps, we pay a fixed rate to the counterparties while they pay us a floating rate. When floating rates are low, on a net basis we pay the counterparty and visa-versa. In a declining interest rate environment, we would be subject to additional exposure for cash margin calls. However, the asset side of the balance sheet should increase in value in a further declining interest rate scenario. Most of our interest rate swap agreements provide for a bi-lateral posting of margin, the effect being that on either side of the valuation for such swaps, the counterparty can call/post margin. Unlike typical unilateral posting of margin only in the direction of the swap counterparty, this provides us with additional flexibility in meeting our liquidity requirements as we can call margin on our counterparty as swap values increase.

Incoming cash on our mortgage loans and securities is a principal source of cash. The volume of cash depends on, among other things, interest rates. The volume and quality of such incoming cash flows can be impacted by severe and immediate changes in interest rates. If rates increase dramatically, our short-term funding costs will increase quickly. While many of our loans are hybrid ARMs, they typically will not reset as quickly as our funding costs creating a reduction in incoming cash flow. Our derivative financial instruments are used to mitigate the effect of interest rate volatility.

We manage liquidity to ensure that we have the continuing ability to maintain cash flows that are adequate to fund operations and meet commitments on a timely and cost-effective basis. Our principal sources of liquidity are the repurchase agreement market, the issuance of CDOs, whole loan financing facilities as well as principal and interest payments from ARM Assets. We believe that our liquidity level is in excess of that necessary to satisfy our operating requirements and we expect to continue to use diverse funding sources to maintain our financial flexibility.

Prepayment Risk

When borrowers repay the principal on their mortgage loans before maturity or faster than their scheduled amortization, the effect is to shorten the period over which interest is earned, and therefore, reduce the cash flow and yield on our ARM Assets. Furthermore, prepayment speeds exceeding or lower than our reasonable estimates for similar assets, impact the effectiveness of any hedges we have in place to mitigate financing and/or fair value risk. Generally, when market interest rates decline, borrowers have a tendency to refinance their mortgages. The higher the interest rate a borrower currently has on his or her mortgage the more incentive he or she has to refinance the mortgage when rates decline. Additionally, when a borrower has a low loan-to-value ratio, he or she is more likely to do a “cash-out” refinance. Each of these factors increases the chance for higher prepayment speeds during the term of the loan.

We generally do not originate loans that provide for a prepayment penalty if the loan is fully or partially paid off prior to scheduled maturity. We mitigate prepayment risk by constantly evaluating our ARM portfolio at a range of reasonable market prepayment speeds observed at the time for assets with a similar structure, quality and characteristics. Furthermore, we stress-test the portfolio as to prepayment speeds and interest rate risk in order to develop an effective hedging strategy.

For the three months ended December 31, 2005, our mortgage assets paid down at an approximate average annualized Constant Paydown Rate (“CPR”) of 31%, compared to 30% for the three months ended September 30, 2005, to 27% for the three months ended June 30, 2005, to 22% for the three months ended March 31, 2005 and 24% for the three months ended December 31, 2004. The constant prepayment rate averaged approximately 33% during the year of operations ended December 31, 2005. When prepayment experience increases, we have to amortize our premiums over a shorter time period, resulting in a reduced yield to maturity on our ARM Assets. Conversely, if actual prepayment experience decreases, we would amortize the premium over a longer time period, resulting in a higher yield to maturity. We monitor our prepayment experience on a monthly basis and adjust the amortization of the net premium, as appropriate.

Credit Risk

Credit risk is the risk that we will not fully collect the principal we have invested in mortgage loans or securities. As previously noted, we are predominately a high-quality loan originator and our underwriting guidelines are intended to evaluate the credit history of the potential borrower, the capacity and willingness of the borrower to repay the loan, and the adequacy of the collateral securing the loan.

We mitigate credit risk by directly underwriting our own loan originations and re-underwriting any loans originated through our correspondent networks. With regard to the purchased mortgage security portfolio, we rely on the guaranties of FNMA, FHLMC, GNMA or the AAA/Aaa rating established by the Rating Agencies.

With regard to loan originations, factors such as FICO score, LTV, debt-to-income ratio, and other borrower and collateral factors are evaluated. Credit enhancement features, such as mortgage insurance may also be factored into the credit decision. In some instances, when the borrower exhibits strong compensating factors, exceptions to the underwriting guidelines may be approved.

Our loan originations are concentrated in geographic markets that are generally supply constrained. We believe that these markets have less exposure to sudden declines in housing values than those markets which have an oversupply of housing. In addition, in the supply constrained housing markets we focus on, housing values tend to be high and, generally, underwriting standards for higher value homes require lower LTVs and thus more owner equity further mitigating credit risk. Finally, the higher housing value/mortgage loan financing markets allow for more cost efficient origination volume in terms of dollars and units. For our mortgage securities that are purchased, we rely on the Fannie Mae, Freddie Mac, Ginnie Mae and AAA-rating of the securities supplemented with additional due diligence.

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements of the Company and the related notes and schedules to the financial statements, together with the Report of Independent Registered Public Accounting Firm thereon, as required by this Item 8, are set forth beginning on page F-1 of this annual report on Form 10-K.

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

None.

Item 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures. We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that such information is accumulated and communicated to our management timely. An evaluation was performed under the supervision and with the participation of our management, including our Co-Chief Executive Officers and our Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) as of December 31, 2005. Based upon that evaluation, our management, including our Co-Chief Executive Officers and our Chief Financial Officer, concluded that our disclosure controls and procedures were effective as of December 31, 2005.

Management's Report on Internal Control Over Financial Reporting . Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Under the supervision and with the participation of our management, including our principal executive officers and principal financial officer, the Company conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in “ *Internal Control - Integrated Framework* ,” issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). Based on our evaluation under the framework in *Internal Control -Integrated Framework* , our management concluded that our internal control over financial reporting was effective as of December 31, 2005. Our management’s assessment of the effectiveness of our internal control over financial reporting as of December 31, 2005 has been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report which is included herein beginning on page F-2 of this annual report on Form 10-K.

Item 9B. OTHER INFORMATION

On February 28, 2006, the Compensation Committee of the Company’s Board of Directors granted 2005 cash incentive bonuses to each of the Company’s executive officers and is summarized in the following table along with 2006 contractual salaries:

	2006 Annual Salary(1)	2005 Cash Bonus(2)
Steven B. Schnell Chairman of the Board and Co-Chief Executive Officer	\$ 409,500	\$ 35,000
David A. Akre Co-Chief Executive Officer	409,500	35,000
Michael I. Wirth Executive Vice President and Chief Financial Officer	336,000	105,000
Joseph V. Fierro Chief Operating Officer of NYMC	330,750	20,000
Steven R. Mumma Vice President and Chief Investment and Operating Officer	\$ 300,000	\$ 105,000

(1) Pursuant to each of the executive officer’s employment agreements, 2006 base salaries reflect a 3.4% increase over base salary as established in 2005.

There was no change to the fees payable to our directors. Our Board of Directors approved the grant of 2,500 shares of stock on September 15, 2005 to each of our non-employee directors. These stock awards vest immediately upon issuance.

On December 13, 2005, NYMC Loan Corporation, a wholly owned subsidiary of New York Mortgage Trust, Inc. (the “Company”), and the Company entered into a \$300 million master repurchase agreement (the “Agreement”) with DB Structured Products, Inc., Aspen Funding Corp. and Newport Funding Corp. (each a “Buyer” and collectively the “Buyers”) to finance, on a short-term basis, mortgage loans originated by The New York Mortgage Company, LLC (“assets”). The Company guaranteed the payment and performance of NYMC Loan Corporation, as Seller, under the Agreement. Under the Agreement, the Seller will sell assets to the Buyers and agrees to repurchase those assets on a date certain. The purchase price for assets will generally be an amount equal to the product of the market value of the assets to be sold multiplied by a percentage of the purchase price that generally ranges from 75% to 98% of the asset's market value, depending on the type of mortgage asset being financed and whether the asset is performing or non-performing. In general, the repurchase price will equal the original purchase price plus accrued but unpaid interest. Pursuant to the terms of the Agreement, the Seller will pay interest to the Buyers at a fixed percentage over LIBOR depending on collateral type. All of the Seller's interest in the transferred assets pass to the Buyers on the purchase date. Upon receipt of the purchase price, the Buyers shall transfer their ownership interests in the asset back to the Seller. The Agreement is a \$300 million uncommitted lending facility, meaning the Buyers must agree to each asset financed under the Agreement. The facility established by the Agreement is set to expire on December 12, 2006. If the market value of an asset financed under the facility declines to less than the related Buyer's purchase price (the “margin deficit”), then the Buyers may require that the Seller transfer cash in an amount equal to such margin deficit or additional loans or may retain any funds received by it to which the Seller would otherwise be entitled.

The Company and the Seller are required to maintain certain routine covenants during the term of the Agreement, including without limitation, maintaining a certain level of net worth, not exceeding a certain indebtedness ratio, providing financial reports, not undertaking a merger or other fundamental transaction, and maintaining a certain level of profitability. The Agreement requires that all assets subject to the facility have the related loan documents delivered to LaSalle Bank, National Association, who holds them as a custodian so long as they are subject to the facility.

In addition to being an uncommitted facility, if an event of default (as defined in the Agreement) occurs, the Seller will be unable to finance assets under the facility and its obligation to repurchase assets financed under the facility may, at the option of the Buyers, be accelerated. The definition of an event of default includes, among others, the following events: (i) failure to pay sums due under the Agreement, (ii) failure to repurchase an asset as required, (iii) a default on other obligations of the Company or Seller that involves the failure to pay a matured obligation or permits the acceleration of the maturity of the obligation, (iv) a material adverse change in the Company's or Seller's property, business, or financial condition, and (v) undergoing a change in control of the Company.

If the Seller defaults under the Agreement, then the Buyers have most standard remedies, including, demanding all assets be repurchased and selling the assets subject to the facility. Pursuant to an amended and restated guaranty of the Company, the Company fully and unconditionally guarantees the obligations of the Sellers under the terms of this Agreement.

On January 5, 2006, the Company and its wholly-owned subsidiaries, The New York Mortgage Company, LLC (“NYMC”) and New York Mortgage Funding, LLC (“NYMF”) (the Company, NYMC and NYMF, each a Seller and together, the “Sellers”), entered into a \$250 million master repurchase agreement with Greenwich Capital Products, Inc. (“GCM”). The terms of the agreement between the Sellers and GCM are substantially similar to the Agreement described above. The agreement between the Sellers and GCM is a full-recourse facility against the Sellers and all obligations of the Sellers are joint and several. This agreement with GCM is set to expire on December 4, 2006.

PART III

Item 10. *DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT*

Information on our directors and executive officers is incorporated by reference from our Proxy Statement (under the headings “Proposal 1: Election of Directors,” “Information on Our Board of Directors and its Committees,” “Section 16(a) Beneficial Ownership Reporting Compliance” and “Executive Officers and Significant Employees”) to be filed with respect to our Annual Meeting of Stockholders to be held June 14, 2006 (the “2006 Proxy Statement”).

Because our common stock is listed on the NYSE, our Co-Chief Executive Officers are required to make an annual certification to the NYSE stating that they are not aware of any violation by us of the corporate governance listing standards of the NYSE. Our Co-Chief Executive Officers made their annual certification to that effect to the NYSE as of June 30, 2005. In addition, we have filed, as exhibits to this Annual Report on Form 10-K, the certifications of our principal executive officers and principal financial officer required under Section 302 of the Sarbanes Oxley Act of 2002.

Item 11. *EXECUTIVE COMPENSATION*

The information presented under the headings “Compensation of Directors” and “Executive Compensation” in our 2006 Proxy Statement to be filed with the SEC is incorporated herein by reference.

Item 12. *SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS*

The information presented under the heading “Security Ownership of Certain Beneficial Owners and Management” in our 2006 Proxy Statement to be filed with the SEC is incorporated herein by reference.

The information presented under the heading “Market for the Registrant’s Common Equity and Related Stockholder Matters — Securities Authorized for Issuance Under Equity Compensation Plans” in Item 5 of Part II of this Form 10-K is incorporated herein by reference.

Item 13. *CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS*

The information presented under the heading “Certain Relationships and Related Transactions” in our 2006 Proxy Statement to be filed with the SEC is incorporated herein by reference.

Item 14. *PRINCIPAL ACCOUNTANT FEES AND SERVICES*

The information presented under the headings “Principal Accountant Fees and Services” and “Audit Committee Pre-Approval Policy” in our 2006 Proxy Statement to be filed with the SEC is incorporated herein by reference.

PART IV

Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) Financial Statements and Schedules. The following financial statements and schedules are included in this report:

	Page
FINANCIAL STATEMENTS:	
Report of Independent Registered Public Accounting Firm	F-2
Report of Independent Registered Public Accounting Firm	F-3
Consolidated Balance Sheets	F-4
Consolidated Statements of Operations	F-5
Consolidated Statements of Stockholders'/Members' Equity	F-6
Consolidated Statements of Cash Flows	F-7
Notes to Consolidated Financial Statements	F-8

(b) Exhibits.

The exhibits required by Item 601 of Regulation S-K are listed below. Management contracts or compensatory plans are filed as Exhibits

Exhibit	Description
3.2(b)	Amendment No. 1 to Bylaws
21.1	List of Subsidiaries of the Registrant.
23.1	Consent of Independent Registered Public Accounting Firm (Deloitte & Touche LLP).
31.1	Section 302 Certification of Co-Chief Executive Officer.
31.2	Section 302 Certification of Co-Chief Executive Officer.
31.3	Section 302 Certification of Chief Financial Officer.
32.1	Section 906 Certification of Co-Chief Executive Officers.
32.2	Section 906 Certification of Chief Financial Officer.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

NEW YORK MORTGAGE TRUST, INC.

Date: March 16, 2006

By: /s/ STEVEN B. SCHNALL

Name: Steven B. Schnall
Title: Co-Chief Executive Officer

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Steven B. Schnall</u> Steven B. Schnall	Chairman of the Board, President, and Co-Chief Executive Officer (Principal Executive Officer)	March 16, 2006
<u>/s/ David A. Akre</u> David A. Akre	Co-Chief Executive Officer and Director	March 16, 2006
<u>/s/ Michael I. Wirth</u> Michael I. Wirth	Executive Vice President, Chief Financial Officer, secretary and Treasurer (Principal Financial Officer)	March 16, 2006
<u>/s/ David R. Bock</u> David R. Bock	Director	March 16, 2006
<u>/s/ Alan L. Hainey</u> Alan L. Hainey	Director	March 16, 2006
<u>/s/ Steven G. Norcutt</u> Steven G. Norcutt	Director	March 16, 2006
<u>/s/ Mary Dwyer Pembroke</u> Mary Dwyer Pembroke	Director	March 16, 2006
<u>/s/ Jerome F. Sherman</u> Jerome F. Sherman	Director	March 16, 2006
<u>/s/ Thomas W. White</u>	Director	March 16, 2006

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES

CONSOLIDATED FINANCIAL STATEMENTS

AND

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

For Inclusion in Form 10-K

Filed with

Securities and Exchange Commission

December 31, 2005

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES

Index to Consolidated Financial Statements

	Page
FINANCIAL STATEMENTS:	
Report of Independent Registered Public Accounting Firm	F-2
Report of Independent Registered Public Accounting Firm	F-3
Consolidated Balance Sheets	F-4
Consolidated Statements of Operations	F-5
Consolidated Statements of Stockholders'/Members' Equity	F-6
Consolidated Statements of Cash Flows	F-7
Notes to Consolidated Financial Statements	F-8

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
New York Mortgage Trust, Inc.
New York, NY

We have audited management's assessment, included in Management's Report on Internal Control over Financial Reporting at Item 9A, that New York Mortgage Trust, Inc. and subsidiaries (the "Company") maintained effective internal control over financial reporting as of December 31, 2005, based on the criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

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

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

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that the Company maintained effective internal control over financial reporting as of December 31, 2005, is fairly stated, in all material respects, based on the criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2005, based on the criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements as of and for the year ended December 31, 2005 of the Company and our report dated March 15, 2006 expressed an unqualified opinion on those financial statements.

/s/ Deloitte & Touche LLP

New York, NY
March 15, 2006

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
New York Mortgage Trust, Inc.
New York, NY

We have audited the accompanying consolidated balance sheets of New York Mortgage Trust, Inc. and subsidiaries (the "Company") as of December 31, 2005 and 2004, and the related consolidated statements of operations, stockholders'/members' equity, and cash flows for each of the three years in the period ended December 31, 2005. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of New York Mortgage Trust, Inc. and subsidiaries as of December 31, 2005 and 2004, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2005, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of the Company's internal control over financial reporting as of December 31, 2005, based on the criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 15, 2006 expressed an unqualified opinion on management's assessment of the effectiveness of the Company's internal control over financial reporting and an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ Deloitte & Touche LLP

New York, NY
March 15, 2006

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(Dollar amounts in thousands)

	December 31, 2005	December 31, 2004
ASSETS		
Cash and cash equivalents	\$ 9,056	\$ 7,613
Restricted cash	5,468	2,342
Investment securities — available for sale	716,482	1,204,745
Due from loan purchasers	121,813	79,904
Escrow deposits — pending loan closings	1,434	16,236
Accounts and accrued interest receivable	14,866	15,554
Mortgage loans held for sale	108,271	85,385
Mortgage loans held in securitization trusts	776,610	—
Mortgage loans held for investment	4,060	190,153
Prepaid and other assets	16,505	4,351
Derivative assets	9,846	3,678
Property and equipment, net	6,882	4,801
TOTAL ASSETS	\$ 1,791,293	\$ 1,614,762
LIABILITIES AND STOCKHOLDERS' EQUITY		
LIABILITIES:		
Financing arrangements, portfolio investments	\$ 1,166,499	\$ 1,111,393
Financing arrangements, loans held for sale/for investment	225,186	359,203
Collateralized debt obligations	228,226	—
Due to loan purchasers	1,652	351
Accounts payable and accrued expenses	22,794	19,485
Subordinated debentures	45,000	—
Derivative liabilities	394	165
Other liabilities	584	4,683
Total liabilities	1,690,335	1,495,280
COMMITMENTS AND CONTINGENCIES (Note 12)		
STOCKHOLDERS' EQUITY:		
Common stock, \$0.01 par value, 400,000,000 shares authorized 18,258,221 shares issued and 17,953,674 outstanding at December 31, 2005 and 18,217,498 shares issued and 17,797,375 outstanding at December 31, 2004	183	181
Additional paid-in capital	107,573	119,045
Accumulated other comprehensive income	1,910	256
Accumulated deficit	(8,708)	—
Total stockholders' equity	100,958	119,482
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 1,791,293	\$ 1,614,762

See notes to consolidated financial statements.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS

(Dollar amounts in thousands, except per share data)

For the Year Ended December 31,

	2005	2004	2003
REVENUES:			
Interest income:			
Investment securities and loans held in securitization trusts	\$ 55,050	\$ 19,671	\$ —
Loans held for investment	7,675	723	—
Loans held for sale	14,751	6,905	7,609
Total interest income	<u>77,476</u>	<u>27,299</u>	<u>7,609</u>
Interest expense:			
Investment securities and loans held in securitization trusts	42,001	11,982	—
Loans held for investment	5,847	488	—
Loans held for sale	10,252	3,543	3,266
Subordinated debentures	2,004	—	—
Total interest expense	<u>60,104</u>	<u>16,013</u>	<u>3,266</u>
Net interest income	<u>17,372</u>	<u>11,286</u>	<u>4,343</u>
Other income (expense):			
Gain on sales of mortgage loans	26,783	20,835	23,031
Brokered loan fees	9,991	6,895	6,683
Gain on sales of securities and related hedges	2,207	774	—
Impairment loss on investment securities	(7,440)	—	—
Miscellaneous income	232	227	45
Total other income (expense)	<u>31,773</u>	<u>28,731</u>	<u>29,759</u>
EXPENSES:			
Salaries, commissions and benefits	30,979	17,118	9,247
Brokered loan expenses	7,543	5,276	3,734
Occupancy and equipment	6,127	3,529	2,018
Marketing and promotion	4,861	3,190	1,008
Data processing and communications	2,371	1,598	608
Office supplies and expenses	2,333	1,519	803
Professional fees	4,742	2,005	959
Travel and entertainment	840	612	666
Depreciation and amortization	1,716	690	412
Other	1,522	792	921
Total expenses	<u>63,034</u>	<u>36,329</u>	<u>20,376</u>
(LOSS)/INCOME BEFORE INCOME TAX BENEFIT	<u>(13,889)</u>	<u>3,688</u>	<u>13,726</u>
Income tax benefit	8,549	1,259	—
NET (LOSS)/INCOME	<u>\$ (5,340)</u>	<u>\$ 4,947</u>	<u>\$ 13,726</u>
Basic (loss)/income per share	<u>\$ (0.30)</u>	<u>\$ 0.28</u>	<u>\$ —</u>
Diluted (loss)/income per share	<u>\$ (0.30)</u>	<u>\$ 0.27</u>	<u>\$ —</u>
Weighted average shares outstanding-basic(1)	<u>17,873</u>	<u>17,797</u>	<u>—</u>
Weighted average shares outstanding-diluted(1)	<u>17,873</u>	<u>18,011</u>	<u>—</u>

(1) Weighted average shares outstanding-basic and diluted assume the shares outstanding upon the Company's initial public offering are outstanding for the full year.

See notes to consolidated financial statements.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES

STATEMENTS OF STOCKHOLDERS'/MEMBERS' EQUITY

For the Years Ended December 31, 2005, 2004 and 2003

(Dollar amounts in thousands)

	Common Stock	Additional Paid-In Capital	Stockholders' Members' Equity/Deficit	Accumulated Other Comprehensive Income (Loss)	Comprehensive Income (Loss)	Total
BALANCE, JANUARY 1, 2003 —						
	\$					
Members' Equity		\$	\$ 6,469	\$ 31		\$ 6,500
Net income			13,726	—	\$ 13,726	13,726
Distributions			(21,534)	—	—	(21,534)
Increase associated with cash flow hedges			—	51	51	51
Increase in net unrealized gain on available for sale securities			—	783	783	783
Comprehensive income			—	—	\$ 14,560	—
BALANCE, DECEMBER 31, 2003 —						
Members' Deficit	—	—	(1,339)	865	—	(474)
Net income	—	—	4,947	—	4,947	4,947
Contributions	—	—	2,310	—	—	2,310
Distributions	—	—	(3,135)	—	—	(3,135)
Forfeiture of 47,680 escrowed shares	—	(493)	—	—	—	(493)
Dividends declared	—	(4,470)	(2,783)	—	—	(7,253)
Initial public offering — Common stock	181	121,910	—	—	—	122,091
Vested restricted stock	—	1,743	—	—	—	1,743
Vested performance shares	—	249	—	—	—	249
Vested stock options	—	106	—	—	—	106
Decrease in net unrealized gain on available for sale securities	—	—	—	(3,836)	(3,836)	(3,836)
Increase in net unrealized gain on derivative instruments	—	—	—	3,227	3,227	3,227
Comprehensive income	—	—	—	—	\$ 4,338	—
BALANCE, DECEMBER 31, 2004 —						
Stockholders' Equity	181	119,045	0	256	—	119,482
Net loss	—	—	(5,340)	—	(5,340)	(5,340)
Dividends declared	—	(13,375)	(3,368)	—	—	(16,743)
Vested restricted stock	2	1,310	—	—	—	1,312
Vested performance shares	—	549	—	—	—	549
Vested stock options	—	44	—	—	—	44
Decrease in net unrealized gain on available for sale securities	—	—	—	(1,130)	(1,130)	(1,130)
Increase in net unrealized gain on derivative instruments	—	—	—	2,784	2,784	2,784
Comprehensive loss	—	—	—	—	\$ (3,686)	—
BALANCE, DECEMBER 31, 2005 —						
Stockholders' Equity	\$ 183	\$ 107,573	\$ (8,708)	\$ 1,910		\$ 100,958

See notes to consolidated financial statements.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

(Dollar amounts in thousands)

	For the Years Ended December 31,		
	2005	2004	2003
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net (loss)/income	\$ (5,340)	\$ 4,947	\$ 13,726
Adjustments to reconcile net (loss)/income to net cash used in operating activities:			
Depreciation and amortization	1,716	690	412
Amortization of premium on investment securities and mortgage loans	6,269	1,667	—
Gain on sale of securities and related hedges	(2,207)	(939)	—
Impairment loss on investment securities	7,440	—	—
Origination of mortgage loans held for sale	(2,316,734)	(1,435,340)	(1,234,847)
Proceeds from sales of mortgage loans	2,293,848	1,386,124	1,232,711
Restricted stock compensation expense	1,861	1,992	—
Stock option grants — compensation expense	44	106	—
Deferred tax benefit	(8,549)	(1,309)	—
Forfeited shares-non cash		(492)	—
Change in value of derivatives	(3,155)	(314)	(107)
Loss on sale of fixed assets	27	—	—
(Increase) decrease in operating assets:			
Due from loan purchasers	(41,909)	(21,042)	(18,242)
Due from affiliate	—	—	(153)
Escrow deposits-pending loan closings	14,802	(16,236)	—
Accounts and accrued interest receivable	714	(12,846)	(1,499)
Prepaid and other assets	(3,987)	(2,211)	(1,116)
Increase (decrease) in operating liabilities:			
Due to loan purchasers	1,301	(403)	(357)
Accounts payable and accrued expenses	3,990	12,170	2,737
Other liabilities	(4,100)	4,553	(375)
Net cash used in operating activities	<u>(53,969)</u>	<u>(78,883)</u>	<u>(7,110)</u>
CASH FLOWS FROM INVESTING ACTIVITIES:			
Restricted cash	(3,126)	(2,124)	(15)
Purchase of marketable securities	—	—	(2,007)
Sale of investment securities	225,326	197,350	—
Purchase of investment securities	(148,150)	(1,533,511)	—
Purchase of mortgage loans held in securitization trusts	(167,097)	—	—
Principal repayments received on loans held in securitization trust	120,835	—	—
Purchase of mortgage loans held for investment	—	(94,767)	—
Origination of mortgage loans held for investment	(558,554)	(95,386)	—
Proceeds from sale of marketable securities	—	3,580	1,354
Principal paydown on investment securities	399,694	126,944	—
Payments received on loans held for investment	13,279	—	—
Purchases of property and equipment	(3,929)	(3,460)	(1,472)
Sale of fixed assets	75	—	—
Net cash used in investing activities	<u>(121,647)</u>	<u>(1,401,374)</u>	<u>(2,140)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from issuance of common stock	—	122,091	—
Members' contributions	—	1,309	—
Increase in financing arrangements, net	149,315	1,380,171	17,409

Payments on subordinated notes due members	—	(13,707)	—
Dividends paid	(17,256)	(2,906)	—
Cash distributions to members	—	(3,135)	(6,858)
Issuance of subordinated debentures	45,000	—	—
Net cash provided by financing activities	<u>177,059</u>	<u>1,483,823</u>	<u>10,551</u>
NET INCREASE IN CASH AND CASH EQUIVALENTS	1,443	3,566	1,301
CASH AND CASH EQUIVALENTS — Beginning of period	<u>7,613</u>	<u>4,047</u>	<u>2,746</u>
CASH AND CASH EQUIVALENTS — End of period	<u>\$ 9,056</u>	<u>\$ 7,613</u>	<u>\$ 4,047</u>
SUPPLEMENTAL DISCLOSURE			
Cash paid for interest	<u>\$ 57,871</u>	<u>\$ 11,709</u>	<u>\$ 2,988</u>
NON CASH FINANCING ACTIVITIES			
Distribution to members in the form of subordinated notes	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 14,707</u>
Reduction of subordinated notes due members	<u>\$ —</u>	<u>\$ 1,000</u>	<u>\$ —</u>
Dividends declared to be paid in subsequent period	<u>\$ 3,834</u>	<u>\$ 4,347</u>	<u>\$ —</u>
Grant of restricted stock	<u>\$ 277</u>	<u>\$ 1,974</u>	<u>\$ —</u>
NON CASH INVESTING ACTIVITIES			
Non-cash purchase of fixed assets	168	—	—

See notes to consolidated financial statements.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (dollar amounts in thousands unless otherwise indicated)

1. Summary of Significant Accounting Policies

Organization - New York Mortgage Trust, Inc. (“NYMT” or the “Company”) is a fully-integrated, self-advised, residential mortgage finance company formed as a Maryland corporation in September 2003. The Company earns net interest income from residential mortgage-backed securities and fixed-rate and adjustable-rate mortgage loans and securities originated through its wholly-owned subsidiary, The New York Mortgage Company, LLC (“NYMC”). The Company also earns net interest income from its investment in and the securitization of certain self-originated adjustable rate mortgage loans that meet the Company’s investment criteria. Licensed, or exempt from licensing, in 43 states and the District of Columbia and through a network of 28 full-service loan origination locations and 26 satellite loan origination locations, NYMC originates a wide range of mortgage loans, with a primary focus on prime, residential mortgage loans.

The Company is organized and conducts its operations to qualify as a real estate investment trust (“REIT”) for federal income tax purposes. As such, the Company will generally not be subject to federal income tax on that portion of its income that is distributed to stockholders if it distributes at least 90% of its REIT taxable income to its stockholders by the due date of its federal income tax return and complies with various other requirements.

On January 9, 2004, the Company capitalized New York Mortgage Funding, LLC (“NYMF”) as a wholly-owned subsidiary of the Company. NYMF is a qualified REIT subsidiary, or QRS, in which the Company accumulates mortgage loans that the Company intends to securitize. In June 2004, the Company sold 15 million shares of its common stock in an initial public offering (“IPO”) at a price to the public of \$9.00 per share, for net proceeds of \$122.0 million after deducting the underwriters’ discount and other offering expenses. Concurrent with the Company’s IPO, the Company issued 2,750,000 shares of common stock in exchange for the contribution to the Company of 100% of the equity interests of NYMC. Subsequent to the IPO and the contribution of NYMC, the Company had 18,114,445 shares of common stock issued and 17,797,375 shares outstanding. Prior to the IPO, NYMT did not have recurring business operations.

On February 25, 2005, the Company completed its first loan securitization of \$419.0 million high-credit quality, first-lien, adjustable rate mortgage (“ARM”) loans, by contributing loans into New York Mortgage Trust 2005-1 (“NYMT ‘05-1 Trust”). NYMT ‘05-1 Trust is a wholly-owned subsidiary of NYMT. The securitization was structured as a secured borrowing, with the line-of-credit financing used to purchase and originate the mortgage loans and refinanced through repurchase agreements upon securitization. On March 15, 2005, the Company closed a private placement of \$25.0 million of trust preferred securities issued by NYM Preferred Trust I. NYM Preferred Trust I is a wholly-owned subsidiary of NYMC. On July 28, 2005 the Company completed its second loan securitization of \$242.9 million of high-credit quality, first-lien, ARM loans, by contributing loans to New York Mortgage Trust 2005-2 (“NYMT ‘05-2 Trust”). NYMT ‘05-2 Trust is a wholly-owned subsidiary of NYMT. The securitization was structured as a secured borrowing, with the line-of-credit financing used to purchase and originate the mortgage loans and refinanced through repurchase agreements upon securitization. On September 1, 2005, the Company closed a private placement of \$20.0 million of preferred securities issued by NYM Preferred Trust II. NYM Preferred Trust II is a wholly-owned subsidiary of NYMC. On December 20, 2005 the Company completed its third loan securitization of \$235.0 million of high-credit quality, first-lien, ARM loans, by contributing loans to New York Mortgage Trust 2005-3 (“NYMT ‘05-3 Trust”). NYMT ‘05-3 Trust is a wholly-owned subsidiary of NYMT.

As used herein, references to the “Company,” “NYMT,” “we,” “our” and “us” refer to New York Mortgage Trust, Inc., collectively with its subsidiaries.

Basis of Presentation - The consolidated financial statements include the accounts of the Company subsequent to the IPO and also include the accounts of NYMC and NYMF prior to the IPO. As a result, our historical financial results reflect the financial operations of this prior business strategy of selling virtually all of the loans originated by NYMC to third parties. All intercompany accounts and transactions are eliminated in consolidation. Certain prior period amounts have been reclassified to conform to current period classifications, including the reclassification of \$4.4 million for the fiscal year ended December 31, 2004 of payables to brokers from financing arrangements, portfolio investment to other liabilities. In addition, we have reclassified restricted cash on our statement of cash flows from operating activities to cash flows from investing activities of \$2.1 million and \$15.2 thousand at December 31, 2004 and December 31, 2003, respectively.

The combination of the Company and NYMC was accounted for as a transfer of assets between entities under common control. Accordingly, the Company has recorded assets and liabilities transferred from NYMC at their carrying amounts in the accounts of NYMC at the date of transfer.

Upon the closing of the Company's IPO, of the 2,750,000 shares exchanged for the equity interests of NYMC, 100,000 shares were held in escrow through December 31, 2004 and were available to satisfy any indemnification claims the Company may have had against the contributors of NYMC for losses incurred as a result of defaults on any residential mortgage loans originated by NYMC and closed prior to the completion of the IPO. As of December 31, 2004, the amount of escrowed shares was reduced by 47,680 shares, representing \$493,000 for estimated losses on loans closed prior to the Company's IPO. Furthermore, the contributors of NYMC entered into a new escrow agreement which extended the escrow period to December 31, 2006 for the remaining 52,320 shares. There have been no additional losses with respect to the escrow agreement recorded during the twelve month period ended December 31, 2005.

Use of Estimates - The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The Company's estimates and assumptions primarily arise from risks and uncertainties associated with interest rate volatility, prepayment volatility and credit exposure. Although management is not currently aware of any factors that would significantly change its estimates and assumptions in the near term, future changes in market conditions may occur which could cause actual results to differ materially.

Cash and Cash Equivalents - Cash and cash equivalents include cash on hand, amounts due from banks and overnight deposits. The Company maintains its cash and cash equivalents in highly rated financial institutions, and at times these balances exceed insurable amounts.

Restricted Cash - Restricted cash is held by counterparties as collateral for hedging instruments, collateralized debt obligations or ("CDOs") and two letters of credit related to the Company's lease of its corporate headquarters. Restricted cash collateralizing CDOs is replaced by ARM loans within 30 days.

Investment Securities Available for Sale - The Company's investment securities are residential mortgage-backed securities comprised of Ginnie Mae ("GNMA") and "AAA"- rated adjustable-rate securities, including adjustable-rate loans that have an initial fixed-rate period. Investment securities are classified as available for sale securities and are reported at fair value with unrealized gains and losses reported in other comprehensive income ("OCI"). Realized gains and losses recorded on the sale of investment securities available for sale are based on the specific identification method and included in gain on sale of securities and related hedges. Purchase premiums or discounts on investment securities are accreted or amortized to interest income over the estimated life of the investment securities using the interest method. Investment securities may be subject to interest rate, credit and/or prepayment risk.

When the fair value of an available for sale security is less than amortized cost, management considers whether there is an other-than-temporary impairment in the value of the security (e.g., whether the security will be sold prior to the recovery of fair value). Management considers at a minimum the following factors that, both individually or in combination, could indicate the decline is "other-than-temporary:" 1) the length of time and extent to which the market value has been less than book value; 2) the financial condition and near-term prospects of the issuer; or 3) the intent and ability of the Company to retain the investment for a period of time sufficient to allow for any anticipated recovery in market value. If, in management's judgment, an other-than-temporary impairment exists, the cost basis of the security is written down to the then-current fair value, and the unrealized loss is transferred from accumulated other comprehensive income as an immediate reduction of current earnings (i.e., as if the loss had been realized in the period of impairment). Even though no credit concerns exist with respect to an available for sale security, an other- than-temporary impairment may be evident if management determines that the Company does not have the intent and ability to hold an investment until a forecasted recovery of the value of the investment.

As of December 31, 2005, management concluded, based on the decision to potentially sell in the 1st quarter of 2006 certain of its available for sale securities, that the decline in those securities was other-than-temporary. Accordingly, the cost basis of those securities of \$395.7 million was written down to fair value and an unrealized loss of \$7.4 million was transferred from accumulated other comprehensive income as an impairment loss on investment securities to the accompanying consolidated statement of operations.

Due from Loan Purchasers and Escrow Deposits - Pending Loan Closings - Amounts due from loan purchasers are a receivable for the principal and premium due to us for loans sold and shipped but for which payment has not yet been received at period end. Escrow deposits pending loan closing are advance cash fundings by us to escrow agents to be used to close loans within the next one to three business days.

Mortgage Loans Held for Sale - Mortgage loans held for sale represent originated mortgage loans held for sale to third party investors. The loans are initially recorded at cost based on the principal amount outstanding net of deferred direct origination costs and fees. The loans are subsequently carried at the lower of cost or market value. Market value is determined by examining outstanding commitments from investors or current investor yield requirements, calculated on an aggregate loan basis, less an estimate of the costs to close the loan, and the deferral of fees and points received, plus the deferral of direct origination costs. Gains or losses on sales are recognized at the time title transfers to the investor which is typically concurrent with the transfer of the loan files and related documentation and are based upon the difference between the sales proceeds from the final investor and the adjusted book value of the loan sold.

Mortgage Loans Held in Securitization Trusts - Mortgage loans held in securitization trusts are certain ARM mortgage loans transferred to the NYMT '05-1 Trust, the NYMT '05-2 Trust and the NYMT '05-3 Trust that have been securitized into sequentially rated classes of beneficial interests. Mortgage loans held in securitization trusts are recorded at amortized cost, using the same accounting principles as that used for mortgage loans held for investment. Currently the Company has retained 100% of the securities issued by NYMT '05-1 Trust and the NYMT '05-2 Trust and the securities have been financed as a secured borrowing under repurchase agreements. For our third securitization, NYMT '05-03 Trust, we sold investment grade securities to third parties which is recorded as collateralized debt obligations on the accompanying consolidated balance sheet.

Mortgage Loans Held for Investment - The Company retains substantially all of the adjustable-rate mortgage loans originated that meet specific investment criteria and portfolio requirements. Loans originated and retained in the Company's portfolio are serviced through a subservicer. Servicing is the function primarily consisting of collecting monthly payments from mortgage borrowers, and disbursing those funds to the appropriate loan investors.

Mortgage loans held for investment are recorded net of deferred loan origination fees and associated direct costs and are stated at amortized cost. Net loan origination fees and associated direct mortgage loan origination costs are deferred and amortized over the life of the loan as an adjustment to yield. This amortization includes the effect of projected prepayments.

Interest income is accrued and recognized as revenue when earned according to the terms of the mortgage loans and when, in the opinion of management, it is collectible. The accrual of interest on loans is discontinued when, in management's opinion, the interest is not collectible in the normal course of business, but in no case when payment becomes greater than 90 days delinquent. Loans return to accrual status when principal and interest become current and are anticipated to be fully collectible.

Credit Risk and Allowance for Loan Losses - The Company limits its exposure to credit losses on its portfolio of residential adjustable-rate mortgage-backed securities by purchasing securities that are guaranteed by a government-sponsored or federally-chartered corporation (FNMA, FHLMC or GNMA) (collectively "Agency Securities") or that have a "AAA" investment grade rating by at least one of two nationally recognized rating agencies, Standard & Poor's, Inc. or Moody's Investors Service, Inc. at the time of purchase.

The Company seeks to limit its exposure to credit losses on its portfolio of residential adjustable-rate mortgage loans held for investment (including mortgage loans held in the securitization trusts) by originating and investing in loans primarily to borrowers with strong credit profiles, which are evaluated by analyzing the borrower's credit score ("FICO" is a credit score, ranging from 300 to 850, with 850 being the best score, based upon the credit evaluation methodology developed by Fair, Isaac and Company, a consulting firm specializing in creating credit evaluation models), employment, income and assets and related documentation, the amount of equity in and the value of the property securing the borrower's loan, debt to income ratio, credit history, funds available for closing and post-closing liquidity.

The Company estimates an allowance for loan losses based on management's assessment of probable credit losses in the Company's investment portfolio of residential mortgage loans. Mortgage loans are collectively evaluated for impairment as the loans are homogeneous in nature. The allowance is based upon management's assessment of various credit-related factors, including current economic conditions, the credit diversification of the portfolio, loan-to-value ratios, delinquency status, historical credit losses, purchased mortgage insurance and other factors deemed to warrant consideration. If the credit performance of mortgage loans held for investment deviates from expectations, the allowance for loan losses is adjusted to a level deemed appropriate by management to provide for estimated probable losses in the portfolio.

The allowance will be maintained through ongoing provisions charged to operating income and will be reduced by loans that are charged off. As of December 31, 2005 the allowance for loan losses is insignificant. Determining the allowance for loan losses is subjective in nature due to the estimation required.

Property and Equipment, Net - Property and equipment have lives ranging from three to ten years, and are stated at cost less accumulated depreciation and amortization. Depreciation is determined in amounts sufficient to charge the cost of depreciable assets to operations over their estimated service lives using the straight-line method. Leasehold improvements are amortized over the lesser of the life of the lease or service lives of the improvements using the straight-line method.

Financing Arrangements, Portfolio Investments — Portfolio investments are typically financed with repurchase agreements, a form of collateralized borrowing which is secured by portfolio securities on the balance sheet. Such financings are recorded at their outstanding principal balance with any accrued interest due recorded as an accrued expense.

Financing Arrangements, Loans Held for Sale/for Investment — Loans held for sale or for investment are typically financed with warehouse lines that are collateralized by loans we originate or purchase from third parties. Such financings are recorded at their outstanding principal balance with any accrued interest due recorded as an accrued expense.

Collateralized Debt Obligations - CDOs are securities that are issued and secured by ARM loans. For financial reporting purposes, the ARM loans and restricted cash held as collateral are recorded as assets of the Company and the CDO is recorded as the Company's debt. The transaction includes interest rate caps and are held by the securitization trust and recorded as an asset or liability of the Company.

Subordinated Debentures - Subordinated debentures are trust preferred securities that are fully guaranteed by the Company with respect to distributions and amounts payable upon liquidation, redemption or repayment. These securities are classified as subordinated debentures in the liability section of the Company's consolidated balance sheet.

Derivative Financial Instruments - The Company has developed risk management programs and processes, which include investments in derivative financial instruments designed to manage market risk associated with its mortgage banking and its mortgage-backed securities investment activities.

All derivative financial instruments are reported as either assets or liabilities in the consolidated balance sheet at fair value. The gains and losses associated with changes in the fair value of derivatives not designated as hedges are reported in current earnings. If the derivative is designated as a fair value hedge and is highly effective in achieving offsetting changes in the fair value of the asset or liability hedged, the recorded value of the hedged item is adjusted by its change in fair value attributable to the hedged risk. If the derivative is designated as a cash flow hedge, the effective portion of change in the fair value of the derivative is recorded in OCI and is recognized in the income statement when the hedged item affects earnings. The Company calculates the effectiveness of these hedges on an ongoing basis, and, to date, has calculated effectiveness of approximately 100%. Ineffective portions, if any, of changes in the fair value or cash flow hedges are recognized in earnings. (See Note 15).

In accordance with a Securities and Exchange Commission ("SEC") Staff Accounting Bulletin No. 105, "Application of Accounting Principles to Loan Commitments" ("SAB 105") issued on March 9, 2004, beginning in the second quarter of 2004, the fair value of interest rate lock commitments ("IRLCs") excludes future cash flows related to servicing rights, if such rights are retained upon the sale of originated mortgage loans. Since the Company sells all of its originated loans with servicing released, SAB 105 had no effect on the value of its IRLCs.

Risk Management - Derivative transactions are entered into by the Company solely for risk management purposes. The decision of whether or not an economic risk within a given transaction (or portion thereof) should be hedged for risk management purposes is made on a case-by-case basis, based on the risks involved and other factors as determined by senior management, including the financial impact on income, asset valuation and restrictions imposed by the Internal Revenue Code among others. In determining whether to hedge a risk, the Company may consider whether other assets, liabilities, firm commitments and anticipated transactions already offset or reduce the risk. All transactions undertaken to hedge certain market risks are entered into with a view towards minimizing the potential for economic losses that could be

incurred by the Company. Under Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS No. 133"), the Company is required to formally document its hedging strategy before it may elect to implement hedge accounting for qualifying derivatives. Accordingly, all qualifying derivatives are intended to qualify as fair value, or cash flow hedges, or free standing derivatives. To this end, terms of the hedges are matched closely to the terms of hedged items with the intention of minimizing ineffectiveness.

In the normal course of its mortgage loan origination business, the Company enters into contractual interest rate lock commitments to extend credit to finance residential mortgages. These commitments, which contain fixed expiration dates, become effective when eligible borrowers lock-in a specified interest rate within time frames established by the Company's origination, credit and underwriting practices. Interest rate risk arises if interest rates change between the time of the lock-in of the rate by the borrower and the sale of the loan. Under SFAS No. 133, the IRLCs are considered undesignated or free-standing derivatives. Accordingly, such IRLCs are recorded at fair value with changes in fair value recorded to current earnings. Mark to market adjustments on IRLCs are recorded from the inception of the interest rate lock through the date the underlying loan is funded. The fair value of the IRLCs is determined by the interest rate differential between the contracted loan rate and the currently available market rates as of the reporting date.

To mitigate the effect of the interest rate risk inherent in providing IRLCs from the lock-in date to the funding date of a loan, the Company generally enters into forward sale loan contracts ("FSLC"). The FSLCs in place prior to the funding of a loan are undesignated derivatives under SFAS No. 133 and are marked to market through current earnings.

Derivative instruments contain an element of risk in the event that the counterparties may be unable to meet the terms of such agreements. The Company minimizes its risk exposure by limiting the counterparties with which it enters into contracts to banks, investment banks and certain private investors who meet established credit and capital guidelines. Management does not expect any counterparty to default on its obligations and, therefore, does not expect to incur any loss due to counterparty default. These commitments and option contracts are considered in conjunction with the Company's lower of cost or market valuation of its mortgage loans held for sale.

The Company uses other derivative instruments, including treasury, agency or mortgage-backed securities forward sale contracts which are also classified as free-standing, undesignated derivatives and thus are recorded at fair value with the changes in fair value recognized in current earnings.

Once a loan has been funded, the Company's primary risk objective for its mortgage loans held for sale is to protect earnings from an unexpected charge due to a decline in value. The Company's strategy is to engage in a risk management program involving the designation of FSLCs (the same FSLCs entered into at the time of rate lock) to hedge most of its mortgage loans held for sale. The FSLCs have been designated as qualifying hedges for the funded loans and the notional amount of the forward delivery contracts, along with the underlying rate and critical terms of the contracts, are equivalent to the unpaid principal amount of the mortgage loan being hedged. The FSLCs effectively fix the forward sales price and thereby offset interest rate and price risk to the Company. Accordingly, the Company evaluates this relationship quarterly and, at the time the loan is funded, classifies and accounts for the FSLCs as cash flow hedges.

Interest Rate Risk - The Company hedges the aggregate risk of interest rate fluctuations with respect to its borrowings, regardless of the form of such borrowings, which require payments based on a variable interest rate index. The Company generally intends to hedge only the risk related to changes in the benchmark interest rate (London Interbank Offered Rate ("LIBOR") or a Treasury rate).

In order to reduce such risks, the Company enters into swap agreements whereby the Company receives floating rate payments in exchange for fixed rate payments, effectively converting the borrowing to a fixed rate. The Company also enters into cap agreements whereby, in exchange for a fee, the Company is reimbursed for interest paid in excess of a certain capped rate.

To qualify for cash flow hedge accounting, interest rate swaps and caps must meet certain criteria, including:

- the items to be hedged expose the Company to interest rate risk; and
- the interest rate swaps or caps are expected to be and continue to be highly effective in reducing the Company's exposure to interest rate risk.

The fair values of the Company's interest rate swap agreements and interest rate cap agreements are based on market values provided by dealers who are familiar with the terms of these instruments. Correlation and effectiveness are periodically assessed at least quarterly based upon a comparison of the relative changes in the fair values or cash flows of the interest rate swaps and caps and the items being hedged.

For derivative instruments that are designated and qualify as a cash flow hedge (i.e. hedging the exposure to variability in expected future cash flows that is attributable to a particular risk), the effective portion of the gain or loss on the derivative instruments are reported as a component of OCI and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. The remaining gain or loss on the derivative instruments in excess of the cumulative change in the present value of future cash flows of the hedged item, if any, is recognized in current earnings during the period of change.

With respect to interest rate swaps and caps that have not been designated as hedges, any net payments under, or fluctuations in the fair value of, such swaps and caps, will be recognized in current earnings.

Termination of Hedging Relationships - The Company employs a number of risk management monitoring procedures to ensure that the designated hedging relationships are demonstrating, and are expected to continue to demonstrate, a high level of effectiveness. Hedge accounting is discontinued on a prospective basis if it is determined that the hedging relationship is no longer highly effective or expected to be highly effective in offsetting changes in fair value of the hedged item.

Additionally, the Company may elect to undesignate a hedge relationship during an interim period and re-designate upon the rebalancing of a hedge profile and the corresponding hedge relationship. When hedge accounting is discontinued, the Company continues to carry the derivative instruments at fair value with changes recorded in current earnings.

Other Comprehensive Income - Other comprehensive income is comprised primarily of net income (loss) from changes in value of the Company's available for sale securities, and the impact of deferred gains or losses on changes in the fair value of derivative contracts hedging future cash flows.

Gain on Sale of Mortgage Loans - The Company recognizes gain on sale of loans sold to third parties as the difference between the sales price and the adjusted cost basis of the loans when title transfers. The adjusted cost basis of the loans includes the original principal amount adjusted for deferrals of origination and commitment fees received, net of direct loan origination costs paid.

Loan Origination Fees and Direct Origination Cost - The Company records loan fees, discount points and certain incremental direct origination costs as an adjustment of the cost of the loan and such amounts are included in gain on sales of loans when the loan is sold. Accordingly, salaries, compensation, benefits and commission costs have been reduced by \$41.2 million and \$20.5 million for the years ended December 31, 2005 and 2004, respectively, because such amounts are considered incremental direct loan origination costs.

Brokered Loan Fees and Expenses - The Company records commissions associated with brokered loans when such loans are closed with the borrower. Costs associated with brokered loans are expensed when incurred.

Loan Commitment Fees - Mortgage loans held for sale: fees received for the funding of mortgage loans to borrowers at pre-set conditions are deferred and recognized at the date at which the loan is sold. Mortgage loans held for investment: such fees are deferred and recognized into interest income over the life of the loan based on the effective yield method.

Employee Benefits Plans - The Company sponsors a defined contribution plan (the "Plan") for all eligible domestic employees. The Plan qualifies as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code. Under the Plan, participating employees may defer up to 15% of their pre-tax earnings, subject to the annual Internal Revenue Code contribution limit. The Company matches contributions up to a maximum of 25% of the first 5% of salary. Employees vest immediately in their contribution and vest in the Company's contribution at a rate of 25% after two full years and then an incremental 25% per full year of service until fully vested at 100% after five full years of service. The Company's total contributions to the Plan were \$0.4 million and \$0.2 million for the years ended December 31, 2005 and 2004, respectively.

Stock Based Compensation - The Company follows the provisions of SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS No. 123") and SFAS No. 148, "Accounting for Stock-Based Compensation, Transition and Disclosure" ("SFAS No. 148"). The provisions of SFAS No. 123 allow companies either to expense the estimated fair value of stock options or to continue to follow the intrinsic value method set forth in Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB No. 25") and disclose the pro forma effects on net income (loss) had the fair value of the options been expensed. The Company, since its inception, has elected not to apply APB No. 25 in accounting for its stock option incentive plans and has expensed stock based compensation in accordance with SFAS No. 123.

In December, 2004 the Financial Accounting Standards Board ("FASB") issued SFAS No. 123R, "Share-Based Payment," ("SFAS No. 123R") which will require all companies to measure compensation costs for all share-based payments, including employee stock options, at fair value. This statement will be effective for the Company with the quarter beginning January 1, 2006. The adoption of SFAS No. 123R will not have a material impact on the Company's financial statements.

Marketing and Promotion - The Company charges the costs of marketing, promotion and advertising to expense in the period incurred.

Income Taxes - The Company operates so as to qualify as a REIT under the requirements of the Internal Revenue Code. Requirements for qualification as a REIT include various restrictions on ownership of the Company's stock, requirements concerning distribution of taxable income and certain restrictions on the nature of assets and sources of income. A REIT must distribute at least 90% of its taxable income to its stockholders of which 85% plus any undistributed amounts from the prior year must be distributed within the taxable year in order to avoid the imposition of an excise tax. The remaining balance may extend until timely filing of the Company's tax return in the subsequent taxable year. Qualifying distributions of taxable income are deductible by a REIT in computing taxable income.

NYMC changed its tax status upon completion of the IPO from a non-taxable limited liability company to a taxable REIT subsidiary and therefore subsequent to the IPO, is subject to corporate Federal income taxes. Accordingly, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax base upon the change in tax status. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

Earnings Per Share - Basic earnings per share excludes dilution and is computed by dividing net income available to common stockholders by the weighted-average number of shares of common stock outstanding for the period. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock or resulted in the issuance of common stock that then shared in the earnings of the Company.

New Accounting Pronouncements - In May 2005, the FASB issued SFAS 154, "Accounting Changes and Error Corrections." SFAS 154 changes the requirements for the accounting for and reporting of a change in accounting principle. Previous guidance required that most voluntary changes in accounting principle be recognized by including in net income of the period of the change the cumulative effect of changing to the new accounting principle. SFAS 154 requires retrospective application to prior periods' financial statements of changes in accounting principle, unless it is impracticable to determine either the period-specific effects or the cumulative effect of the change. Management believes SFAS 154 will have no impact on the Company's financial statements.

In February 2006, the FASB issued SFAS 155, "Accounting for Certain Hybrid Financial Instruments". Key provisions of SFAS 155 include: (1) a broad fair value measurement option for certain hybrid financial instruments that contain an embedded derivative that would otherwise require bifurcation; (2) clarification that only the simplest separations of interest payments and principal payments qualify for the exception afforded to interest-only strips and principal-only strips from derivative accounting under paragraph 14 of FAS 133 (thereby narrowing such exception); (3) a requirement that beneficial interests in securitized financial assets be analyzed to determine whether they are freestanding derivatives or whether they are hybrid instruments that contain embedded derivatives requiring bifurcation; (4) clarification that concentrations of credit risk in the form of subordination are not embedded derivatives; and (5) elimination of the prohibition on a QSPE holding passive derivative financial instruments that pertain to beneficial interests that are or contain a derivative financial instrument. In general, these changes will reduce the operational complexity associated with bifurcating embedded derivatives, and increase the number of beneficial interests in securitization transactions, including interest-only strips and principal-only strips, required to be accounted for in accordance with FAS 133. Management does not believe that SFAS 155 will have a material effect on the financial condition, results of operations, or liquidity of the Company.

2. Investment Securities Available For Sale

Investment securities available for sale consist of the following as of December 31, 2005 and December 31, 2004 (dollar amounts in

thousands):

	December 31, 2005	December 31, 2004
Amortized cost	\$ 720,583	\$ 1,207,715
Gross unrealized gains	1	151
Gross unrealized losses	(4,102)	(3,121)
Fair value	<u>\$ 716,482</u>	<u>\$ 1,204,745</u>

The amortized cost balance includes approximately \$388.3 million of certain lower-yielding mortgage (with rate resets of less than two years) agency securities that the Company had concluded it no longer had the intent to hold until their values recovered. Upon such determination, the Company recorded an impairment loss of \$7.4 million.

Due to their terms, none of the remaining securities with unrealized losses have been deemed to be other-than-temporarily impaired. The Company has the intent and believes it has the ability to hold such investment securities until recovery of their amortized cost. Substantially all of the Company's investment securities available for sale are pledged as collateral for borrowings under financing arrangements (Note 8).

The following table sets forth the stated reset periods and weighted average yields of our investment securities at December 31, 2005 (dollar amounts in thousands):

	Less than 6 Months		More than 6 Months To 24 Months		More than 24 Months To 60 Months		Total	
	Carrying Value	Weighted Average Yield	Carrying Value	Weighted Average Yield	Carrying Value	Weighted Average Yield	Carrying Value	Weighted Average Yield
Agency REMIC CMO								
Floating Rate	\$ 13,535	5.45%	\$ —		\$ —		\$ 13,535	5.45%
FHLMC Agency ARMs	—	—	91,217	3.82%	—	—	91,217	3.82%
FNMA Agency ARMs	—	—	297,048	3.91%	—	—	297,048	3.91%
Private Label ARMs	—	—	57,605	4.22%	257,077	4.57%	314,682	4.51%
Total	\$ 13,535	5.45%	\$ 445,870	3.93%	\$ 257,077	4.57%	\$ 716,482	4.19%

3. Mortgage Loans Held For Sale

Mortgage loans held for sale consist of the following as of December 31, 2005 and December 31, 2004 (dollar amounts in thousands):

	December 31, 2005	December 31, 2004
Mortgage loans principal amount	\$ 108,244	\$ 85,105
Deferred origination costs - net	27	280
Mortgage loans held for sale	\$ 108,271	\$ 85,385

Substantially all of the Company's mortgage loans held for sale are pledged as collateral for borrowings under financing arrangements (Note 9).

4. Mortgage Loans Held in Securitization Trusts

Mortgage loans held in securitization trusts consist of the following at December 31, 2005 (dollar amounts in thousands):

Mortgage loans principal amount	\$ 771,451
Deferred origination costs - net	5,159
Total mortgage loans held in securitization trusts	\$ 776,610

Substantially all of the Company's mortgage loans held in securitization trusts are pledged as collateral for borrowings under financing arrangements (Note 8) or for the collateralized debt obligation (Note 10). None of the Company's mortgage loans were held in securitization trusts at December 31, 2004.

As of December 31, 2005, we had four delinquent loans totaling \$2.0 million categorized as Mortgage Loans Held in Securitization Trusts. The table below shows delinquencies in our loan portfolio as of December 31, 2005 (dollar amounts in thousands):

Days Late	Number of Delinquent Loans	Total Dollar Amount	% of Loan Portfolio
30-60	1	\$ 193.1	0.02%
61-90	—	—	—
90+	3	\$ 1,771.0	0.23%

5. Mortgage Loans Held For Investment

Mortgage loans held for investment consist of the following at December 31, 2005 and December 31, 2004 (dollar amounts in thousands):

	December 31, 2005	December 31, 2004
Mortgage loans principal amount	\$ 4,054	\$ 188,859
Deferred origination cost-net	6	1,294
Total mortgage loans held for investment	\$ 4,060	\$ 190,153

Substantially all of the Company's mortgage loans held for investment are pledged as collateral for borrowings under financing arrangements (Note 9).

6. Property and Equipment — Net

Property and equipment consist of the following as of December 31, 2005 and December 31, 2004 (dollar amounts in thousands):

	December 31, 2005	December 31, 2004
Office and computer equipment	\$ 6,292	\$ 3,191
Furniture and fixtures	2,306	2,032
Leasehold improvements	1,429	1,138
Total premises and equipment	10,027	6,361
Less: accumulated depreciation and amortization	(3,145)	(1,560)
Property and equipment - net	\$ 6,882	\$ 4,801

7. Derivative Instruments and Hedging Activities

The Company enters into derivatives to manage its interest rate and market risk exposure associated with its mortgage banking and its mortgage-backed securities investment activities. In the normal course of its mortgage loan origination business, the Company enters into contractual IRLCs to extend credit to finance residential mortgages. To mitigate the effect of the interest rate risk inherent in providing IRLCs from the lock-in date to the funding date of a loan, the Company generally enters into FSLCs. With regard to the Company's mortgage-backed securities investment activities, the Company uses interest rate swaps and caps to mitigate the effects of major interest rate changes on net investment spread.

The following table summarizes the estimated fair value of derivative assets and liabilities as of December 31, 2005 and December 31, 2004 (dollar amounts in thousands):

	<u>December 31,</u> <u>2005</u>	<u>December 31,</u> <u>2004</u>
Derivative Assets:		
Interest rate caps	\$ 3,340	\$ 411
Interest rate swaps	6,383	3,229
Interest rate lock commitments - loan commitments	123	5
Interest rate lock commitments - mortgage loans held for sale	—	33
Total derivative assets	\$ 9,846	\$ 3,678
Derivative Liabilities:		
Forward loan sale contracts - loan commitments	(38)	(24)
Forward loan sale contracts - mortgage loans held for sale	(18)	(2)
Forward loan sale contracts - TBA securities	(324)	(139)
Interest rate lock commitments - mortgage loans held for sale	(14)	—
Total derivative liabilities	\$ (394)	\$ (165)

The notional amounts of the Company's interest rate swaps, interest rate caps and forward loan sales contracts as of December 31, 2005 were \$645.0 million, \$1.9 billion and \$51.8 million, respectively.

The notional amounts of the Company's interest rate swaps, interest rate caps and forward loan sales contracts as of December 31, 2004 were \$670.0 million, \$250.0 million and \$97.1 million, respectively.

The Company estimates that over the next twelve months, approximately \$5.2 million of the net unrealized gains on the interest rate swaps will be reclassified from accumulated OCI into earnings.

8. Financing Arrangements, Portfolio Investments

The Company has entered into repurchase agreements with third party financial institutions to finance its residential mortgage-backed securities and mortgage loans held in the securitization trusts. The repurchase agreements are short-term borrowings that bear interest rates based on a spread to LIBOR, and are secured by the residential mortgage-backed securities and mortgage loans held in the securitization trusts which they finance. At December 31, 2005, the Company had repurchase agreements with an outstanding balance of \$1.2 billion and a weighted average interest rate of 4.37%. As of December 31, 2004, the Company had repurchase agreements with an outstanding balance of \$1.1 billion and a weighted average interest rate of 2.35%. At December 31, 2005 and 2004 securities and mortgage loans pledged as collateral for repurchase agreements had estimated fair values of \$1.2 billion. As of December 31, 2005 all of the repurchase agreements will mature within 30 days, with weighted average days to maturity equal to 22 days. The Company has available to it \$5.4 billion in commitments to provide financings through such arrangements with 23 different counterparties.

The follow table summarizes outstanding repurchase agreement borrowings secured by portfolio investments as of December 31, 2005 and December 31, 2004 (dollars amounts in thousands):

Repurchase Agreements by Counterparty

<u>Counterparty Name</u>	<u>December 31,</u> <u>2005</u>	<u>December 31,</u> <u>2004</u>
--------------------------	------------------------------------	------------------------------------

Banc of America Securities LLC	\$	—	\$	140,000
Citigroup Global Markets Inc.		200,000		—
Countrywide Securities Corporation		109,632		100,000
Credit Suisse First Boston LLC		148,131		200,000
Deutsche Bank Securities Inc.		205,233		—
Goldman, Sachs & Co.		—		238,000
HSBC		163,781		—
J.P. Morgan Securities Inc.		37,481		—
Merrill Lynch Government Securities Inc.		—		128,000
UBS Securities LLC		—		260,393
Wachovia		—		45,000
WaMu Capital Corp		158,457		—
West LB		143,784		—
Total Financing Arrangements, Portfolio Investments	\$	1,166,499	\$	1,111,393

9. Financing Arrangements, Mortgage Loans Held for Sale/for Investment

Financing arrangements secured by mortgage loans held for sale or for investment consist of the following as of December 31, 2005, and December 31, 2004 (dollar amounts in thousands):

	<u>December 31,</u> <u>2005</u>	<u>December 31,</u> <u>2004</u>
\$250 million master repurchase agreement with Greenwich Capital expiring on December 4, 2006 bearing interest at one-month LIBOR plus spreads from 0.75% to 1.25% (5.137% at December 31, 2005 and 3.16% at December 31, 2004). Principal repayments are required 120 days from the funding date(a)	\$ 81,577	\$ 215,612
\$200 million revolving line of credit agreement with CSFB expiring on March 31, 2006 bearing interest at daily LIBOR plus spreads from 0.75% to 2.000% depending on collateral (4.3413% at December 31, 2005 and 3.599% at December 31, 2004). Principal repayments are required 90 days from the funding date	143,609	73,752
\$150 million revolving line of credit agreement with HSBC expiring on September 30, 2005 bearing interest at one-month LIBOR plus spreads from 1.00% to 1.25% (4.294 at December 31, 2005 and 3.29% at December 31, 2004) (b)	—	69,839
	<u>\$ 225,186</u>	<u>\$ 359,203</u>

- (a) This credit facility, with Greenwich Capital Financial Products, Inc., requires the Company to transfer specific collateral to the lender under repurchase agreements; however, due to the rate of turnover of the collateral by the Company, the counterparty has not taken title to or recorded their interest in any of the collateral transferred. Interest is paid to the counterparty based on the amount of outstanding borrowings and on the terms provided. This facility was renewed on January 6, 2006 and expires December 6, 2006.
- (b) The HSBC credit facility was terminated by mutual agreement effective September 30, 2005 and was paid in full on December 31, 2005.

The lines of credit are secured by all of the mortgage loans held by the Company, except for the loans held in the securitization trusts. The lines contain various covenants pertaining to, among other things, maintenance of certain amounts of net worth, periodic income thresholds and working capital. As of December 31, 2005, the Company was in compliance with all covenants with the exception of the net income covenant on the CSFB and Greenwich facilities and waivers have been obtained from these institutions. As these annual agreements are negotiated for renewal, these covenants may be further modified. The agreements are each renewable annually, but are not committed, meaning that the counterparties to the agreements may withdraw access to the credit facilities at any time.

10. Collateralized Debt Obligations

The CDO issued on December 20, 2005 is secured by ARM loans and restricted cash placed as collateral for prefunded loans which will be replaced by ARM loans within 30 days. For financial reporting purposes, the ARM loans and restricted cash held as collateral are recorded as assets of the Company and the CDO is recorded as the Company's debt. The transaction includes an amortizing interest rate cap contract with an initial notional amount of \$230.6 million which is held by the trust and recorded as an asset of the Company. The amortizing interest rate cap contract limits the interest rate exposure on this transaction. As of December 31, 2005 CDO outstanding totaled \$228.2 million net of issuance costs with an average interest rate of 4.68%. The CDO is collateralized by ARM loans with a principal balance of \$235.0 million including the prefunding amount of \$4.6 million.

11. Subordinated Debentures

On September 1, 2005 the Company closed a private placement of \$20.0 million of trust preferred securities to Taberna Preferred Funding II, Ltd., a pooled investment vehicle. The securities were issued by NYM Preferred Trust II and are fully guaranteed by the Company with respect to distributions and amounts payable upon liquidation, redemption or repayment. These securities have a fixed interest rate equal to 8.35% up to and including July 30, 2010, at which point the interest rate is converted to a floating rate equal to one-month LIBOR plus 3.95% until maturity. The securities mature on October 30, 2035 and may be called at par by the Company any time after October 30, 2010. In accordance with the guidelines of SFAS No. 150 "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity", the issued preferred stock of NYM Preferred Trust II has been classified as subordinated debentures in the liability section of the Company's consolidated balance sheet.

On March 15, 2005 the Company closed a private placement of \$25.0 million of trust preferred securities to Taberna Preferred Funding I, Ltd., a pooled investment vehicle. The securities were issued by NYM Preferred Trust I and are fully guaranteed by the Company with respect to distributions and amounts payable upon liquidation, redemption or repayment. These securities have a floating interest rate equal to three-month LIBOR plus 3.75%, resetting quarterly (7.77% at December 31, 2005). The securities mature on March 15, 2035 and may be called at par by the Company any time after March 15, 2010. NYMC entered into an interest rate cap agreement to limit the maximum interest rate cost of the trust preferred securities to 7.5%. The term of the interest rate cap agreement is five years and resets quarterly in conjunction with the reset periods of the trust preferred securities. The interest rate cap agreement is accounted for as a cash flow hedge transaction in accordance with SFAS No.133. In accordance with the guidelines of SFAS No. 150 "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity", the issued preferred stock of NYM Preferred Trust I has been classified as subordinated debentures in the liability section of the Company's consolidated balance sheet.

12. Commitments and Contingencies

Loans Sold to Investors - Generally, the Company is not exposed to significant credit risk on its loans sold to investors. In the normal course of business, the Company is obligated to repurchase loans which do not meet certain terms set by investors. Such loans are then generally repackaged and sold to other investors.

Loans Funding and Delivery Commitments - At December 31, 2005 and December 31, 2004 the Company had commitments to fund loans with agreed-upon rates totaling \$130.3 million and \$156.1 million, respectively. The Company hedges the interest rate risk of such commitments and the recorded mortgage loans held for sale balances primarily with FSLCs, which totaled \$51.8 million and \$97.1 million at December 31, 2005 and December 31, 2004, respectively. The remaining commitments to fund loans with agreed-upon rates are anticipated to be sold through optional delivery contract investor programs. The Company does not anticipate any material losses from such sales.

Net Worth Requirements - NYMC is required to maintain certain specified levels of minimum net worth to maintain its approved status with Fannie Mae, Freddie Mac, HUD and other investors. As of December 31, 2005 NYMC is in compliance with all minimum net worth requirements .

Outstanding Litigation - The Company is involved in litigation arising in the normal course of business. Although the amount of any ultimate liability arising from these matters cannot presently be determined, the Company does not anticipate that any such liability will have a material effect on its consolidated financial statements.

Leases - The Company leases its corporate offices and certain retail facilities and equipment under short-term lease agreements expiring at various dates through 2010. All such leases are accounted for as operating leases. Total rental expense for property and equipment amounted to \$4.6 million, \$3.3 million and \$2.1 million for the years ended December 31, 2005, 2004 and 2003, respectively. On February 11, 2005, the Company signed a letter of intent to enter into a sub-lease for its former headquarters space at 304 Park Avenue in New York. The Company's remaining contractual obligation to the landlord on this lease is \$1.8 million. The sub-lease tenant will have a contractual rent obligation to the Company under the sub-lease of \$1.0 million. This transaction was completed in late March 2005. Accordingly, during the first quarter of 2005, the Company recognized a charge of \$0.8 million to earnings.

As of December 31, 2005 obligations under non-cancelable operating leases that have an initial term of more than one year are as follows (dollar amounts in thousands):

Year Ending December 31,

2006	\$	4,685
2007		4,171
2008		3,442
2009		2,354
2010		2,116
Thereafter		—
	\$	<u>16,768</u>

Letters of Credit - NYMC maintains a letter of credit in the amount of \$100,000 in lieu of a cash security deposit for an office lease dated June 1998 for the Company's former headquarters located at 304 Park Avenue South in New York City. The sole beneficiary of this letter of credit is the owner of the building, 304 Park Avenue South LLC. This letter of credit is secured by cash deposited in a bank account maintained at Signature Bank.

Subsequent to the move to a new headquarters location in New York City in July 2003, in lieu of a cash security deposit for the office lease, we entered into an irrevocable transferable letter of credit in the amount of \$313,000 with PricewaterhouseCoopers, LLP (sublandlord), as beneficiary. This letter of credit is secured by cash deposited in a bank account maintained at HSBC bank.

On February 15, 2005, the Company entered into an irrevocable standby letter of credit in an initial amount of \$500,000 with the beneficiary being CCC Atlantic, L.L.C., the landlord of the Company's leased facility at 500 Burton Avenue, Northfield, New Jersey. The letter of credit serves as security for leased office property, initially occupied by employees of our branches doing business as Ivy League Mortgage, L.L.C. The letter of credit is secured by the personal guarantee and a mortgage on the home of the Ivy League Mortgage, L.L.C. branch manager. The initial amount of the letter of credit will be reduced at each of the first four annual anniversary dates by \$50,000, thereafter to remain at a value of \$250,000 until termination on April 1, 2015.

13. Related Party Transactions

Upon completion of the Company's IPO and acquisition of NYMC, Steven B. Schnall and Joseph V. Fierro, the former owners of NYMC, were entitled to a distribution of NYMC's retained earnings through the close of the Company's IPO on June 29, 2004, not to exceed \$4.5 million. As a result, a distribution of \$2.4 million (\$0.4 million of retained earnings as of March 31, 2004 plus an estimate of \$2.0 million for NYMC's earnings through June 29, 2004) was made to the former owners upon the close of the IPO. The subsequent earnings and elimination of distributions and unrealized gains and losses attributable to NYMC for the period prior to June 29, 2004 equated to a distribution overpayment of \$1.3 million, for which Messrs. Schnall and Fierro reimbursed the Company immediately upon the finalization of the overpayment calculation in July 2004.

Steven B. Schnall owns a 48% membership interest and Joseph V. Fierro owns a 12% membership interest in Centurion Abstract, LLC ("Centurion"), which provides title insurance brokerage services for certain title insurance providers. From time to time, NYMC refers its mortgage loan borrowers to Centurion for assistance in obtaining title insurance in connection with their mortgage loans, although the borrowers have no obligation to utilize Centurion's services. When NYMC's borrowers elect to utilize Centurion's services to obtain title insurance, Centurion collects various fees and a portion of the title insurance premium paid by the borrower for its title insurance. Centurion received \$0.6 million in fees and other amounts from NYMC borrowers for the year ended December 31, 2005. NYMC does not economically benefit from such referrals.

14. Concentrations of Credit Risk

The Company has originated loans predominantly in the eastern United States. Loan concentrations are considered to exist when there are amounts loaned to a multiple number of borrowers with similar characteristics, which would cause their ability to meet contractual obligations to be similarly impacted by economic or other conditions. At December 31, 2005 and December 31, 2004, there were geographic concentrations of credit risk exceeding 5% of the total loan balances within mortgage loans held for sale as follows:

	December 31, 2005	December 31, 2004
New York	43.0%	70.2%
Massachusetts	17.8%	6.6%
Florida	9.7%	1.9%
Connecticut	5.8%	5.0%
New Jersey	5.1%	7.4%

At December 31, 2005 and December 31, 2004, there were geographic concentrations of credit risk exceeding 5% of the total loan balances within mortgage loans held in the securitization trusts and mortgage loans held for investment as follows:

	December 31, 2005	December 31, 2004
New York	32.7%	30.7%
Massachusetts	19.4%	1.4%
California	14.1%	51.3%
New Jersey	5.8%	5.5%
Florida	5.4%	1.4%

15. Fair Value of Financial Instruments

Fair value estimates are made as of a specific point in time based on estimates using market quotes, present value or other valuation techniques. These techniques involve uncertainties and are significantly affected by the assumptions used and the judgments made regarding risk characteristics of various financial instruments, discount rates, estimates of future cash flows, future expected loss experience, and other factors.

Changes in assumptions could significantly affect these estimates and the resulting fair values. Derived fair value estimates cannot be necessarily substantiated by comparison to independent markets and, in many cases, could not be necessarily realized in an immediate sale of the instrument. Also, because of differences in methodologies and assumptions used to estimate fair values, the Company's fair values should not be compared to those of other companies.

Fair value estimates are based on existing financial instruments and do not attempt to estimate the value of anticipated future business and the value of assets and liabilities that are not considered financial instruments. Accordingly, the aggregate fair value amounts presented below do not represent the underlying value of the Company.

The fair value of certain assets and liabilities approximate cost due to their short-term nature, terms of repayment or interest rates associated with the asset or liability. Such assets or liabilities include cash and cash equivalents, escrow deposits, unsettled mortgage loan sales, and financing arrangements. All forward delivery commitments and option contracts to buy securities are to be contractually settled within six months of the balance sheet date.

The following describes the methods and assumptions used by the Company in estimating fair values of other financial instruments:

a. *Investment Securities Available for Sale* - Fair value is generally estimated based on market prices provided by five to seven dealers who make markets in these financial instruments. If the fair value of a security is not reasonably available from a dealer, management estimates the fair value based on characteristics of the security that the Company receives from the issuer and based on available market information.

b. *Mortgage Loans Held for Sale* - Fair value is estimated using the quoted market prices for securities backed by similar types of loans and current investor or dealer commitments to purchase loans.

c. *Mortgage Loans Held for Investment* - Mortgage loans held for investment are recorded at amortized cost. Fair value is estimated using pricing models and taking into consideration the aggregated characteristics of groups of loans such as, but not limited to, collateral type, index, interest rate, margin, length of fixed-rate period, life cap, periodic cap, underwriting standards, age and credit estimated using the quoted market prices for securities backed by similar types of loans.

d. *Mortgage Loans Held in the Securitization Trusts* - Mortgage loans held in the securitization trusts are recorded at amortized cost. Fair value is estimated using pricing models and taking into consideration the aggregated characteristics of groups of loans such as, but not limited to, collateral type, index, interest rate, margin, length of fixed-rate period, life cap, periodic cap, underwriting standards, age and credit estimated using the quoted market prices for securities backed by similar types of loans.

e. *Interest Rate Lock Commitments* - The fair value of IRLCs is estimated using the fees and rates currently charged to enter into similar agreements, taking into account the remaining terms of the agreements and the present creditworthiness of the counterparties. For fixed rate loan commitments, fair value also considers the difference between current levels of interest rates and the committed rates. The fair value of IRLCs is determined in accordance with SAB 105.

f. *Forward Sale Loan Contracts* - The fair value of these instruments is estimated using current market prices for dealer or investor commitments relative to the Company's existing positions.

The following tables set forth information about financial instruments, except for those noted above for which the carrying amount approximates fair value (dollar amounts in thousands):

	December 31, 2005		
	Notional Amount	Carrying Amount	Estimated Fair Value
Investment securities available for sale	\$ 719,701	\$ 716,482	\$ 716,482
Mortgage loans held for investment	4,054	4,060	4,079
Mortgage loans held in the securitization trusts	771,451	776,610	775,311
Mortgage loans held for sale	108,244	108,271	109,252
Commitments and contingencies:			
Interest rate lock commitments - loan commitments	130,320	123	123
Interest rate lock commitments - mortgage loans held for sale	108,109	(14)	(14)
Forward loan sales contracts	51,763	(380)	(380)
Interest rate swaps	645,000	6,383	6,383
Interest rate caps	1,858,860	3,340	3,340

	December 31, 2004		
	Notional Amount	Carrying Amount	Estimated Fair Value
Investment securities available for sale	\$ 1,194,055	\$ 1,204,745	\$ 1,204,745
Mortgage loans held for investment	188,859	190,153	190,608
Mortgage loans held for sale	85,105	85,385	86,098
Commitments and contingencies:			
Interest rate lock commitments	156,110	38	38
Forward loan sales contracts	97,080	(165)	(165)
Interest rate swaps	670,000	3,228	3,228
Interest rate caps	250,000	411	411

16. Income taxes

NYMT and its taxable subsidiary, NYMC, were S corporations prior to June 29, 2004 pursuant to the Internal Revenue Code of 1986, as amended, and as such did not incur any federal income tax expense.

On June 29, 2004, NYMC became a C corporation for federal and state income tax purposes and as such is subject to federal and state income tax on its taxable income for periods after June 29, 2004.

A reconciliation of the statutory income tax provision (benefit) to the effective income tax provision for the years ended December 31, 2005 and December 31, 2004, is as follows (dollar amounts in thousands).

	December 31, 2005	December 31, 2004
Tax at statutory rate (35%)	\$ (4,861)	\$ 1,291
Non-taxable REIT income	(2,038)	(2,559)
Transfer pricing of loans sold to nontaxable parent	555	292
State and local taxes	(1,731)	(372)
Change in tax status	(453)	299
Income earned prior to taxable status	—	(207)
Miscellaneous	(21)	(3)
Total provision (benefit)	<u>\$ (8,549)</u>	<u>\$ (1,259)</u>

The income tax benefit for the year ended December 31, 2005 is comprised of the following components (dollar amounts in thousands):

	<u>Deferred</u>	<u>Total</u>
Regular tax benefit		
Federal	\$ (6,818)	\$ (6,818)
State	(1,731)	(1,731)
Total tax benefit	<u>\$ (8,549)</u>	<u>\$ (8,549)</u>

The income tax benefit for the year ended December 31, 2004 is comprised of the following components:

	<u>Current</u>	<u>Deferred</u>	<u>Total</u>
Regular Tax Provision (Benefit)			
Federal	—	\$ (1,251)	\$ (1,251)
State	\$ 50	(327)	(277)
Total	<u>\$ 50</u>	<u>\$ (1,578)</u>	<u>\$ (1,528)</u>
Change in Tax Status			
Federal	—	\$ 213	\$ 213
State	—	56	56
	—	\$ 269	\$ 269
Total tax expense (benefit)	<u>\$ 50</u>	<u>\$ (1,309)</u>	<u>\$ (1,259)</u>

The deferred tax asset at December 31, 2005 includes a deferred tax asset of \$10.2 million and a deferred tax liability of \$0.3 million which represents the tax effect of differences between tax basis and financial statement carrying amounts of assets and liabilities. The major sources of temporary differences and their deferred tax effect at December 31, 2005 are as follows (dollar amounts in thousands):

Deferred tax assets:	
Net operating loss forward	\$ 9,560
Restricted stock, performance shares and stock option expense	125
Rent expense	120
Management compensation	98
Loss on Sublease	181
Mark to market adjustments	94
Total deferred tax asset	<u>10,178</u>
Deferred tax liabilities:	
Depreciation	319
Total deferred tax liability	<u>319</u>
Net deferred tax asset	<u>\$ 9,859</u>

The deferred tax asset at December 31, 2004 includes a deferred tax asset of \$1.6 million and a deferred tax liability of \$0.3 million which represents the tax effect of differences between tax basis and financial statement carrying amounts of assets and liabilities. The major sources of temporary differences and their deferred tax effect at December 31, 2004 are as follows:

Deferred tax assets:	
Net operating loss carry forward	\$ 1,238
Restricted performance stock option expense	329
Management compensation	90
	<u>1,657</u>
Deferred tax liabilities:	
Mark-to-market adjustments	79
Depreciation	269
	<u>348</u>
Net deferred tax asset	<u>\$ 1,309</u>

The net deferred tax asset is included in prepaid and other assets on the accompanying consolidated balance sheet. Although realization is not assured, management believes it is more likely than not that all the deferred tax assets will be realized. The net operating loss carry forward expires at various intervals between 2012 and 2026.

17. Segment Reporting

The Company operates two segments:

- *Mortgage Portfolio Management* — long-term investment in high-quality, adjustable-rate mortgage loans and residential mortgage-backed securities; and
- *Mortgage Lending* — mortgage loan originations as conducted by NYMC.

Our mortgage portfolio management segment primarily invest in adjustable-rate FNMA, FHLMC and “AAA”— rated residential mortgage-backed securities and high-quality mortgages that are originated by our mortgage operations or that may be acquired from third parties. The Company’s equity capital and borrowed funds are used to invest in residential mortgage-backed securities, thereby producing net interest income.

The mortgage lending segment originates residential mortgage loans through the Company's taxable REIT subsidiary, NYMC. Loans are originated through NYMC's retail and internet branches and generate gain on sale revenue when the loans are sold to third parties or revenue from brokered loans when the loans are brokered to third parties.

Year Ended December 31, 2005

(Dollar amounts in thousands)

	Mortgage Portfolio Management Segment	Mortgage Lending Segment	Total
REVENUE:			
Interest income:			
Investment securities and loans held in the securitization trusts	\$ 55,050	\$ —	\$ 55,050
Loans held for investment	7,675	—	7,675
Loans held for sale	—	14,751	14,751
Total Interest Income	<u>62,725</u>	<u>14,751</u>	<u>77,476</u>
Interest expense:			
Investment securities and loans held in the securitization trusts	42,001	—	42,001
Loans held for investment	5,847	—	5,847
Loans held for sale	—	10,252	10,252
Subordinated debentures	—	2,004	2,004
Total Interest Expense	<u>47,848</u>	<u>12,256</u>	<u>60,104</u>
Net interest income	<u>14,877</u>	<u>2,495</u>	<u>17,372</u>
Other income (expense):			
Gain on sales of mortgage loans	—	26,783	26,783
Brokered loan fees	—	9,991	9,991
Gain on sale of securities and related hedges	2,207	—	2,207
Impairment loss on investment securities	(7,440)	—	(7,440)
Miscellaneous income	1	231	232
Total other income (expense)	<u>(5,232)</u>	<u>37,005</u>	<u>31,773</u>
EXPENSES:			
Salaries, commissions and benefits	1,934	29,045	30,979
Brokered loan expenses	—	7,543	7,543
Occupancy and equipment	33	6,094	6,127
Marketing and promotion	125	4,736	4,861
Data processing and communication	148	2,223	2,371
Office supplies and expenses	21	2,312	2,333
Professional fees	853	3,889	4,742
Travel and entertainment	6	834	840
Depreciation and amortization	8	1,708	1,716
Other	289	1,233	1,522
Total expenses	<u>3,417</u>	<u>59,617</u>	<u>63,034</u>
INCOME (LOSS) BEFORE INCOME TAX BENEFIT	<u>6,228</u>	<u>(20,117)</u>	<u>(13,889)</u>
Income tax benefit	—	8,549	8,549
NET INCOME (LOSS)	<u>\$ 6,228</u>	<u>\$ (11,568)</u>	<u>\$ (5,340)</u>
Segment assets	\$ 1,528,222	\$ 263,071	\$ 1,791,293
Segment equity	100,197	761	100,958

Prior to June 29, 2004, the Company conducted only mortgage lending operations.

	Year Ended December 31, 2004		
	(Dollar amounts in thousands)		
	Mortgage Portfolio Management Segment	Mortgage Lending Segment	Total
REVENUE:			
Interest income:			
Investment securities and loans held in the securitization trusts	\$ 19,671	\$ —	\$ 19,671
Loans held for investment	723	—	723
Loans held for sale	—	6,905	6,905
Total Interest Income	20,394	6,905	27,299
Interest expense:			
Investment securities and loans held in the securitization trusts	11,982	—	11,982
Loans held for investment	488	—	488
Loans held for sale	—	3,543	3,543
Total Interest Expense	12,470	3,543	16,013
Net interest income	7,924	3,362	11,286
Other income (expense):			
Gain on sales of mortgage loans	—	20,835	20,835
Brokered loan fees	—	6,895	6,895
Gain on sale of securities	167	607	774
Miscellaneous income	—	227	227
Total other income (expense)	167	28,564	28,731
EXPENSES:			
Salaries, commissions and benefits	382	16,736	17,118
Brokered loan expenses	—	5,276	5,276
Occupancy and equipment	10	3,519	3,529
Marketing and promotion	14	3,176	3,190
Data processing and communication	174	1,424	1,598
Office supplies and expenses	4	1,515	1,519
Professional fees	149	1,856	2,005
Travel and entertainment	1	611	612
Depreciation and amortization	1	689	690
Other	45	747	792
Total expenses	780	35,549	36,329
INCOME (LOSS) BEFORE INCOME TAX BENEFIT	7,311	(3,623)	3,688
Income tax benefit	—	1,259	1,259
NET INCOME (LOSS)	\$ 7,311	\$ (2,364)	\$ 4,947
Segment assets	\$ 1,413,954	\$ 200,808	\$ 1,614,762
Segment equity	107,542	11,940	119,482

18. Capital Stock and Earnings per Share

The Company had 400,000,000 shares of common stock, par value \$0.01 per share, authorized with 18,258,221 shares issued and 17,953,674 outstanding as of December 31, 2005. Of the common stock authorized, 936,111 shares were reserved for issuance as restricted stock awards to employees, officers and directors. As of December 31, 2005, 174,677 shares remain reserved for issuance.

The Company calculates basic net income per share by dividing net income (loss) for the period by weighted-average shares of common stock outstanding for that period. Diluted net income (loss) per share takes into account the effect of dilutive instruments, such as stock options

and unvested restricted or performance stock, but uses the average share price for the period in determining the number of incremental shares that are to be added to the weighted-average number of shares outstanding. For the year ended December 31, 2004, weighted average shares outstanding assume that the shares outstanding upon the Company's IPO are outstanding for the full year ending December 31, 2004. Earnings per share for periods prior to the IPO are not presented as they are not representative of the Company's current capital structure.

The following table presents the computation of basic and diluted net earnings per share for the periods indicated (dollar amounts in thousands, except net earnings per share):

	For the Year Ended December 31, 2005	For the Year Ended December 31, 2004
Numerator:		
Net income/(loss)	\$ (5,340)	\$ 4,947
Denominator:		
Weighted average number of common shares outstanding — basic	17,873	17,797
Net effect of unvested restricted stock	-	224
Performance shares	-	35
Escrowed shares(1)	-	53
Net effect of stock options(2)	-	6
Weighted average number of common shares outstanding — dilutive	17,873	18,115
Net (loss) per share — basic	\$ (0.30)	\$ (0.28)
Net (loss) per share — diluted	\$ (0.30)	\$ (0.27)

- (1) Upon the closing of the Company's IPO, of the 2,750,000 shares exchanged for the equity interests of NYMC, 100,000 shares were held in escrow through December 31, 2004 and were available to satisfy any indemnification claims the Company may have had against the contributors of NYMC for losses incurred as a result of defaults on any residential mortgage loans originated by NYMC and closed prior to the completion of the IPO. As of December 31, 2004, the amount of escrowed shares was reduced by 47,680 shares, representing \$492,536 for estimated losses on loans closed prior to the Company's IPO. Furthermore, the contributors of NYMC entered into a new escrow agreement, which extended the escrow period to December 31, 2006 for the remaining 52,320 shares.
- (2) The Company has granted 591,500 of the 706,000 stock options available for issuance under the Company's 2004 stock incentive plan.
- (3) For the year ended December 31, 2005 basic and diluted loss per common share are the same because the effect of NYMT's restricted shares, performance shares, escrowed shares and stock options was antidilutive.

During 2005, taxable dividends for New York Mortgage Trust's common stock were \$0.95 per share. For tax reporting purposes, the 2005 taxable dividend will be classified as follows: \$0.81532 as ordinary income and \$0.13468 as a return of capital.

19. Stock Incentive Plan

Pursuant to the 2004 Stock Incentive Plan (the "2004 Plan"), eligible employees, officers and directors were offered the opportunity to acquire shares of the Company's common stock through the grant of options and the award of restricted stock under the 2004 Plan. In connection with the Plan, the Company also awarded shares of stock to employees conditioned upon satisfaction of certain performance criteria related to the November 2004 acquisition of Guaranty Residential Lending. The maximum number of options that may be issued is 706,000 shares and the maximum number of restricted stock awards that may be granted under the 2004 Plan is 794,250.

2005 Stock Incentive Plan

At the Annual Meeting of Stockholders held on May 31, 2005, the Company's stockholders approved the adoption of the Company's 2005 Stock Incentive Plan (the "2005 Plan"). The 2005 Plan replaces the 2004 Plan, which was terminated on the same date. The 2005 Plan provides that up to 936,111 shares of the Company's common stock may be issued thereunder. That number of shares represents 711,895 shares of common stock, or (4% of the 17,797,375 shares of common stock outstanding at March 10, 2005), plus 224,216 shares of common stock remaining from the 2004 Plan. The number of shares available for issuance under the 2005 Plan will be increased by (a) 6% of the number of additional shares of the Company's common stock issued between March 10, 2005 and May 31, 2006 (other than shares issued under the 2004 Plan or 2005 Plan) and (b) the number of shares covered by 2004 Plan awards that are forfeited or terminated after March 10, 2005.

Options

The 2004 Plan provides for the exercise price of options to be determined by the Compensation Committee of the Board of Directors (“Compensation Committee”) but not to be less than the fair market value on the date the option is granted. Options expire ten years after the grant date. As of December 31, 2005, 591,500 options have been granted pursuant to the 2004 Plan with a vesting period of two years.

The Company accounts for the fair value of its grants in accordance with SFAS No. 123. The compensation cost charged against income during the years ended December 31, 2005 and 2004 was approximately \$44,000 and \$106,000, respectively.

A summary of the status of the Company's options as of December 31, 2005 and changes during the year then ended is presented below:

	Number of Options	Weighted Average Exercise Price
Outstanding at beginning of year, January 1, 2005	556,500	\$ 9.57
Granted	35,000	\$ 9.83
Canceled	25,000	9.83
Exercised	—	—
Outstanding at end of year, December 31, 2005	<u>566,500</u>	<u>\$ 9.56</u>
Options exercisable at year-end	<u>289,826</u>	<u>\$ 9.32</u>
Weighted-average fair value of options granted during the year		<u>\$ 9.83</u>

A summary of the status of the Company's options as of December 31, 2004 and changes during the year then ended is presented below:

	Number of Options	Weighted Average Exercise Price
Outstanding at beginning of year, January 1, 2004	—	—
Granted	556,500	\$ 9.57
Canceled	—	—
Exercised	—	—
Outstanding at end of year, December 31, 2004	<u>556,500</u>	<u>\$ 9.57</u>
Options exercisable at year-end	<u>303,162</u>	<u>\$ 9.35</u>
Weighted-average fair value of options granted during the year		<u>\$ 9.57</u>

The following table summarizes information about stock options at December 31, 2005:

Range of Exercise Prices	Options Outstanding			Options Exercisable		Fair Value of Options Granted
	Number Outstanding	Weighted- Average Remaining Contractual Life (Years)	Exercise Price	Number Exercisable	Exercise Price	
\$9.00	176,500	8.5	\$ 9.00	176,500	\$ 9.00	\$ 0.39
\$9.83	390,000	8.9	9.83	113,326	9.83	0.29
Total	<u>566,500</u>	<u>8.8</u>	<u>\$ 9.57</u>	<u>289,826</u>	<u>\$ 9.35</u>	<u>\$ 0.33</u>

The following table summarizes information about stock options at December 31, 2004:

Range of Exercise Prices	Options Outstanding			Options Exercisable		Fair Value of Options Granted
	Number Outstanding	Weighted- Average Remaining Contractual Life (Years)	Exercise Price	Number Exercisable	Exercise Price	
\$9.00	176,500	9.5	\$ 9.00	176,500	\$ 9.00	\$ 0.39
\$9.83	380,000	9.9	9.83	126,662	9.83	0.29

Total	<u>556,500</u>	<u>9.8</u>	<u>\$</u>	<u>9.57</u>	<u>303,162</u>	<u>\$</u>	<u>9.35</u>	<u>\$</u>	<u>0.32</u>
-------	----------------	------------	-----------	-------------	----------------	-----------	-------------	-----------	-------------

The fair value of each option grant is estimated on the date of grant using the Binomial option-pricing model with the following weighted-average assumptions:

Risk free interest rate	4.5%
Expected volatility	10%
Expected life	10 years
Expected dividend yield	10.48%

Restricted Stock

As of December 31, 2005, the Company has awarded 555,178 shares of restricted stock under the 2005 Plan, of which 334,120 shares have fully vested. As of December 31, 2005 the remaining shares of restricted stock awarded under the 2004 Plan are subject to vesting periods between 5 and 36 months. During the year ended December 31, 2005, the Company recognized non-cash compensation expense of \$1.6 million relating to the vested portion of restricted stock grants. Dividends are paid on all restricted stock issued, whether those shares are vested or not. In general, unvested restricted stock is forfeited upon the recipient's termination of employment.

Performance Based Stock Awards

In November 2004, the Company acquired 15 full-service and 26 satellite retail mortgage banking offices located in the Northeast and Mid-Atlantic states from General Residential Lending, Inc. ("GRL"). Pursuant to that transaction, the Company has committed to award 236,909 shares of the Company's stock to certain employees of those branches upon attainment of predetermined production levels. As of December 31, 2005, the awards range in vesting periods from 2 to 18 months with a share price set at the December 2, 2004 grant date market value of \$9.83 per share. During the year ended December 31, 2005, the Company recognized non-cash compensation expense of \$1.5 million relating to performance based stock awards. Unvested issued performance share awards have no voting rights and do not earn dividends.

20. QUARTERLY FINANCIAL DATA (UNAUDITED)

The following table is a comparative breakdown of our unaudited quarterly results for the immediately preceding eight quarters. The quarter ended June 30, 2004 has been restated, as explained below, and includes the appropriate adjustments discussed below (dollar amounts in thousands, except per share data):

	Three Months Ended			
	Mar. 31, 2005	Jun. 30, 2005	Sep. 30, 2005	Dec. 31, 2005
REVENUES:				
Interest income	\$ 17,117	\$ 19,669	\$ 19,698	\$ 20,992
Interest expense	11,690	14,531	16,159	17,724
Net interest income	5,427	5,138	3,539	3,268
Other income (expense):				
Gain on sales of mortgage loans	4,321	8,328	8,985	5,149
Brokered loan fees	1,999	2,534	2,647	2,811
Gain (loss) on sale of marketable securities and related hedges	377	544	1,286	(7,440)
Miscellaneous income (loss)	115	(10)	91	36
Total other income (expense)	6,812	11,396	13,009	556
EXPENSES:				
Salaries, commissions and related expenses	7,143	9,430	7,302	7,104
Brokered loan expenses	1,520	2,686	1,483	1,854
General and administrative expenses	6,304	6,062	5,903	6,243
Total expenses	14,967	18,178	14,688	15,201
Income (loss) before provision for income taxes	(2,728)	(1,644)	1,860	(11,377)
Income tax benefit	2,690	2,190	1,000	2,669
Net income (loss)	\$ (38)	\$ 546	\$ 2,860	\$ (8,708)
Per share basic income (loss)	\$ 0.00	\$ 0.03	\$ 0.16	\$ (0.49)
Per share diluted income (loss)	\$ 0.00	\$ 0.03	\$ 0.16	\$ (0.49)

	Three Months Ended			
	Mar. 31, 2004	Jun. 30, 2004	Sep. 30, 2004	Dec. 31, 2004
REVENUES:				
Interest income	\$ 1,261	\$ 1,886	\$ 10,290	\$ 13,862
Interest expense	609	1,124	5,465	8,815
Net interest income	652	762	4,825	5,047
Other income				
Gain on sales of mortgage loans	3,506	6,945	4,482	5,902
Brokered loan fees	2,183	778	1,438	2,496
Gain (loss) on sale of marketable securities	—	607	126	41
Miscellaneous income	16	30	50	131
Total other income	5,705	8,360	6,096	8,570
EXPENSES:				
Salaries, commissions and related expenses	2,719	4,172	4,504	5,723
Brokered loan expenses	1,284	835	1,017	2,140
General and administrative expenses	2,236	3,724	3,180	4,795
Total expenses	6,239	8,731	8,701	12,658
Income before provision for income taxes	118	391	2,220	959
Income tax (expense) benefit	—	(10)	232	1,037
Net income	\$ 118	\$ 381	\$ 2,452	\$ 1,996
Per share basic income	—	\$ 0.02	\$ 0.14	\$ 0.12
Per share diluted income	—	\$ 0.02	\$ 0.14	\$ 0.12

On March 16, 2005, the Company's management determined that the accounting for the disposition of marketable securities and certain cash flow hedges owned by NYMC was incorrect and should be restated to reflect the gain of \$865,000 in earnings instead of as a change in other comprehensive income. As a result, the net income reported for the three and six months ended June 30, 2004 and the nine months ended September 30, 2004 as filed in the Company's Quarterly Reports on Form 10-Q for such periods, respectively, was understated by \$865,000.

The marketable securities were disposed of in a transaction during the second quarter of 2004 prior to completion of the Company's IPO so as to avoid owning a legacy portfolio of securities which (i) did not meet the Company's new investment guidelines, (ii) are equity securities, (iii) cannot be appropriately hedged or (iv) do not generate qualifying REIT income. As a result, the impact on the sale of these assets did not impact the Company or its earnings generated during periods after completion of the IPO. However, because the Company's acquisition of NYMC is accounted for as a reverse merger for accounting and financial reporting purposes, the historical financial presentation of net income is affected.

For financial presentation purposes, the restatement increases net income by approximately \$783,000 for the marketable securities and \$82,000 for the cash flow hedges with a corresponding reduction in accumulated other comprehensive income for the periods indicated. There was no impact on total assets, liabilities or equity on the Company's balance sheet, or to net comprehensive income for the periods presented.

EXHIBIT INDEX

Exhibits. The exhibits required by Item 601 of Regulation S-K are listed below. Management contracts or compensatory plans are filed as Exhibits 10.55, 10.92, 10.93, 10.94, 10.95, 10.96, 10.97, 10.98, 10.102 and 10.105.

Exhibit	Description
3.1	Articles of Amendment and Restatement of New York Mortgage Trust, Inc. (Incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
3.2(a)	Bylaws of New York Mortgage Trust, Inc. (Incorporated by reference to Exhibit 3.2 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
3.2(b)	Amendment No. 1 to Bylaws of New York Mortgage Trust, Inc.*
4.1	Form of Common Stock Certificate. (Incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
4.2(a)	Junior Subordinated Indenture between The New York Mortgage Company, LLC and JPMorgan Chase Bank, National Association, as trustee, dated September 1, 2005. (Incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on September 6, 2005).
4.2(b)	Amended and Restated Trust Agreement among The New York Mortgage Company, LLC, JPMorgan Chase Bank, National Association, Chase Bank USA, National Association and the Administrative Trustees named therein, dated September 1, 2005. (Incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on September 6, 2005).
10.1	Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as amended and restated, on December 23, 2003, in the principal amount of \$2,574,352.00, payable to Joseph V. Fierro. (Incorporated by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.2	Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as amended and restated, on December 23, 2003, in the principal amount of \$12,132,550.00 payable to Steven B. Schnall. (Incorporated by reference to Exhibit 10.2 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.3	Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated October 2, 2002. (Incorporated by reference to Exhibit 10.3 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.4	Amendment No. 1 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated December 4, 2002. (Incorporated by reference to Exhibit 10.4 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

Exhibit	Description
10.5	Amendment No. 2 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated February 20, 2003. (Incorporated by reference to Exhibit 10.5 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.6	Amendment No. 3 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated April 22, 2003. (Incorporated by reference to Exhibit 10.6 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.7	Amendment No. 4 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated July 1, 2003. (Incorporated by reference to Exhibit 10.7 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.8	Amendment No. 5 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated July 7, 2003. (Incorporated by reference to Exhibit 10.8 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.9	Amendment No. 6 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated July 31, 2003. (Incorporated by reference to Exhibit 10.9 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.10	Amendment No. 7 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated August 4, 2003. (Incorporated by reference to Exhibit 10.10 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.11	Amendment No. 8 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated August 9, 2003. (Incorporated by reference to Exhibit 10.11 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.12	Amendment No. 9 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated August 28, 2003. (Incorporated by reference to Exhibit 10.12 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.13	Amendment No. 10 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated September 17, 2003. (Incorporated by reference to Exhibit 10.13 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.14	Amendment No. 11 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated October 1, 2003. (Incorporated by reference to Exhibit 10.14 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

Exhibit	Description
10.15	Amendment No. 12 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated October 31, 2003. (Incorporated by reference to Exhibit 10.15 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.16	Amendment No. 13 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated December 19, 2003. (Incorporated by reference to Exhibit 10.16 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.17	Credit Note between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.17 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.18	Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.18 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.19	First Amended Credit Note, dated as of May 24, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.19 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.20	First Amended Credit and Security Agreement, dated as of May 24, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.20 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.21	Second Amended Credit Note, dated as of June 18, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.21 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.22	Second Amended Credit and Security Agreement, dated June 18, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.22 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.23	Third Amended Credit Note, dated as of November 13, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.23 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.24	Third Amended Credit and Security Agreement, dated as of November 13, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.24 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

Exhibit	Description
10.25	Fourth Amended Credit Note, dated as of January 16, 2002, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.25 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.26	Fourth Amended Credit and Security Agreement, dated as of January 16, 2002, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.26 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.27	Fifth Amended Credit Note, dated as of April 29, 2002, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.27 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.28	Fifth Amended Credit and Security Agreement, dated as of April 29, 2002, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.28 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.29	Extension Letter, dated August 26, 2002, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.29 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.30	Extension Letter, dated September 11, 2002, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.30 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.31	Extension Letter, dated October 28, 2002, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.31 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.32	Extension Letter, dated November 27, 2002, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.32 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.33	Extension Letter, dated April 15, 2003, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.33 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.34	Extension Letter, dated June 24, 2003, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.34 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

Exhibit	Description
10.35	Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.35 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.36	Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.36 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.37	First Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of May 24, 2001. (Incorporated by reference to Exhibit 10.37 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.38	First Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of May 24, 2001. (Incorporated by reference to Exhibit 10.38 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.39	Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.39 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.40	First Amendment, dated April 2002, to Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.40 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.41	Second Amendment, dated June 3, 2002, to Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.41 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.42	Third Amendment, dated November , 2002, to Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.42 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.43	Fourth Amendment, dated June 15, 2003, to Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.43 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.44	Warehouse Promissory Note, between The New York Mortgage Company, LLC and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.44 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

Exhibit	Description
10.45	Amended and Restated Warehouse Promissory Note, between The New York Mortgage Company, LLC and National City Bank of Kentucky, dated June 3, 2002. (Incorporated by reference to Exhibit 10.45 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.46	Warehousing Credit Agreement, between New York Mortgage Company, LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated as of January 25, 2002. (Incorporated by reference to Exhibit 10.46 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.47	Pledge and Security Agreement, between The New York Mortgage Company, LLC and National City Bank of Kentucky, dated as of January 25, 2002. (Incorporated by reference to Exhibit 10.47 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.48	Unconditional and Continuing Guaranty of Payment by Steven B. Schnall to National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.48 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.49	Unconditional and Continuing Guaranty of Payment by Joseph V. Fierro to National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.49 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.50	Amended and Restated Unconditional and Continuing Guaranty of Payment by Steven B. Schnall to National City Bank of Kentucky, dated June 15, 2003. (Incorporated by reference to Exhibit 10.50 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.51	Amended and Restated Unconditional and Continuing Guaranty of Payment by Joseph V. Fierro to National City Bank of Kentucky, dated June 15, 2003. (Incorporated by reference to Exhibit 10.51 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.52	Inter-Creditor Agreement, between National City Bank of Kentucky and HSBC Bank USA, dated January 25, 2002. (Incorporated by reference to Exhibit 10.52 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.53	Whole Loan Purchase and Sale Agreement/Mortgage Loan Purchase and Sale Agreement between The New York Mortgage Company, LLC and Greenwich Capital Financial Products, Inc., dated as of September 1, 2003. (Incorporated by reference to Exhibit 10.53 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.54	Whole Loan Custodial Agreement/Custodial Agreement between Greenwich Capital Financial Products, Inc., The New York Mortgage Company, LLC and LaSalle Bank National Association, dated as of September 1, 2003. (Incorporated by reference to Exhibit 10.54 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

Exhibit	Description
10.55	Form of New York Mortgage Trust, Inc. 2004 Stock Incentive Plan. (Incorporated by reference to Exhibit 10.55 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.56	Contribution Agreement by and among Steven B. Schnall and Joseph V. Fierro and New York Mortgage Trust, Inc., dated December 22, 2003. (Incorporated by reference to Exhibit 10.56 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.57	Agreement by and among New York Mortgage Trust, Inc., The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated December 23, 2003. (Incorporated by reference to Exhibit 10.57 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.58	Sixth Amended Credit and Security Agreement, dated as of August 11, 2003, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.58 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.59	Temporary Overadvance Note, dated as of August 11, 2003, between HSBC Bank USA and the New York Mortgage Company LLC. (Incorporated by reference to Exhibit 10.59 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.60	Second Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of June 18, 2001. (Incorporated by reference to Exhibit 10.60 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.61	Second Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of June 18, 2001. (Incorporated by reference to Exhibit 10.61 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.62	Third Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of November 13, 2001. (Incorporated by reference to Exhibit 10.62 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.63	Third Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of November 13, 2001. (Incorporated by reference to Exhibit 10.63 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.64	Fourth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of January 16, 2002. (Incorporated by reference to Exhibit 10.64 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.65	Fourth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of January 16, 2002. (Incorporated by reference to Exhibit 10.65 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

Exhibit	Description
10.66	Fifth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of April 29, 2002. (Incorporated by reference to Exhibit 10.66 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.67	Fifth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of April 29, 2002. (Incorporated by reference to Exhibit 10.67 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.68	Sixth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of August 11, 2003. (Incorporated by reference to Exhibit 10.68 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.69	Sixth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of August 11, 2003. (Incorporated by reference to Exhibit 10.69 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.70	Credit and Security Agreement by and among HSBC Bank USA, National City Bank of Kentucky and The New York Mortgage Company LLC, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.70 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.71	Guaranty between HSBC Bank USA, National City Bank of Kentucky, The New York Mortgage Company LLC and Steven B. Schnall, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.71 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.72	Guaranty between HSBC Bank USA, National City Bank of Kentucky, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.72 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.73	Credit Note by and between HSBC Bank USA and The New York Mortgage Company LLC, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.73 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.74	Credit Note by and between National City Bank of Kentucky and The New York Mortgage Company LLC, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.74 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.75	Swingline Note by and between HSBC Bank USA and The New York Mortgage Company LLC, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.75 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.76	Custodial Agreement by and among Greenwich Capital Financial Products, Inc., The New York Mortgage Corporation LLC and Deutsche Bank Trust Company Americas, dated as of August 1, 2003. (Incorporated by reference to Exhibit 10.76 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

Exhibit	Description
10.77	Master Mortgage Loan Purchase and Interim Servicing Agreement by and between The New York Mortgage Company L.L.C. and Greenwich Capital Financial Products, Inc., dated as of August 1, 2003. (Incorporated by reference to Exhibit 10.77 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.78	Subordination and Pledge Agreement by and between HSBC Bank USA and Steven B. Schnall, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.78 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.79	Subordination and Pledge Agreement by and between HSBC Bank USA and Joseph V. Fierro, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.79 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.80	Second Amended and Restated Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as further amended and restated, on December 23, 2003 and February 26, 2004, in the principal amount of \$11,432,550 payable to Steven B. Schnall. (Incorporated by reference to Exhibit 10.80 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.81	Second Amended and Restated Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as further amended and restated, on December 23, 2003 and February 26, 2004, in the principal amount of \$2,274,352, payable to Joseph V. Fierro. (Incorporated by reference to Exhibit 10.81 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.82	Promissory Note, issued by New York Mortgage Funding, LLC on January 9, 2004 in the principal amount of \$100,000,000.00, payable to Greenwich Capital Financial Products, Inc. (Incorporated by reference to Exhibit 10.82 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.83	Guaranty between the New York Mortgage Company, LLC and Greenwich Capital Financial Products, Inc., dated as of January 9, 2004. (Incorporated by reference to Exhibit 10.83 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.84	Master Loan and Security Agreement between New York Mortgage Funding, LLC and Greenwich Capital Financial Products, Inc., dated as of January 9, 2004. (Incorporated by reference to Exhibit 10.84 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.85	Custodial Agreement between New York Mortgage Funding, LLC, Deutsche Bank Trust Company Americas and Greenwich Capital Financial Products, Inc., dated as of January 9, 2004. (Incorporated by reference to Exhibit 10.85 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.86	Amendment Number One, dated November 24, 2003, to the Master Mortgage Loan Purchase and Interim Servicing Agreement, dated as of August 1, 2003. (Incorporated by reference to Exhibit 10.86 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

Exhibit	Description
10.87	Amended and Restated Contribution Agreement, by and among Steven B. Schnall, Steven B. Schnall Annuity Trust U/A 3/25/04, Joseph V. Fierro, 2004 Joseph V. Fierro Grantor Retained Annuity Trust and New York Mortgage Trust, Inc., dated March 25, 2004. (Incorporated by reference to Exhibit 10.87 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.88	Second Amended and Restated Contribution Agreement, by and among Steven B. Schnall, Steven B. Schnall Annuity Trust U/A 3/25/04, Joseph V. Fierro, 2004 Joseph V. Fierro Grantor Retained Annuity Trust and New York Mortgage Trust, Inc., dated April 29, 2004. (Incorporated by reference to Exhibit 10.88 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.89	Amended and Restated Agreement by and among New York Mortgage Trust, Inc., The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated April 29, 2004. (Incorporated by reference to Exhibit 10.89 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.90	Third Amended and Restated Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as further amended and restated on December 23, 2003, February 26, 2004 and May 26, 2004, in the principal amount of \$11,432,550 payable to Steven B. Schnall. (Incorporated by reference to Exhibit 10.90 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.91	Third Amended and Restated Promissory Note, issued by the New York Mortgage Company, LLC on August 31, 2003, as further amended and restated, on December 23, 2003, February 26, 2004 and May 26, 2004, in the principal amount of \$2,274,352 payable to Joseph V. Fierro. (Incorporated by reference to Exhibit 10.91 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.92	Form of Employment Agreement between New York Mortgage Trust, Inc. and Steven B. Schnall. (Incorporated by reference to Exhibit 10.92 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.93	Form of Employment Agreement between New York Mortgage Trust, Inc. and David A. Akre. (Incorporated by reference to Exhibit 10.93 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.94	Form of Employment Agreement between New York Mortgage Trust, Inc. and Raymond A. Redlingshafer, Jr. (Incorporated by reference to Exhibit 10.94 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.95	Form of Employment Agreement between New York Mortgage Trust, Inc. and Michael I. Wirth. (Incorporated by reference to Exhibit 10.95 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.96	Form of Employment Agreement between New York Mortgage Trust, Inc. and Joseph V. Fierro. (Incorporated by reference to Exhibit 10.96 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

Exhibit	Description
10.97	Form of Employment Agreement between New York Mortgage Trust, Inc. and Steven R. Mumma. (Incorporated by reference to Exhibit 10.97 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.98	Amendment No. 1 to Employment Agreement between New York Mortgage Trust, Inc. and Steven R. Mumma, dated December 2, 2004. (Incorporated by reference to Exhibit 10.98 to the Company's Annual Report on Form 10-K as filed with the Securities and Exchange Commission on March 31, 2005).
10.99	Amended and Restated Credit and Security Agreement between HSBC Bank USA, National Association, National City Bank of Kentucky, JP Morgan Chase Bank, N.A. and The New York Mortgage Company LLC, dated as of February 1, 2005. (Incorporated by reference to Exhibit 10.99 to the Company's Annual Report on Form 10-K as filed with the Securities and Exchange Commission on March 31, 2005).
10.100	Amended and Restated Master Loan and Security Agreement between New York Mortgage Funding, LLC, The New York Mortgage Company, LLC and New York Mortgage Trust, Inc. and Greenwich Capital Financial Products, Inc., dated as of December 6, 2004. (Incorporated by reference to Exhibit 10.100 to the Company's Annual Report on Form 10-K as filed with the Securities and Exchange Commission on March 31, 2005).
10.101	Amended and Restated Master Repurchase Agreement Between New York Mortgage Trust, Inc., The New York Mortgage Company, LLC, New York Mortgage Funding, LLC and Credit Suisse First Boston Mortgage Capital LLC, dated as of March 30, 2005. (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on April 5, 2005).
10.102	Separation and Release Agreement, dated June 30, 2005, by and between the Company and Raymond A. Redlingshafer, Jr. (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on July 5, 2005).
10.103	Parent Guarantee Agreement between New York Mortgage Trust, Inc. and JPMorgan Chase Bank, National Association, as guarantee trustee, dated September 1, 2005. (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on September 6, 2005).
10.104	Purchase Agreement among The New York Mortgage Company, LLC, New York Mortgage Trust, Inc., NYM Preferred Trust II and Taberna Preferred Funding II, Ltd., dated September 1, 2005. (Incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on September 6, 2005).
10.105	New York Mortgage Trust, Inc. 2005 Stock Incentive Plan. (Incorporated by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-3/A (File No. 333-127400) as filed with the Securities and Exchange Commission on September 9, 2005).
10.106	Master Repurchase Agreement among DB Structured Products, Inc., Aspen Funding Corp. and Newport Funding Corp, New York Mortgage Trust, Inc. and NYMC Loan Corporation, dated as of December 13, 2005.*
10.107	Custodial Agreement among DB Structured Products, Inc., Aspen Funding Corp., and Newport Funding Corp., NYMC Loan Corporation, New York Mortgage Trust, Inc. and LaSalle Bank National Association, dated as of December 13, 2005.*
10.108	Master Repurchase Agreement among New York Mortgage Funding, LLC, The New York Mortgage Company, LLC, New York Mortgage Trust Inc. and Greenwich Capital Financial Products, Inc. dated as of January 5, 2006.*

Exhibit	Description
10.109	Amended and Restated Custodial Agreement by and among The New York Mortgage Company, LLC, New York Mortgage Funding, LLC, New York Mortgage Trust, Inc., LaSalle Bank National Association and Greenwich Capital Financial Products, Inc. dated as of January 5, 2006.*
12.1	Computation of Ratios
21.1	List of Subsidiaries of the Registrant.
23.1	Consent of Independent Registered Public Accounting Firm (Deloitte & Touche LLP).
31.1	Section 302 Certification of Co-Chief Executive Officer.
31.2	Section 302 Certification of Co-Chief Executive Officer.
31.3	Section 302 Certification of Chief Financial Officer.
32.1	Section 906 Certification of Co-Chief Executive Officers.
32.2	Section 906 Certification of Chief Financial Officer.

* Filed herewith.

**Amendment No. 1
to Bylaws of
New York Mortgage Trust, Inc.**

Section 2 of Article II of the Bylaws of New York Mortgage Trust, Inc. is hereby deleted in its entirety and replaced with the following:

Section 2. ANNUAL MEETING. An annual meeting of the stockholders for the election of directors and the transaction of any business within the powers of the Corporation shall be held by the end of June each year on a date and at a time set by the Board of Directors.

MASTER REPURCHASE AGREEMENT

Among:

**DB STRUCTURED PRODUCTS, INC., as Buyer
ASPEN FUNDING CORP., as Buyer
NEWPORT FUNDING CORP., as Buyer**

NEW YORK MORTGAGE TRUST, INC., as Guarantor

And

NYMC LOAN CORPORATION, as Seller

Dated as of December 13, 2005

TABLE OF CONTENTS

1.	APPLICABILITY	1
2.	DEFINITIONS AND INTERPRETATION	1
3.	THE TRANSACTIONS	17
4.	CONFIRMATIONS	18
5.	PAYMENT AND TRANSFER	18
6.	MARGIN MAINTENANCE	18
7.	INCOME PAYMENTS	19
8.	TAXES; TAX TREATMENT	19
9.	SECURITY INTEREST; BUYERS' APPOINTMENT AS ATTORNEY-IN-FACT	20
10.	CONDITIONS PRECEDENT	22
11.	RELEASE OF PURCHASED LOANS	25
12.	RELIANCE	25
13.	REPRESENTATIONS AND WARRANTIES	25
14.	COVENANTS OF SELLER AND GUARANTOR	28
15.	REPURCHASE DATE PAYMENTS/COLLECTIONS	33
16.	REPURCHASE OF PURCHASED LOANS; CHANGE OF LAW	34
17.	SUBSTITUTION	34
18.	REPURCHASE TRANSACTIONS	35
19.	EVENTS OF DEFAULT	35
20.	REMEDIES	39
21.	DELAY NOT WAIVER; REMEDIES ARE CUMULATIVE	41
22.	USE OF EMPLOYEE PLAN ASSETS	41
23.	INDEMNITY	41
24.	WAIVER OF REDEMPTION AND DEFICIENCY RIGHTS	43
25.	REIMBURSEMENT; SET-OFF	43
26.	FURTHER ASSURANCES	44
27.	ENTIRE AGREEMENT; PRODUCT OF NEGOTIATION	44
28.	TERMINATION	44
29.	ASSIGNMENT	44
30.	AMENDMENTS, ETC.	45
31.	SEVERABILITY	45
32.	BINDING EFFECT; GOVERNING LAW	45
33.	WAIVER OF JURY TRIAL; CONSENT TO JURISDICTION AND VENUE; SERVICE OF PROCESS	45
34.	SINGLE AGREEMENT	46
35.	INTENT	46
36.	NOTICES AND OTHER COMMUNICATIONS	46
37.	CONFIDENTIALITY	47
38.	DUE DILIGENCE	48
39.	NO PROCEEDINGS	48

EXHIBITS

EXHIBIT A-1	MONTHLY CERTIFICATION
EXHIBIT A-2	QUARTERLY CERTIFICATION
EXHIBIT B-1	REPRESENTATIONS AND WARRANTIES WITH RESPECT TO LOANS OTHER THAN SMALL BALANCE COMMERCIAL LOANS

EXHIBIT B-2	REPRESENTATIONS AND WARRANTIES WITH RESPECT TO LOANS THAT ARE SMALL BALANCE COMMERCIAL LOANS
EXHIBIT C	ACQUISITION GUIDELINES
EXHIBIT D	UNDERWRITING GUIDELINES
EXHIBIT E	FORM OF SECURITY RELEASE CERTIFICATION
EXHIBIT F	LITIGATION
EXHIBIT G	THIRD PARTY GUIDELINES

MASTER REPURCHASE AGREEMENT

Dated as of December 13, 2005

AMONG:

DB STRUCTURED PRODUCTS, INC. (“DBSP”), ASPEN FUNDING CORP. (“Aspen”), NEWPORT FUNDING CORP. (“Newport” and collectively with DBSP and Aspen, the “Buyers” and individually, a “Buyer,” which term shall include any “Principal” as defined and provided for in Annex I), or as agent pursuant hereto (“Agent”),

NEW YORK MORTGAGE TRUST, INC. (“Guarantor”), and

NYMC LOAN CORPORATION (“Seller”).

1. APPLICABILITY

The Buyers may, from time to time, upon the terms and conditions set forth herein, agree to enter into transactions in which Seller transfers to the related Buyer Eligible Loans against the transfer of funds by the related Buyer, with a simultaneous agreement by the related Buyer to transfer to Seller such Purchased Loans at a date certain, against the transfer of funds by Seller. Each such transaction shall be referred to herein as a “Transaction”, and, unless otherwise agreed in writing, shall be governed by this Agreement.

2. DEFINITIONS AND INTERPRETATION

(a) Defined Terms.

“Accepted Servicing Practices” means with respect to any Loan, those mortgage servicing practices (including collection procedures) of prudent mortgage banking institutions which service mortgage loans of the same type as the Loans in the jurisdiction where the related Mortgaged Property is located, and which are in accordance with Fannie Mae servicing practices and procedures for MBS pool mortgages, as defined in the Fannie Mae servicing guides including future updates.

“Acquisition Guidelines” means (i) NYMC’s loan acquisition guidelines set forth on Exhibit C in effect as of the date of this Agreement and which have been approved in writing by Buyers, and (ii) certain acquisition guidelines of third parties listed in Exhibit G hereof in accordance with which NYMC acquires Loans, all as the same may be amended from time to time in accordance with terms of this Agreement.

“Additional Purchased Loans” shall have the meaning assigned thereto in Section 6(a) hereof.

“Adjustable Rate Mortgage Loan” means a Loan which provides for the adjustment of the Mortgage Interest Rate payable in respect thereto.

“Adjusted Tangible Net Worth” means consolidated Net Worth plus Approved Subordinated Debt less goodwill, intangible assets and intercompany/interaffiliate receivables (each calculated in accordance with GAAP).

“Adjustment Date” means with respect to each Adjustable Rate Mortgage Loan, the date set forth in the related Note on which the Mortgage Interest Rate on the Loan is adjusted in accordance with the terms of the Note.

“ Affiliate ” means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, “control” means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise and the terms “controlling” and “controlled” have meanings correlative to the meaning of “control”.

“ Agent ” means any Buyer or any successor.

“ Aggregation Transaction ” shall mean the sale to Buyers of Aggregation Mortgage Loans hereunder.

“ Aggregation Mortgage Loan ” shall mean a Mortgage Loan sold to Buyers that Seller intends to repurchase and sell into an affiliated securitization vehicle.

“ Agreement ” means this Master Repurchase Agreement (including all exhibits, schedules and other addenda thereto), as supplemented by the Pricing Side Letter, as it may be amended, further supplemented or otherwise modified from time to time.

“ ALTA ” means the American Land Title Association.

“ Alt-A Loan ” means a Loan that satisfies the guidelines for such loans set forth in the Underwriting Guidelines.

“ Appraised Value ” means the value set forth in an appraisal made in connection with the origination of the related Loan as the value of the Mortgaged Property.

“ Approved Subordinated Debt ” means (a) all debt of Guarantor or any of its consolidated Subsidiaries to any Person that is effectively subordinated in right of payment to all present and future Obligations either (1) under a subordination of debt agreement on the form prescribed by Buyers or (2) otherwise on terms acceptable to Buyers, and (b) debt covenants and conditions of Guarantor or such Subsidiary that are not more restrictive or onerous than the covenants and conditions imposed on Guarantor or such Subsidiary under Section 14(g)(ii) herein..

“ Approved Title Insurance Company ” shall mean a title insurance company that has not been disapproved by Buyers in their sole discretion in a written notice to the Custodian by the Buyer.

“ Assignment of Mortgage ” means, with respect to any Mortgage, an assignment of the Mortgage, notice of transfer or equivalent instrument in recordable form, sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect the assignment of the Mortgage to Buyers.

“ Assignment of the Note and Pledge Agreement ” means with respect to a Cooperative Loan, an assignment of the Note and Pledge Agreement.

“ Assignment of the Proprietary Lease ” means with respect to a Cooperative Loan, an assignment of the Proprietary Lease.

“ Balloon Loan ” means, with respect to a Loan, a final Monthly Payment that is significantly larger than the other scheduled Monthly Payments in respect of such Loan.

“ Breakage Costs ” shall have the meaning assigned thereto in Section 3(d) herein.

“ Business Day ” means any day other than (i) a Saturday or Sunday or (ii) a day upon which the New York Stock Exchange, the Federal Reserve Bank of New York or the Custodian is authorized or obligated by law or executive order to be closed.

“ Cash Equivalents ” shall mean any of the following: (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of six months or less from the date of acquisition issued by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than \$500,000,000; (c) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody’s Investors Service, Inc. (“ Moody’s ”), or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within six months from the date of acquisition; (d) repurchase obligations of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than 30 days, with respect to securities issued or fully guaranteed or insured by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody’s; (f) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the requirements of clause (b) of this definition; or (g) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition.

“ Change in Control ” shall mean the acquisition by any Person, or two or more Persons acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934) of outstanding shares of voting stock of Guarantor at any time if after giving effect to such acquisition such Person or Persons owns fifty percent (50%) or more of such outstanding voting stock.

“ Change in Law ” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by Buyers (or any Affiliate of a Buyer) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

“ Closed End Second Lien Loan ” means a closed-end Second Lien Loan.

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

“ Collateral ” shall have the meaning assigned thereto in Section 9 hereof.

“ Collection Account ” means the following account established by the Seller in accordance with Section 14(w) for the benefit of the Buyers, “DB Structured Products, Inc., Aspen Funding Corp., and Newport Funding Corp. - P&I account - Account # 723207.1”.

“ Combined Loan-to-Value Ratio ” or “ CLTV ” means with respect to any First Lien Mortgage Loan or Second Lien Mortgage Loan, the sum of the original principal balance of such First Lien Mortgage Loan or Second Lien Mortgage Loan, as applicable, at the time of origination and the outstanding principal balance of any related first lien loan or second lien loan, as applicable as of the date of origination of such First Lien Mortgage Loan or Second Lien Mortgage Loan, as applicable, divided by the lesser of (a) the Appraised Value of the related Mortgage Property as of the date of origination of such First Lien Mortgage Loan or Second Lien Mortgage Loan, as applicable and (b) if the related Mortgaged Property was purchased within twelve (12) months of the origination of such First Lien Mortgage Loan or Second Lien Mortgage Loan, as applicable, the purchase price of such Mortgaged Property.

“ Commercial Paper Notes ” shall mean the short-term promissory notes issued by Aspen or Newport having an original term to maturity of 270 days or less (including the date of issuance thereof).

“ Computer Tape ” means a computer tape or other electronic medium generated by or on behalf of Seller and delivered or transmitted to Buyers and Custodian which provides information relating to the Purchased Loans, including the information set forth in the Loan Schedule and the information set forth on Annex 1 to the Disbursement Agreement, in a format acceptable to Buyers.

“ Confirmation ” shall have the meaning assigned thereto in Section 4 hereof.

“ Conforming Mortgage Loan ” means a Loan which is insured by, and meets all criteria of and is approved through the Underwriting Systems of, Fannie Mae, Freddie Mac, the FHA or the Department of Veterans Affairs which is secured by a first lien on the related Mortgaged Property.

“ Consent ” shall mean a document executed by the Cooperative (i) consenting to the sale of the Cooperative Apartment to the Mortgagor and (ii) certifying that all maintenance charges relating to the Cooperative Apartment have been paid.

“ Cooperative ” shall mean the private, non profit cooperative apartment corporation which owns all of the real property that comprises the Project, including the land, separate dwelling units and all common areas.

“ Cooperative Apartment ” shall mean the specific dwelling unit relating to a Cooperative Loan.

“ Cooperative Lien Search ” shall mean a search for (a) federal tax liens, mechanics' liens, lis pendens, judgments of record or otherwise against (i) the Cooperative, (ii) the seller of the Cooperative Apartment and (iii) the Mortgagor if the Cooperative Loan is a Refinanced Loan, (b) filings of Financing Statements and (c) the deed of the Project into the Cooperative.

“ Cooperative Loan ” shall mean a Mortgage Loan that is secured by a first lien on and a perfected security interest in Cooperative Shares and the related Proprietary Lease granting exclusive rights to occupy the related Cooperative Apartment in the building owned by the related Cooperative.

“ Cooperative Shares ” shall mean the shares of stock issued by the Cooperative, owned by the Mortgagor, and allocated to a Cooperative Apartment and represented by a Stock Certificate.

“ Coop Pledge Agreement ” shall mean the specific agreement creating a first lien on and pledge of the Cooperative Shares and the appurtenant Proprietary Lease securing a Cooperative Loan.

“ Custodial Agreement ” means the Custodial Agreement dated as of December 13, 2005 among Seller, Buyer, Guarantor, and Custodian as the same may be amended, modified or supplemented from time to time.

“ Custodian ” means LaSalle Bank National Association, or its successors and permitted assigns.

“DBSI” means Deutsche Bank Securities Inc. and any successor thereto.

“Default” means any event, that, with the giving of notice or the passage of time or both, would constitute an Event of Default.

“Default Rate” means, as of any date of determination, the lesser of (i) the Prime Rate plus 2% and (ii) the maximum rate permitted by applicable law. The Default Rate is calculated on the basis of a 360-day year and the actual number of days elapsed between the date of Default and the date of determination.

“Delinquent” means, with respect to a Loan, that a monthly payment due thereon is not made by the close of business on the Due Date.

“Delinquent Loan” means any 30-Day Delinquent Loan, 60-Day Delinquent Loan, or 90-Day Delinquent Loan.

“Disbursement Agent” means Deutsche Bank National Trust Company, or its successors and permitted assigns.

“Disbursement Agreement” means the disbursement agreement dated as of December 13, 2005 among Seller, Buyers, Guarantor and the Disbursement Agent.

“Dollars” or “\$” means, unless otherwise expressly stated, means lawful money of the United States of America.

“Dry Mortgage Loan” shall mean a first lien or a second lien Loan which is underwritten in accordance with the Underwriting Guidelines which Mortgage File contains all required Mortgage Loan Documents.

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

“Effective Date” shall mean the date set forth on the top of the first page of this Agreement.

“Electronic Tracking Agreement” means the electronic tracking agreement dated as of December 13, 2005 among Buyers, Seller, NYMC, MERSCORP, Inc. and Mortgage Electronic Registration, Systems, Inc., in form and substance acceptable to Buyers to be entered into in the event that any of the Loans become MERS Designated Mortgage Loans as the same may be amended, modified or supplemented from time to time; provided that if no Loans are or will be MERS Designated Mortgage Loans, all references herein to the Electronic Tracking Agreement shall be disregarded.

“Electronic Transmission” means the delivery of information in an electronic format acceptable to the applicable recipient thereof. An Electronic Transmission shall be considered written notice for all purposes hereof (except when a request or notice by its terms requires execution).

“Eligible Loan” means any Subprime Loan, Alt-A Loan, Conforming Loan, Jumbo Loan, Super Jumbo Loan, Small Balance Commercial Loan, 30-Day Delinquent Loan, 60-Day Delinquent Loan, 90-Day Delinquent Loan, Wet-Ink Subprime Loan, Wet-Ink Alt-A Loan, Wet-Ink Conforming Loan, Wet-Ink Jumbo Loan, Wet-Ink Super Jumbo Loan, Wet-Ink Small Balance Commercial Loan, Closed End Second Lien Loan or HELOC, that satisfies the criteria set forth in the definition of “Eligible Loan” in the Pricing Side Letter.

“ Escrow Letter ” means the escrow or closing letter from the Seller to the Settlement Agent in the form attached as Annex 17 to the Custodial Agreement

“ Escrow Payments ” means the amounts constituting ground rents, taxes, assessments, water charges, sewer rents, mortgage insurance premiums, fire and hazard insurance premiums and other payments as may be required to be escrowed by the Mortgagor with the Mortgagee pursuant to the terms of any Note or Mortgage.

“ Estoppel Letter ” shall mean a document executed by the Cooperative certifying, with respect to a Cooperative Apartment, (i) the appurtenant Proprietary Lease will be in full force and effect as of the date of issuance thereof, (ii) the related Stock Certificate was registered in the Mortgagor’s name and the Cooperative has not been notified of any lien upon, pledge of, levy of execution on or disposition of such Stock Certificate, and (iii) the Mortgagor is not in default under the appurtenant Proprietary Lease and all charges due the Cooperative have been paid.

“ Event of Default ” shall have the meaning assigned thereto in Section 19 hereof.

“ Fannie Mae ” means the Federal National Mortgage Association, and its successors in interest.

“ FHA ” means the Federal Housing Administration, an agency within HUD, or any successor thereto and including the Federal Housing Commissioner and the Secretary of Housing and Urban Development where appropriate under the FHA regulations.

“ FICO Score ” means the credit score of the Mortgagor provided by Fair, Isaac & Company, Inc. or such other organization providing credit scores at the time of the origination of a Loan.

“ Financing Statement ” shall mean a financing statement in the form of a UCC 1 filed pursuant to the Uniform Commercial Code to perfect a security interest in the Cooperative Shares and Pledge Instruments.

“ First Lien Mortgage Loan ” means a Loan secured by a first priority lien on the related Mortgaged Property.

“ Freddie Mac ” means the Federal Home Loan Mortgage Corporation, and its successors in interest.

“ GAAP ” means generally accepted accounting principles in the United States of America in effect from time to time.

“ Governmental Authority ” shall mean any nation or government, any state or other political subdivision thereof, or any entity exercising executive, legislative, judicial, regulatory or administrative functions over Seller or Guarantor.

“ Gross Margin ” means with respect to each Adjustable Rate Mortgage Loan, the fixed percentage amount set forth in the related Note and the Loan Schedule that is added to the Index on each Adjustment Date in accordance with the terms of the related Note to determine the new Mortgage Interest Rate for such Loan.

“ Guarantee ” means, as to any Person, any obligation of such Person directly or indirectly guaranteeing any Indebtedness of any other Person or in any manner providing for the payment of any Indebtedness of any other Person.

“Guarantor” means New York Mortgage Trust, Inc. and any successor thereto.

“Guaranty” means the Guaranty Agreement of Guarantor in favor of Buyers, dated as of December 13, 2005, as the same may be amended, modified or supplemented from time to time.

“Hedge Instrument” means any interest rate cap agreement, interest rate floor agreement, interest rate swap agreement or other interest rate hedging agreement entered into by the Seller or the Guarantor with a counterparty approved by the Buyers.

“HELOC” means an open end home equity line of credit secured by a first or second lien and underwritten in accordance with the Underwriting Guidelines.

“High Cost Loan” means a Loan that is (a) subject to, covered by or in violation of the provisions of the Homeownership and Equity Protection Act of 1994, as amended, (b) a “high cost”, “covered”, “abusive”, “predatory” or “high risk” mortgage loan under any federal, state or local law, or similarly classified loan using different terminology under a law imposing heightened regulation scrutiny or additional legal liability for residential mortgage loans having high interest rates, points and/or fees, or any other state or regulation providing assignee liability to holders of such mortgage loans, (c) subject to or in violation of any such or comparable federal, state or local statutes or regulations, or (d) a “High Cost Loan” or “Covered Loan,” as applicable (as such terms are defined in the current Standard & Poor’s LEVELS® Glossary Revised, Appendix E.

“HUD” means the Department of Housing and Urban Development, or any federal agency or official thereof which may from time to time succeed to the functions thereof with regard to FHA mortgage insurance. The term “HUD,” for purposes of this Agreement, is also deemed to include subdivisions thereof such as the FHA and Government National Mortgage Association.

“Income” means, with respect to any Purchased Loan at any time, any principal and/or interest thereon and all dividends, sale proceeds (including, without limitation, any proceeds from the securitization of such Purchased Loan or other disposition thereof) and other collections and distributions thereon (including, without limitation, any proceeds received in respect of mortgage insurance), but not including any commitment fees, origination fees and/or servicing fees accrued in respect of periods on or after the initial Purchase Date with respect to such Purchased Loan.

“Indebtedness” shall mean, for any Person: (a) all obligations for borrowed money (excluding non-recourse debt obligations); (b) obligations of such Person to pay the deferred purchase or acquisition price of Property or services, other than trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business so long as such trade accounts payable are payable and paid within ninety (90) days of the date the respective goods are delivered or the respective services are rendered; (c) indebtedness of others secured by a lien on the Property of such Person, whether or not the respective indebtedness so secured has been assumed by such Person; (d) obligations (contingent or otherwise) of such Person in respect of letters of credit or similar instruments issued for account of such Person; (e) capital lease obligations of such Person; (f) obligations of such Person under repurchase agreements or like arrangements; (g) indebtedness of others guaranteed on a recourse basis by such Person; (h) all obligations of such Person incurred in connection with the acquisition or carrying of fixed assets by such Person; (i) indebtedness of general partnerships of which such Person is a general partner; and (j) any other contingent liabilities of such Person.

“Index” means with respect to each Adjustable Rate Mortgage Loan, the index identified on the related Loan Schedule and set forth in the related Note for the purpose of calculating the interest rate thereon.

“ Insured Closing Letter ” shall mean a letter of indemnification from an Approved Title Insurance Company addressed to Seller with coverage that is customarily acceptable to Persons engaged in the origination of mortgage loans, identifying the Settlement Agent covered thereby. The Insured Closing Letter shall be either with respect to the individual Wet-Ink Mortgage Loan being purchased pursuant hereto or a blanket Insured Closing Letter which covers closings conducted by the Settlement Agent in the jurisdiction in which the closing of such Wet-Ink Mortgage Loan takes place.

“ Interest-Only Loan ” means a Loan which, by its terms, requires the related Mortgagor to make monthly payments of only accrued interest for a certain period of time following origination. After such interest-only period, the loan terms provide that the Mortgagor’s monthly payment will be recalculated to cover both interest and principal so that such Loan will amortize fully on or prior to its final payment date.

“ Investment Company Act ” means the Investment Company Act of 1940, as amended, including all rules and regulations promulgated thereunder.

“ Jumbo Loan ” means a Loan that is secured by a first lien and meets all criteria of Fannie Mae or Freddie Mac, except that the outstanding principal balance thereof at origination was in excess of Fannie Mae or Freddie Mac’s guidelines.

“ Lead Managed Aggregation Transaction ” shall mean an Aggregation Transaction relating to a securitization with respect to which DBSP or an Affiliate thereof will be a lead manager or joint lead manager.

“ LIBOR ” shall mean, for each day, the rate determined by Buyers on the related Purchase Date on the basis of the offered rate for one-month U.S. dollar deposits, as such rate appears on Telerate Page 3750 as of 11:00 a.m. (London time) on such date (rounded up to the nearest whole multiple of 1/16%); provided that if such rate does not appear on Telerate Page 3750, the rate for such date will be the rate determined by reference to such other comparable publicly available service publishing such rates as may be selected by Buyers in their sole discretion and communicated to Seller.

“ Liquidity ” shall mean Unrestricted Cash and mortgage backed securities which (i) have a rating by S&P of “AAA”, (ii) are free of all liens and encumbrances, and (iii) are on the balance sheet of the Guarantor.

“ Loan ” means (i) a first lien or second lien, fixed rate or adjustable rate, closed-end, wet or dry-funded, residential mortgage loan or home equity mortgage loan either originated in accordance with the Underwriting Guidelines or acquired in accordance with the Acquisition Guidelines and in each case, meets the representations and warranties attached as Exhibit B hereto and deemed by Buyers to be eligible for securitization in the normal course of business, (ii) such other type of loan, lease or other receivable as shall be agreed upon by the parties in writing, or (iii) any interest in, or secured by, any such loan, lease or other receivable.

“ Loan Schedule ” means the list of Loans delivered by Guarantor or Seller to the related Buyer and Custodian together with each Transaction Notice and attached by the Custodian to the related Trust Receipt. Each Loan Schedule (which shall also include a Computer Tape) shall set forth the following information with respect to each Loan: product description, purchased loan number, obligor name and address, principal balance, coupon, first payment date, last payment date, next payment due date, monthly payment, origination date, credit score, debt-to-income ratio, property type, property valuation, LTV, CLTV, loan purpose, owner occupancy, lien status, senior liens, subordinate liens, purchase price paid, selling entity, whether the loans are subject to prepayment charges, any other information required by the related Buyer and any other additional items to be delivered as set forth on Annex 1 to the Custodial Agreement.

“Loan-to-Value Ratio” or “LTV” means with respect to any Loan, the ratio of the outstanding principal amount of such Loan at the time of origination to the lesser of (a) the Appraised Value of the related Mortgaged Property at origination of such Loan and (b) if the related Mortgaged Property was purchased within twelve (12) months of the origination of such Loan, the purchase price of the related Mortgaged Property.

“Manufactured Home” means a prefabricated or manufactured home a lien on which secures a Loan and which is considered and treated as “real property” under applicable law.

“Margin Call” shall have the meaning assigned thereto in Section 6(a) hereof.

“Margin Deficit” shall have the meaning assigned thereto in Section 6(a) hereof.

“Market Value” means (i) with respect to any Purchased Loan that is an Eligible Loan, as of any date of determination, the value ascribed to such asset by the related Buyer in its sole discretion as marked to market daily, and (ii) with respect to a Purchased Loan that is not an Eligible Loan or a Purchased Loan that is deemed by the related Buyer to be unsecuritizable or otherwise uncollectible, zero.

“Master Loan Sale Agreement” means the Master Loan Sale Agreement, dated as of December 13, 2005 among NYMC and Seller, as the same may be amended, modified or supplemented from time to time.

“Material Adverse Change” means, with respect to a Person, any material adverse change in the business, condition (financial or otherwise), operations, performance or properties of such Person taken as a whole.

“Material Adverse Effect” means (a) a Material Adverse Change with respect to a Person or a Person and its Affiliates that are party to any Program Document taken as a whole; (b) a material impairment of the ability of a Person or any Affiliate thereof that is a party to any Program Document to perform its obligations under any Program Document; (c) an assertion in writing by a Person or a determination by a court or other Governmental Authority having appropriate jurisdiction or authority that any Program Document is not legal, valid, binding or enforceable against a party to any Program Document; or (d) a material adverse effect upon the value or marketability of a material portion of the Purchased Loans.

“Maximum Aggregate Purchase Price” means Three Hundred Million Dollars (\$300,000,000).

“Maximum Mortgage Interest Rate” means with respect to each Adjustable Rate Mortgage Loan, a rate that is set forth on the related Loan Schedule and in the related Mortgage Note and is the maximum interest rate to which the Mortgage Interest Rate on such Mortgage Loan may be increased on any Adjustment Date.

“MERS” shall have the meaning assigned thereto in the Custodial Agreement.

“MERS Designated Mortgage Loan” shall have the meaning assigned thereto in the Custodial Agreement.

“ Monthly Payment ” means with respect to any Loan, the scheduled combined payment of principal and interest payable by a Mortgagor under the related Mortgage Note on each Due Date.

“ Mortgage ” means a mortgage, deed of trust, or other instrument that creates a lien on the related Mortgaged Property and secures a Note.

“ Mortgage File ” shall have the meaning assigned thereto in the Custodial Agreement.

“ Mortgage Identification Number ” shall have the meaning assigned thereto in the Custodial Agreement.

“ Mortgage Interest Rate ” means, with respect to each Loan, the annual rate at which interest accrues on such Loan from time to time in accordance with the provisions of the related Note.

“ Mortgage Loan Documents ” shall have the meaning assigned thereto in the Custodial Agreement.

“ Mortgaged Property ” means, with respect to a Loan, the related Mortgagor’s fee interest in real property or leasehold interest in real property and all other collateral securing repayment of the debt evidenced by the related Note.

“ Mortgagee ” means the record holder of a Note secured by a Mortgage.

“ Mortgagor ” means the obligor or obligors on a Note, including any person who has assumed or guaranteed the obligations of the obligor thereunder.

“ MV Margin Amount ” means, with respect to any Transaction, as of any date of determination, the amount obtained by application of the MV Margin Percentage to the Repurchase Price for such Transaction as of such date.

“ MV Margin Percentage ” shall have the meaning assigned thereto in the Pricing Side Letter.

“ Negative Amortization ” shall mean the portion of interest accrued at the Mortgage Interest Rate in any month which exceeds the Monthly Payment on the related Loan for such month and which, pursuant to the terms of the Mortgage Note, is added to the principal balance of the Loan.

“ Net Worth ” shall mean, with respect to the Guarantor, the excess of Guarantor’s total assets, over Guarantor’s total liabilities, determined in accordance with GAAP.

“ 90-Day Delinquent Loan ” shall mean a Loan that is ninety (90) days or more Delinquent.

“ Non Usage Fee ” shall have the meaning assigned thereto in the Pricing Side Letter.

“ Note ” means, with respect to any Loan, the related promissory note together with all riders thereto and amendments thereof or other evidence of indebtedness of the related Mortgagor.

“ NYMC ” means The New York Mortgage Company, LLC and any successor thereto.

“ Obligations ” means (a) all of Seller’s and Guarantor’s obligation to pay the Repurchase Price on the Repurchase Date and other obligations and liabilities of Seller and Guarantor to Buyers, its Affiliates, Custodian or any other Person arising under, or in connection with, the Program Documents or directly related to the Purchased Loans, whether now existing or hereafter arising; (b) any and all sums paid by Buyers or on behalf of Buyers pursuant to the Program Documents in order to preserve any Purchased Loan or its interest therein; (c) in the event of any proceeding for the collection or enforcement of any of Seller’s or Guarantor’s indebtedness, obligations or liabilities referred to in clause (a), the reasonable expenses of retaking, holding, collecting, preparing for sale, selling or otherwise disposing of or realizing on any Purchased Loan, or of any exercise by Buyers or any such Affiliate of their rights under the Program Documents, including without limitation, reasonable attorneys’ fees and disbursements and court costs; and (d) all of Seller’s and Guarantor’s indemnity obligations to Buyers pursuant to the Program Documents.

“ Option ARM Loan ” shall mean a first lien Alt-A Loan or Conforming Mortgage Loan that is an Adjustable Rate Mortgage Loan that (i) provides the Mortgagor with multiple Monthly Payment options and (ii) may result in Negative Amortization, as set forth in the related Underwriting Guidelines or Acquisition Guidelines, as applicable.

“ Originator ” shall mean NYMC.

“ Par Margin Amount ” means, with respect to any Transaction, as of any date of determination, the amount obtained by application of the Par Margin Percentage to the Repurchase Price for such Transaction as of such date.

“ Par Margin Percentage ” shall have the meaning assigned thereto in the Pricing Side Letter.

“ Person ” means any legal person, including any individual, corporation, partnership, association, joint stock company, trust, limited liability company, unincorporated organization, governmental entity or other entity of similar nature.

“ Pledge Agreement ” means the Pledge Agreement of NYMC in favor of Buyers, dated as of December 13, 2005, as the same may be amended, modified or supplemented from time to time.

“ Pledge Instruments ” shall mean the Stock Power, the Assignment of the Proprietary Lease and the Assignment of the Note and Coop Pledge Agreement.

“ Price Differential ” means, with respect to each Transaction as of any date of determination, the aggregate amount obtained by daily application of the Pricing Rate (or during the continuation of an Event of Default, by daily application of the Default Rate) for such Transaction to the Purchase Price for such Transaction on a 360-day-per-year basis for the actual number of days elapsed during the period commencing on (and including) the Purchase Date and ending on (but excluding) the Repurchase Date (reduced by any amount of such Price Differential in respect of such period previously paid by Seller to Buyers with respect to such Transaction).

“ Pricing Rate ” means the per annum percentage rate for determination of the Price Differential as set forth in the Pricing Side Letter.

“ Pricing Side Letter ” means the pricing side letter, dated as of December 13, 2005, among Seller, Guarantor and Buyers, as the same may be amended, supplemented or modified from time to time.

“ Prime Rate ” means the daily prime loan rate as reported in The Wall Street Journal or if more than one rate is published, the highest of such rates.

“ Principal ” shall have the meaning given to it in Annex I.

“ Program Documents ” means this Agreement, the Custodial Agreement, the Disbursement Agreement, any Servicing Agreement, the Servicing Side Letter, the Pledge Agreement, the Guaranty, any assignment of Hedge Instrument, the Master Loan Sale Agreement, the Pricing Side Letter, the Electronic Tracking Agreement and any other agreement entered into by Seller and/or Guarantor and/or the Servicer, on the one hand, and the Buyers or one of their Affiliates (or Custodian on its behalf) on the other, in connection herewith or therewith.

“ Project ” shall mean all real property owned by the Cooperative including the land, separate dwelling units and all common areas.

“ Proprietary Lease ” shall mean a lease on a Cooperative Apartment evidencing the possessory interest of the Mortgagor in such Cooperative Apartment.

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

“ Purchase Date ” means, with respect to each Transaction, the date on which Purchased Loans are sold by Seller to the related Buyer hereunder.

“ Purchase Price ” shall have the meaning assigned thereto in the Pricing Side Letter.

“ Purchased Loans ” means any of the following assets sold by Seller to one or more Buyers in a Transaction: the related Loans, together with the related Records, Servicing Rights, Seller’s or Guarantor’s rights under any related Hedge Instruments, Seller’s or Guarantor’s rights under any takeout commitment related to the Loans and other Collateral, such other property, rights, titles or interest as are specified on a related Transaction Notice, and all instruments, chattel paper, and general intangibles comprising or relating to all of the foregoing. The term “Purchased Loans” with respect to any Transaction at any time also shall include Additional Purchased Loans delivered pursuant to Section 6 (a) hereof and Substitute Loans delivered pursuant to Section 17 hereof.

“ Reacquired Loans ” shall have the meaning assigned thereto in Section 17.

“ Recognition Agreement ” means an agreement whereby a Cooperative and a lender with respect to a Cooperative Loan (i) acknowledge that such lender may make, or intends to make, such Cooperative Loan, and (ii) make certain agreements with respect to such Cooperative Loan.

“ Records ” means all instruments, agreements and other books, records, and reports and data generated by other media for the storage of information maintained by Seller or any other person or entity with respect to a Purchased Loan. Records shall include, without limitation, the Notes, any Mortgages, the Mortgage Files, the Servicing File, and any other instruments necessary to document or service a Loan that is a Purchased Loan, including, without limitation, the complete payment and modification history of each Loan that is a Purchased Loan.

“ Refinanced Mortgage Loan ” means a Mortgage Loan the proceeds of which were not used to purchase the related Mortgaged Property.

“ REIT ” means a real estate investment trust, as defined in Section 856 of the Code.

“ REIT Status ” means with respect to any Person, such Person’s status as a real estate investment trust, as defined in Section 856(a) of the Code that satisfies the conditions and limitations set forth in Sections 856(b) and 856(c) of the Code.

“Repurchase Date” means the date occurring on (i) the 21st day of each month (or if such date is not a Business Day, the following Business Day), (ii) any other Business Day set forth in the related Transaction Notice and/or the related Confirmation, or (iii) the date determined by application of Section 20, as applicable; provided, however, that in no event shall the Repurchase Date for any Purchased Loan be more than 364 days after the Purchase Date of such Purchased Loan.

“Repurchase Price” means the price at which Purchased Loans are to be transferred from the related Buyer to Seller upon termination of a Transaction, which will be determined in each case (including Transactions terminable upon demand) as the sum of the Purchase Price for such Purchased Loans and the Price Differential as of the date of such determination.

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

“Residential Dwelling” means any one of the following: (i) a detached single family dwelling, (ii) a two-to-four family dwelling, (iii) a one-family dwelling unit in a Fannie Mae eligible condominium project, (iv) a townhouse, or (v) a detached single family dwelling in a planned unit development none of which is a co-operative commercial property. Mortgaged Properties that consist of the following property types are not Residential Dwellings: (a) mixed use properties, (b) log homes, (c) earthen homes, (d) underground homes, (e) mobile homes or manufactured housing units not secured by real property, (f) any dwelling situated on more than ten acres of property and (g) any dwelling situated on a leasehold estate.

“S&P” means Standard & Poor’s Rating Services.

“Second Lien Mortgage Loan” means an Eligible Loan secured by a lien on the Mortgaged Property, which is subject to one prior lien on such Mortgaged Property.

“Security Agreement” means with respect to any Loan, any contract, instrument or other document related to security for repayment thereof (other than the related Mortgage and Note), executed by the Mortgagor and/or others in connection with such Loan, including without limitation, any security agreement, guaranty, title insurance policy, hazard insurance policy, chattel mortgage, letter of credit or certificate of deposit or other pledged accounts, and any other documents and records relating to any of the foregoing.

“Security Release Certification” shall mean a security release certification in substantially the form set forth as Exhibit E hereto.

“Servicer” means Cenlar F.S.B. and any successor thereto, or any other servicer approved by Buyers in their sole discretion.

“Servicing Agreement” means any agreement (other than the Custodial Agreement) giving rise or relating to Servicing Rights with respect to a Purchased Loan, including any assignment or other agreement relating to such agreement.

“Servicing File” means with respect to each Loan, the file retained by Seller consisting of all documents that a prudent originator and servicer would have, including copies of the Mortgage Loan Documents, all documents necessary to document and service the Loans and any and all documents required to be delivered pursuant to any of the Program Documents.

“ Servicing Rights ” means contractual, possessory or other rights of Seller or any other Person, whether arising under a Servicing Agreement or otherwise, to administer or service a Purchased Loan or to possess related Records.

“ Servicing Side Letter ” means the servicing side letter dated as of December 13, 2005 among the Buyers, the Seller, the Guarantor and the Servicer, as the same may be amended, modified or supplemented from time to time.

“ Settlement Agent ” means, with respect to any Wet-Ink Mortgage Loan, the Person specified in the Transaction Notice (which may be a title company, escrow company or attorney in accordance with local law and practice in the jurisdiction where the related Wet-Ink Mortgage Loan is being originated and which is not listed as an Unapproved Settlement Agent on Annex 15 to the Custodial Agreement as revised from time to time by Buyers) to which the proceeds of the related Purchase Price with respect to such Wet-Ink Mortgage Loan are to be distributed by the Disbursement Agent.

“ 60-Day Delinquent Loan ” means a Loan which is more than fifty-nine (59) days Delinquent but less than ninety (90) days Delinquent.

“ Small Balance Commercial Loan ” means any Loan that is secured by a multi-family, small commercial or mixed use property and is not a Residential Dwelling.

“ Stock Certificates ” means the certificates evidencing ownership of the Cooperative Shares issued by the Cooperative.

“ Stock Power ” means an assignment of the Stock Certificate or an assignment of the Cooperative Shares issued by the Cooperative.

“ Subprime Loan ” means any Loan (other than a Wet-Ink Loan) that is not a Conforming Loan or an Alt-A Loan.

“ Subsidiary ” means, with respect to any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person. Notwithstanding the foregoing, the term “Subsidiary”, when used with respect to the Guarantor, shall not include any trust or other issuing entity formed for the purpose of issuing mortgage-backed securities, the beneficial ownership interest or interests in which are owned, directly or indirectly, by the Guarantor.

“ Substitute Loans ” has the meaning assigned thereto in Section 17.

“ Termination Date ” means the earlier of (i) 364 days following the Effective Date, (ii) at Buyers’ option, upon the occurrence of an Event of Default, or (iii) at Buyers’ option, upon the occurrence of any outbreak or material escalation of hostilities, declaration by the United States of a national emergency or war or other calamity or crisis, the effect of which on the financial markets is such as to make it, in the reasonable judgment of Buyers, impracticable to continue this Agreement.

“ Total Indebtedness ” shall mean with respect to any Person, for any period, the aggregate Indebtedness of such Person and its Subsidiaries during such Period.

“ 30-Day Delinquent Loan ” shall mean a Loan which is more than twenty-nine (29) days Delinquent but less than sixty (60) days Delinquent.

“ Transaction ” has the meaning assigned thereto in Section 1.

“ Transaction Notice ” means a written request of Seller to enter into a Transaction, in a form attached as Exhibit A to the Custodial Agreement or such other form as shall be mutually agreed upon among Seller and Buyers, which is delivered to the related Buyer, the Disbursement Agent and the Custodian.

“ Trust Receipt ” means a Trust Receipt and Certification as defined in the Custodial Agreement.

“ Underwriting Guidelines ” means (i) NYMC’s loan underwriting guidelines set forth on Exhibit D in effect as of the date of this Agreement and which have been approved in writing by Buyers, and (ii) certain underwriting guidelines of third parties listed in Exhibit G hereof in accordance with which NYMC underwrites Loans, as the same may be amended from time to time in accordance with terms of this Agreement.

“ Uniform Commercial Code ” means the Uniform Commercial Code as in effect on the date hereof in the State of New York or the Uniform Commercial Code as in effect in the applicable jurisdiction.

“ Unrestricted Cash ” means cash and Cash Equivalents, of the Guarantor that are not subject to a lien in favor of any Person other than the Buyers pursuant to the Guaranty or that are not required to be maintained by the Guarantor pursuant to a contractual agreement (other than this Agreement) or requirement of law.

“ USC ” shall have the meaning assigned thereto in Section 35.

“ Wet Funding Package ” shall have the meaning set forth in the Custodial Agreement.

“ Wet-Ink Mortgage Loan ” means a first lien or second lien Loan that is sold to the related Buyer simultaneously with the origination thereof by the Originator, which origination is in accordance with the Underwriting Guidelines and is funded in part or in whole with proceeds of the sale of the Loan to the related Buyer paid directly to a Settlement Agent and for which all of the Mortgage Loan Documents specified in the Custodial Agreement have not been delivered to Custodian in accordance with the Custodial Agreement. For the avoidance of doubt Wet-Ink Mortgage Loans shall include each Wet-Ink Conforming Loan, Wet-Ink Alt-A Loan, Wet-Ink HELOC, Wet-Ink Subprime Loan, Wet-Ink Jumbo Loan and Wet-Ink Small Balance Commercial Loan.

“ Wet-Ink Alt-A Loan ” means any Wet-Ink Mortgage Loan that is an Alt-A Loan .

“ Wet-Ink Conforming Loan ” means any Wet-Ink Mortgage Loan that is a Conforming Loan.

“ Wet-Ink HELOC ” means any Wet-Ink Mortgage Loan that is a HELOC.

“ Wet-Ink Jumbo Loan ” means any Wet-Ink Mortgage Loan that is a Jumbo Loan.

“Wet Ink Small Balance Commercial Loan” means any Wet-Ink Mortgage Loan that is a Small Balance Commercial Loan.

“Wet-Ink Subprime Loan” means any Wet-Ink Loan that is not a Wet-Ink Conforming Loan or a Wet-Ink Alt-A Loan.

(b) Capitalized terms used but not defined in this Agreement shall have the meanings assigned thereto in the Custodial Agreement.

(c) Interpretation.

Headings are for convenience only and do not affect interpretation. The following rules of this subsection (c) apply unless the context requires otherwise. The singular includes the plural and conversely. A gender includes all genders. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning. A reference to a subsection, Section, Annex or Exhibit is, unless otherwise specified, a reference to a Section of, or annex or exhibit to, this Agreement. A reference to a party to this Agreement or another agreement or document includes the party’s successors and permitted substitutes or assigns. A reference to an agreement or document is to the agreement or document as amended, modified, novated, supplemented or replaced, except to the extent prohibited by any Program Document. A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it. A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form. A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing. An Event of Default exists until it has been waived in writing by Buyers or has been timely cured. The words “hereof”, “herein”, “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “including” is not limiting and means “including without limitation”. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”, the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including”. This Agreement may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms. Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP, consistently applied. References herein to “fiscal year” and “fiscal quarter” refer to such fiscal periods of Seller or Guarantor, as applicable.

Except where otherwise provided in this Agreement, any determination, consent, approval, statement or certificate made or confirmed in writing with notice to Seller or Guarantor by any Buyer or an authorized officer of any Buyer provided for in this Agreement is conclusive and binds the parties in the absence of manifest error. A reference to an agreement includes a security interest, guarantee, agreement or legally enforceable arrangement whether or not in writing related to such agreement.

A reference to a document includes an agreement (as so defined) in writing or a certificate, notice, instrument or document, or any information recorded in computer disk form. Where Seller or Guarantor is required to provide any document to Buyers under the terms of this Agreement, the relevant document shall be provided in writing or printed form unless Buyers request otherwise. At the request of Buyers, the document shall be provided in computer disk form or both printed and computer disk form.

This Agreement is the result of negotiations among, and has been reviewed by counsel to, Buyers, Guarantor and Seller, and is the product of all parties. In the interpretation of this Agreement, no rule of construction shall apply to disadvantage one party on the ground that such party proposed or was involved in the preparation of any particular provision of this Agreement or this Agreement itself. Except where otherwise expressly stated, Buyers may give or withhold, or give conditionally, approvals and consents and may form opinions and make determinations at its absolute discretion. Any requirement of good faith, discretion or judgment by Buyers shall not be construed to require Buyers to request or await receipt of information or documentation not immediately available from or with respect to Seller, Guarantor, a servicer of the Purchased Loans, any other Person or the Purchased Loans themselves.

3. THE TRANSACTIONS

(a) Subject to the terms and conditions of the Program Documents, the Buyers may enter into Transactions with an aggregate Purchase Price for all Purchased Loans acquired by all Buyers not to exceed the Maximum Aggregate Purchase Price. Unless otherwise agreed, (i) with respect to the purchase of Loans that are Dry Mortgage Loans, Seller shall give the related Buyer and Custodian notice of any proposed purchase by delivering on the proposed purchase prior to 11:00 a.m. New York City time two (2) Business Days prior to the proposed Purchase Date (the date on which such notice is so given, the “Notice Date”) (A) a Transaction Notice, a Loan Schedule and a Computer Tape to the related Buyer and Custodian, and (B) the Mortgage File to Custodian for each Loan subject to such Transaction, and (ii) with respect to the purchase of Wet-Ink Mortgage Loans, prior to 3:00 p.m., New York City time, on the Business Day prior to the purchase of such Wet-Ink Mortgage Loans by a Buyer, Seller shall notify the related Buyer of an estimate of the Purchase Price of such Wet-Ink Mortgage Loans and Seller shall give the related Buyer and Custodian notice of any proposed purchase and shall deliver a Transaction Notice, a Loan Schedule, a Computer Tape and the Escrow Letter to the related Buyer, the Disbursement Agent and Custodian, each in accordance with the applicable delivery times specified in the Custodial Agreement and the Disbursement Agreement (also, a “Notice Date”). In addition to other information provided on the applicable Notice Date, Seller or Guarantor, as applicable shall simultaneously deliver by electronic mail the applicable notice set forth in Exhibit A to the Master Loan Sale Agreement which shall be included in the Transaction Notice.

(b) Seller shall repurchase Purchased Loans from the related Buyer on each related Repurchase Date. Each obligation to repurchase exists without regard to any prior or intervening liquidation or foreclosure with respect to any Purchased Loan. Seller is obligated to obtain the Purchased Loans from the related Buyer or its designee (including the Custodian) at Seller’s expense on (or after) the related Repurchase Date. Provided that the applicable conditions in Sections 10(a) and (b) have been satisfied, the Seller may request that each Purchased Loan that is repurchased by Seller on the Repurchase Date become subject to a new Transaction by delivering notice of such request to the related Buyer at least one (1) Business Day prior to any such Repurchase Date; provided that if the Repurchase Date so determined is later than the Termination Date, the Repurchase Date for such Transaction shall automatically reset to the Termination Date, and the provisions of this sentence as it might relate to a new Transaction shall expire on such date. For each new Transaction, unless otherwise agreed, (y) the accrued and unpaid Price Differential shall be settled in cash on each related Repurchase Date, and (z) the Pricing Rate shall be as set forth in the Pricing Side Letter.

(c) If Seller repurchases Purchased Loans on any day which is not a Repurchase Date for such Purchased Loans, Seller shall indemnify the related Buyer and hold the related Buyer harmless from any losses, costs and/or expenses which the related Buyer may sustain or incur arising from the reemployment of funds obtained by the related Buyer hereunder or from fees payable to terminate the deposits from which such funds were obtained, in each case for the remainder of the applicable 30 day period (“Breakage Costs”). The related Buyer shall deliver to Seller a statement setting forth the amount and basis of determination of any Breakage Costs in such detail as determined in good faith by the related Buyer to be adequate, it being agreed that such statement and the method of its calculation shall be adequate and shall be conclusive and binding upon Seller, absent manifest error. The provisions of this Section 3(c) shall survive termination of this Agreement and the repurchase of all Purchased Loans subject to Transactions hereunder.

4. CONFIRMATIONS

In the event that the parties hereto desire to enter into a Transaction on terms other than as set forth in this Agreement (as amended by the Pricing Side Letter), the parties shall execute a "Confirmation" specifying such terms prior to entering into such Transaction, including, without limitation, the Purchase Date, the Purchase Price, the Pricing Rate therefor and the Repurchase Date. Any such Confirmation and the related Transaction Notice, together with this Agreement, shall constitute conclusive evidence of the terms agreed to between the related Buyer and Seller with respect to the Transaction to which the Confirmation relates. In the event of any conflict between this Agreement and a Confirmation, the terms of the Confirmation shall control with respect to the related Transaction.

5. PAYMENT AND TRANSFER

Unless otherwise agreed, all transfers of funds hereunder shall be in immediately available funds and all Purchased Loans transferred shall be transferred to the Custodian pursuant to the Custodial Agreement. Any Repurchase Price or Price Differential received by the related Buyer after 2:00 p.m. New York City time shall be applied on the next succeeding Business Day.

6. MARGIN MAINTENANCE

(a) If at any time either (i) the aggregate Market Value of all Purchased Loans subject to all Transactions is less than the aggregate MV Margin Amount for all such Transactions, or (ii) the aggregate unpaid principal balance of the Purchased Loans for all Transactions is less than the sum of the aggregate Par Margin Amount for all such Transactions (either such event, a "Margin Deficit"), then the related Buyer may by notice to Seller require Seller in such Transactions to transfer to the related Buyer cash or, at the related Buyer's option (and provided Seller has additional Eligible Loans), additional Eligible Loans ("Additional Purchased Loans") within one (1) Business Day of such notice by such Buyer, so that both (x) the cash and aggregate Market Value of such Purchased Loans, including any such Additional Purchased Loans, will thereupon equal or exceed such aggregate MV Margin Amount, and (y) the cash and unpaid principal balance of such Purchased Loans, including any such Additional Purchased Loans and any Purchased Loans, will thereupon equal or exceed such aggregate Par Margin Amount (either such requirement, a "Margin Call").

(b) Notice required pursuant to Section 6(a) may be given by any means provided in Section 36 hereof. Any notice given on a Business Day shall be met, and the related Margin Call satisfied, no later than 5:00 p.m. New York City time on the following Business Day. The failure of any Buyer, on any one or more occasions, to exercise its rights hereunder, shall not change or alter the terms and conditions to which this Agreement is subject or limit the right of such Buyer to do so at a later date. Seller, Guarantor and Buyer each agree that a failure or delay by any Buyer to exercise its rights hereunder shall not limit or waive Buyers' rights under this Agreement or otherwise existing by law or in any way create additional rights for Seller or Guarantor.

7. INCOME PAYMENTS

Where a particular term of a Transaction extends over the date on which Income is paid in respect of any Purchased Loan subject to that Transaction, such Income shall be the property of Buyers. Notwithstanding the foregoing, and provided no Default has occurred and is continuing, Buyers agree that Seller shall be entitled to receive an amount equal to all Income received by Servicer or Seller in respect of any Purchased Loan to the full extent it would be so entitled if the Purchased Loans had not been sold to Buyers; provided that any Income received by Servicer or Seller while the related Transaction is outstanding shall be deemed to be held by Servicer or Seller, as applicable, solely in trust for Buyers pending the repurchase on the related Repurchase Date; provided further that Seller shall cause Servicer to hold all such Income in the accounts established by Servicer for the benefit of Buyers and upon remittance by Servicer to Seller of all such amounts, Seller shall hold all such Income in the Collection Account established hereunder. Provided no Default has occurred, Buyers shall, as the parties may agree with respect to any Transaction (or, in the absence of any such agreement, as Buyers shall reasonably determine in their sole discretion), on the Repurchase Date following the date such Income is received by Buyers (or a servicer on their behalf) either (i) release to Seller such Income with respect to any Purchased Loans subject to such Transaction or (ii) if a Margin Deficit then exists, apply the Income payment to reduce the amount, if any, to be transferred to Buyers by Seller upon termination of such Transaction. Buyers shall not be obligated to take any action pursuant to the preceding sentences (A) to the extent that such action would result in the creation of a Margin Deficit, unless prior thereto or simultaneously therewith Seller transfers to Buyers cash or Additional Purchased Loans sufficient to eliminate such Margin Deficit, or (B) if an Event of Default with respect to Seller has occurred and is then continuing at the time such Income is paid.

8. TAXES; TAX TREATMENT

(a) All payments made by the Seller under this Repurchase Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities (including penalties, interest and additions to tax) with respect thereto imposed by any Governmental Authority thereof or therein, excluding income taxes, branch profits taxes, franchise taxes or any other tax imposed on the net income by the United States, a state or a foreign jurisdiction under the laws of which the Buyers are organized or of their applicable lending office, or any political subdivision thereof (collectively, "Taxes"), all of which shall be paid by the Seller for its own account not later than the date when due. If the Seller is required by law or regulation to deduct or withhold any Taxes from or in respect of any amount payable hereunder, it shall: (a) make such deduction or withholding; (b) pay the amount so deducted or withheld to the appropriate Governmental Authority not later than the date when due; (c) deliver to Buyers, promptly, original tax receipts and other evidence satisfactory to Buyers of the payment when due of the full amount of such Taxes; and (d) pay to the Buyers such additional amounts as may be necessary so that such Buyers receive, free and clear of all Taxes, a net amount equal to the amount it would have received under this Agreement, as if no such deduction or withholding had been made.

(b) In addition, the Seller agrees to pay to the relevant Governmental Authority in accordance with applicable law any current or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (including, without limitation, mortgage recording taxes, transfer taxes and similar fees) imposed by the United States or any taxing authority thereof or therein that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Repurchase Agreement ("Other Taxes").

(c) The Seller agrees to indemnify the Buyers for the full amount of Taxes (including additional amounts with respect thereto) and Other Taxes, and the full amount of Taxes of any kind imposed by any jurisdiction on amounts payable under this Section 8, and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, provided that the Buyers shall have provided the Seller with evidence, reasonably satisfactory to the Seller, of payment of Taxes or Other Taxes, as the case may be.

(d) Any Buyer that is not incorporated under the laws of the United States, any State thereof, or the District of Columbia (a “Foreign Buyer”) shall provide the Seller with properly completed United States Internal Revenue Service (“IRS”) Form W-8BEN or W-8ECI or any successor form prescribed by the IRS, certifying that such Foreign Buyer is entitled to benefits under an income tax treaty to which the United States is a party which reduces the rate of withholding tax on payments of interest or certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States on or prior to the date upon which each such Foreign Buyer becomes a Buyer. Each Foreign Buyer will resubmit the appropriate form on the earliest of (A) the third anniversary of the prior submission or (B) on or before the expiration of thirty (30) days after there is a “change in circumstances” with respect to such Foreign Buyer as defined in Treas. Reg. Section 1.1441(e)(4)(ii)(D). For any period with respect to which a Foreign Buyer has failed to provide the Seller with the appropriate form or other relevant document pursuant to this Section 8(d) (unless such failure is due to a change in treaty, law, or regulation occurring subsequent to the date on which a form originally was required to be provided), such Foreign Buyer shall not be entitled to any “gross-up” of Taxes or indemnification under Section 8(c) with respect to Taxes imposed by the United States; provided, however, that should a Foreign Buyer, which is otherwise exempt from a withholding tax, become subject to Taxes because of its failure to deliver a form required hereunder, the Seller shall take such steps as such Foreign Buyer shall reasonably request to assist such Foreign Buyer to recover such Taxes.

(e) Without prejudice to the survival or any other agreement of Seller hereunder, the agreements and obligations of Seller contained in this Section 8 shall survive the termination of this Repurchase Agreement. Nothing contained in this Section 8 shall require Buyers to make available any of their tax returns or other information that it deems to be confidential or proprietary.

(f) Each party to this Repurchase Agreement acknowledges that it is its intent for purposes of U.S. federal, state and local income and franchise taxes to treat each Transaction as indebtedness of Seller that is secured by the Purchased Loans and that the Purchased Loans are owned by Seller in the absence of an Event Default by Seller. All parties to this Repurchase Agreement agree to such treatment and agree to take no action inconsistent with this treatment, unless required by law.

9. SECURITY INTEREST; BUYERS’ APPOINTMENT AS ATTORNEY-IN-FACT

(a) Seller and Buyers intend that the Transactions hereunder be sales to Buyers of the Purchased Loans and not loans from Buyers to Seller secured by the Purchased Loans. However, in order to preserve Buyers’ rights under this Agreement in the event that a court or other forum recharacterizes the Transactions hereunder as other than sales, and as security for Seller’s performance of all of its Obligations, Seller hereby grants Buyers a fully perfected first priority security interest, in the following property, whether now existing or hereafter acquired: the Purchased Loans, the related Records, all related Servicing Rights, all mortgage guaranties and insurance relating to such Purchased Loans (issued by governmental agencies or otherwise) or the related Mortgaged Property and any mortgage insurance certificate or other document evidencing such mortgage guaranties or insurance and all claims and payments thereunder, the Seller’s rights under the Master Loan Sale Agreement (including, without limitation, the security interest in favor of Seller pursuant to Section 4 thereof) any purchase agreements or other agreements or contracts relating to or constituting any or all of the foregoing, all “accounts” as defined in the Uniform Commercial Code relating to or constituting any or all of the foregoing, all other insurance policies and insurance proceeds relating to any Purchased Loan or the related Mortgage Property and any other contract rights, payments, rights to payment (including payments of interest or finance charges), and all instruments, chattel paper, securities, investment property and general intangibles and other assets comprising or relating to the Purchased Loans, any security account and all rights to Income and the rights to enforce such payments arising from any of the Purchased Loans, all guarantees or other support for the Purchased Loans, and any and all replacements, substitutions, distributions on, or proceeds with respect to, any of the foregoing (collectively the “Collateral”). Seller acknowledges and agrees that its rights with respect to the Collateral (including without limitation, its security interest in the Purchased Loans and any other collateral granted to Seller pursuant to any other agreement) are and shall continue to be at all times junior and subordinate to the rights of Buyers hereunder. Seller acknowledges and agrees that its rights with respect to the Collateral (including without limitation, its security interest in the Purchased Loans and any other collateral granted to Seller pursuant to any other agreement) are and shall continue to be at all times junior and subordinate to the rights of Buyers hereunder.

(b) Seller hereby irrevocably constitutes and appoints Buyers and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Seller and in the name of Seller or in its own name, from time to time in Buyers' discretion, for the purpose of carrying out the terms of this Repurchase Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be reasonably necessary or desirable to accomplish the purposes of this Repurchase Agreement, to file such financing statement or statements relating to the Purchased Loans and the Collateral without Seller's signature thereon as Buyers at their option may deem appropriate, and, without limiting the generality of the foregoing, Seller hereby gives Buyers the power and right, on behalf of Seller, without assent by, but with notice to, Seller, if an Event of Default shall have occurred and be continuing, to do the following:

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

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

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

Seller hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

Seller also authorizes Buyers, if an Event of Default shall have occurred, from time to time, to execute, in connection with any sale provided for in Section 20 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Purchased Loans.

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

10. CONDITIONS PRECEDENT

(a) As conditions precedent to the initial Transaction, Buyers shall have received on or before the day of such initial Transaction the following, in form and substance satisfactory to Buyers and duly executed by each party thereto (as applicable):

(i) The Program Documents duly executed and delivered by the parties thereto and being in full force and effect, free of any modification, breach or waiver;

(ii) A certified copy of Seller's and Guarantor's consents or corporate resolutions, as applicable, approving the Program Documents and Transactions thereunder (either specifically or by general resolution), and all documents evidencing other necessary corporate action or governmental approvals as may be required in connection with the Program Documents;

(iii) An incumbency certificate of the secretaries of Seller and Guarantor certifying the names, true signatures and titles of Seller's and Guarantor's representatives duly authorized to request Transactions hereunder and to execute the Program Documents and the other documents to be delivered thereunder;

(iv) An opinion of Seller's and Guarantor's counsel as to such matters as Buyers may reasonably request (including, without limitation, perfected security interest in the Collateral, Investment Company Act opinion, a "true sale" and a non-consolidation opinion with respect to the Seller and the Guarantor, and a "repurchase agreement" opinion) each in form and substance acceptable to Buyers;

(v) A copy of the Acquisition Guidelines (referred to in (i) of the definition thereof) and the Underwriting Guidelines (referred to in (i) of the definition thereof), each certified by an officer of Loan Seller;

(vi) To the extent applicable, a waiver from Guarantor's lenders permitting Guarantor to issue the Guaranty;

(vii) The payment in respect of the legal fees as set forth in the Pricing Side Letter;

(viii) Evidence of the establishment of the Collection Account;

- (ix) A copy of the insurance required by Section 14(o) of this Agreement;
 - (x) The original stock certificates, representing 100% beneficial ownership in the Seller issued in the name of NYMC and an original conveyance power in blank executed by NYMC.
 - (xi) Buyers shall have completed the due diligence review pursuant to Section 38, and such review shall be satisfactory to Buyers in their sole discretion; and
 - (xii) Any other documents reasonably requested by Buyers.
- (b) The obligation of Buyers to enter into each Transaction pursuant to this Agreement is subject to the following conditions precedent:
- (i) Buyers or their designee shall have received on or before the day of a Transaction with respect to such Purchased Loans (unless otherwise specified in this Agreement) the following, in form and substance satisfactory to Buyers and (if applicable) duly executed:
 - (A) The Transaction Notice, Loan Schedule and Computer Tape with respect to such Purchased Loans, delivered pursuant to Section 3(a);
 - (B) The Trust Receipt with respect to such Purchased Loans, with the Loan Schedule attached;
 - (C) Such certificates, customary opinions of counsel or other documents as Buyers may reasonably request, provided that such opinions of counsel shall not be required routinely in connection with each Transaction but shall only be required from time to time as deemed necessary by Buyers in its commercially reasonable judgment;
 - (D) A copy of the applicable Underwriting Guidelines (referred to in (i) of the definition thereof) or Acquisition Guidelines (referred to in (i) of the definition thereof) to the extent either of such guidelines have been amended since the last Transaction;
 - (E) A copy of the applicable notice set forth in Exhibit A of the Master Loan Sale Agreement (which may be contained in the related Transaction Notice); and
 - (F) To the extent applicable, a Security Release Certification.
 - (ii) No Default or Event of Default shall have occurred and be continuing.
 - (iii) Buyers shall not have reasonably determined that the introduction of or a change in any requirement of law or in the interpretation or administration of any requirement of law applicable to Buyers has made it unlawful, and no Governmental Authority shall have asserted that it is unlawful, for Buyers to enter into Transactions with a Pricing Rate based on LIBOR.
 - (iv) To the extent that an Insured Closing Letter previously provided to Buyer does not cover the Loans subject to the proposed Transaction, an Insured Closing Letter covering such Loans.

- (v) All representations and warranties in the Program Documents shall be true and correct on the date of such Transaction and Seller and Guarantor are in compliance with the terms and conditions of the Program Documents.
- (vi) The then aggregate outstanding Purchase Price for all Purchased Loans, when added to the Purchase Price for the requested Transaction, shall not exceed the Maximum Aggregate Purchase Price.
- (vii) Satisfaction of any conditions precedent to the initial Transaction as set forth in clause (a) of this Section 10 that were not satisfied prior to such initial Purchase Date.
- (viii) Buyers shall have determined that all actions necessary or, in the opinion of Buyers, desirable to maintain the related Buyer's perfected interest in the Purchased Loans and other Collateral have been taken, including, without limitation, duly executed and filed Uniform Commercial Code financing statements on Form UCC-1.
- (ix) If the Purchased Loans are being acquired or originated under the Acquisition Guidelines (referred to in (ii) of the definition thereof) or the Underwriting Guidelines (referred to in (ii) of the definition thereof), Buyers shall have approved such Underwriting Guidelines or Acquisition Guidelines. If Buyers have previously approved such Underwriting Guidelines or Acquisition Guidelines and there has since been any material modification or amendment thereto, a copy of such modification or amendment shall have been approved by Buyers.
- (x) Seller shall have paid to Buyers any accrued and unpaid Non Usage Fees and all other fees and expenses owed to Buyers in accordance with the Program Documents.
- (xi) Buyers or their designee shall have received any other documents reasonably requested by Buyers.
- (xii) Such Transaction, when added to all other Transactions previously entered into on such Business Day shall not exceed four (4) Transactions.
- (xiii) There is no Margin Deficit at the time immediately prior to entering into a new Transaction.
- (xiv) The Purchase Price for the requested Transaction shall not be less than \$2,000,000.
- (xv) No event or events shall have been reasonably determined by Buyers to have occurred resulting in the effective absence of a whole loan or asset backed securities market or commercial paper market.
- (xvi) Each secured party (including any party that has a precautionary security interest in a Loan) has released all of its right, title and interest in, to and under such Loan (including, without limitation, any security interest that such secured party or secured party's agent may have by virtue of its possession, custody or control thereof) and has filed Uniform Commercial Code termination statements in respect of any Uniform Commercial Code filings made in respect of such Loan, and each such release and Uniform Commercial Code termination statement has been delivered to the Buyers prior to each Transaction and to the Custodian as part of the Mortgage File.

11. RELEASE OF PURCHASED LOANS

Upon timely payment in full of the Repurchase Price and all other Obligations (if any) then owing with respect to a Purchased Loan, unless a Default or Event of Default shall have occurred and be continuing, then (a) Buyers shall be deemed to have terminated any security interest that Buyers may have in such Purchased Loan and any Collateral solely related to such Purchased Loan and (b) with respect to such Purchased Loan, Buyers shall direct Custodian to release such Purchased Loan and any Collateral solely related to such Purchased Loan to Seller unless such release and termination would give rise to or perpetuate a Margin Deficit. Except as set forth in Sections 6(a) and 17, Seller shall give at least one (1) Business Day prior written notice to Buyers if such repurchase shall occur on any date other than the Repurchase Date.

If such a Margin Deficit is applicable, the related Buyer shall notify Seller of the amount thereof and Seller may thereupon satisfy the Margin Call in the manner specified in Section 6.

12. RELIANCE

With respect to any Transaction, Buyers may conclusively rely upon, and shall incur no liability to Seller or Guarantor in acting upon, any request or other communication that Buyers reasonably believe to have been given or made by a person authorized to enter into a Transaction on Seller's or Guarantor's behalf.

13. REPRESENTATIONS AND WARRANTIES

Each of Seller and Guarantor hereby represents and warrants, and shall on and as of the Purchase Date for any Transaction and on and as of each date thereafter through and including the related Repurchase Date be deemed to represent and warrant that:

(a) Due Organization and Qualification. Each of Seller and Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction under whose laws it is organized. Each of Seller and Guarantor is duly qualified to do business and has obtained all necessary licenses, permits, charters, registrations and approvals necessary for the conduct of its business as currently conducted and the performance of its obligations under the Program Documents except where any failure to obtain such a license, permit, charter, registration or approval will not cause a Material Adverse Effect with respect to Seller or Guarantor or impair the enforceability of any Loan.

(b) Power and Authority. Each of Seller and Guarantor has all necessary power and authority to conduct its business as currently conducted, to execute, deliver and perform its obligations under the Program Documents and to consummate the Transactions.

(c) Due Authorization. The execution, delivery and performance of the Program Documents by each of Seller and Guarantor have been duly authorized by all necessary action and do not require any additional approvals or consents or other action by or any notice to or filing with any Person other than any that have heretofore been obtained, given or made.

(d) Noncontravention. None of the execution and delivery of the Program Documents by Seller or Guarantor or the consummation of the Transactions and transactions thereunder:

(i) conflicts with, breaches or violates any provision of the organizational documents or material agreements of Seller or Guarantor or any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award currently in effect having applicability to Seller or Guarantor or its properties;

(ii) constitutes a material default by Seller or Guarantor under any loan or repurchase agreement, mortgage, indenture or other agreement or instrument to which Seller or Guarantor is a party or by which it or any of its properties is or may be bound or affected; or

(iii) results in or requires the creation of any lien upon or in respect of any of the assets of Seller or Guarantor except the lien relating to the Program Documents.

(e) Legal Proceeding. Except as disclosed in Exhibit F, there is no action, proceeding or investigation by or before any court, governmental or administrative agency or arbitrator affecting any of the Purchased Loans, Seller, Guarantor or any of their Affiliates, pending or threatened, which, if decided adversely, would have a Material Adverse Effect with respect to Seller or Guarantor.

(f) Valid and Binding Obligations. Each of the Program Documents to which Seller or Guarantor is a party, when executed and delivered by Seller or Guarantor, as applicable, will constitute the legal, valid and binding obligations of Seller or Guarantor, as applicable, enforceable against Seller or Guarantor, as applicable, in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equitable principles (regardless of whether enforcement is sought in a proceeding in equity or at law).

(g) Financial Statements. The financial statements of Guarantor, copies of which have been furnished to Buyers, (i) are, as of the dates and for the periods referred to therein, complete and correct in all material respects, (ii) present fairly the financial condition and results of operations of Guarantor as of the dates and for the periods indicated and (iii) have been prepared in accordance with GAAP consistently applied, except as noted therein (subject as to interim statements to normal year-end adjustments). Since the date of the most recent financial statements, there has been no Material Adverse Change with respect to Guarantor. Except as disclosed in such financial statements, Guarantor is not subject to any contingent liabilities or commitments that, individually or in the aggregate, have a material possibility of causing a Material Adverse Change with respect to Guarantor.

(h) Accuracy of Information. None of the documents or information prepared by or on behalf of Seller or Guarantor and provided to Buyers relating to Seller's or Guarantor's financial condition contain any statement of a material fact with respect to Seller or Guarantor, or the Transactions that was untrue or misleading in any material respect when made. Since the furnishing of such documents or information, there has been no change, nor any development or event involving a prospective change known to Seller or Guarantor, that would render any of such documents or information untrue or misleading in any material respect.

(i) No Consents. No consent, license, approval or authorization from, or registration, filing or declaration with, any regulatory body, administrative agency, or other governmental, instrumentality, nor any consent, approval, waiver or notification of any creditor, lessor or other non-governmental person, is required in connection with the execution, delivery and performance by Seller or Guarantor of this Agreement or the consummation by Seller or Guarantor of any other Program Document, other than any that have heretofore been obtained, given or made.

(j) Compliance With Law, Etc. No practice, procedure or policy employed or proposed to be employed by Seller or Guarantor in the conduct of their businesses violates any law, regulation, judgment, agreement, regulatory consent, order or decree applicable to it which, if enforced, would result in either a Material Adverse Change or a Material Adverse Effect with respect to Seller or Guarantor.

(k) Solvency: Fraudulent Conveyance. Each of Seller and Guarantor is solvent and will not be rendered insolvent by the Transaction and, after giving effect to such Transaction, neither Seller nor Guarantor will be left with an unreasonably small amount of capital with which to engage in its business. Neither Seller nor Guarantor intends to incur, nor believes that it has incurred, debts beyond its ability to pay such debts as they mature. Neither Seller nor Guarantor is contemplating the commencement of insolvency, bankruptcy, liquidation or consolidation proceedings or the appointment of a receiver, liquidator, conservator, trustee or similar official in respect of Seller or Guarantor or any of their assets. The amount of consideration being received by Seller upon the sale of the Purchased Loans to Buyers constitutes reasonably equivalent value and fair consideration for such Purchased Loans. Seller is not transferring any Purchased Loans with any intent to hinder, delay or defraud any of its creditors. The amount of consideration being received by Guarantor upon the sale of the Purchased Loans to Seller, respectively, constitutes reasonably equivalent value and fair consideration for such Purchased Loans. Guarantor is not transferring any Purchased Loans with any intent to hinder, delay or defraud any of its creditors.

(l) Investment Company Act Compliance. Seller is not required to be registered as an “investment company” as defined under the Investment Company Act nor as an entity under the control of an “investment company” as defined under the Investment Company Act.

(m) Taxes. Each of Seller and Guarantor has filed all federal and state tax returns which are required to be filed and paid all taxes, including any assessments received by it, to the extent that such taxes have become due (other than for taxes that are being contested in good faith or for which it has established adequate reserves). Any taxes, fees and other governmental charges payable by Seller or Guarantor in connection with a Transaction and the execution and delivery of the Program Documents have been paid.

(n) Additional Representations. With respect to each Loan to be sold hereunder by Seller to Buyers, Seller and Guarantor, jointly and severally, hereby make all of the applicable representations and warranties set forth in Exhibit B as of the date the related Mortgage File, or Wet Funding Package, as applicable, is delivered to the Custodian with respect to the Loans and continuously while such Loan is subject to a Transaction. Further, as of each Purchase Date, Seller and Guarantor shall be deemed to have represented and warranted in like manner that neither Seller nor Guarantor have any knowledge that any such representation or warranty may have ceased to be true in a material respect as of such date, except as otherwise stated in a Transaction Notice, any such exception to identify the applicable representation or warranty and specify in reasonable detail the related knowledge of Seller or Guarantor. In addition, the Guarantor agrees to make the representations and warranties set forth in Exhibit B to this Agreement as of the “cut-off date” of the securitization or whole loan sale of the related Loans by Seller or the related Buyer, as applicable; provided, however, that to the extent that the Guarantor has at the time of such securitization or whole loan sale actual knowledge of any facts or circumstances that would render any of such representations and warranties materially false, the Guarantor shall have no obligation to make such materially false representation and warranty.

(o) No Broker. Neither Seller nor Guarantor has dealt with any broker, investment banker, agent, or other person, except for Buyers, who may be entitled to any commission or compensation in connection with the sale of Purchased Loans pursuant to this Agreement; provided, that if Seller or Guarantor has dealt with any broker, investment banker, agent, or other person, except for Buyers, who may be entitled to any commission or compensation in connection with the sale of Purchased Loans pursuant to this Agreement, such commission or compensation shall have been paid in full by Seller or Guarantor, as applicable.

(p) Corporate Separateness.

(i) The capital of Seller and Guarantor is adequate for the respective business and undertakings of Seller and Guarantor.

(ii) Other than as provided in this Agreement and the other Program Documents, Seller is not engaged in any business transactions with Guarantor or any of its Affiliates other than transactions in the ordinary course of its business on an “arms-length” basis.

(iii) The funds and assets of Seller are not and will not be, commingled with the funds of any other Person.

The representations and warranties set forth in this Agreement shall survive transfer of the Purchased Loans to Buyers and shall continue for so long as the Purchased Loans are subject to this Agreement.

14. COVENANTS OF SELLER AND GUARANTOR

Each of Seller and Guarantor, as applicable, hereby covenants with Buyers as follows:

(a) Defense of Title. Each of Seller and Guarantor warrants and will defend the right, title and interest of Buyers in and to all Collateral against all adverse claims and demands.

(b) No Amendment or Compromise. Without Buyers’ prior written consent, none of Seller, Guarantor or those acting on Seller’s or Guarantor’s behalf shall amend or modify, or waive any term or condition of, or settle or compromise any claim in respect of, any item of the Purchased Loans, any related rights or any of the Program Documents, provided that any such party may amend or modify a Loan if such amendment or modification does not affect the amount or timing of any payment of principal or interest, extend its scheduled maturity date, modify its interest rate, or constitute a cancellation or discharge of its outstanding principal balance and does not materially and adversely affect the security afforded by the real property, furnishings, fixtures, or equipment securing the Loan.

(c) No Assignment. Except as permitted herein, none of Seller, Guarantor, or any servicer shall sell, assign, transfer or otherwise dispose of, or grant any option with respect to, or pledge, hypothecate or grant a security interest in or lien on or otherwise encumber (except pursuant to the Program Documents), any of the Purchased Loans or any interest therein, provided that this Section 14(c) shall not prevent any of the following: any contribution, sale, assignment, transfer or conveyance of Purchased Loans in accordance with the Program Documents; servicing arrangement between the Servicer and Seller or its Affiliates; and any forward purchase commitment or other type of take out commitment for the Purchased Loans.

(d) Servicing of Loans. Seller and Guarantor shall cause Servicer to service, or cause to be serviced, all Loans that are part of the Purchased Loans in accordance with Accepted Servicing Practices, pending any delivery of such servicing to Buyers pursuant to Section 14 (r), employing at least the same procedures and exercising the same care that Servicer customarily employs in servicing Loans for its own account. Seller shall notify all Servicers and subservicers of Buyers’ interests hereunder and Seller shall notify Buyers of the name and address of all Servicers and subservicers of Purchased Loans. Buyers shall have the right to approve each such Servicer or subservicer and the form of all Servicing Agreements or servicing side letter agreements with respect thereto. Seller and Guarantor shall cause the Servicer to hold or cause to be held all funds collected with respect to such Loans in a principal and interest account and an escrow account and shall apply the same for the purposes for which such funds were collected and shall remit all amounts with respect to principal and interest into the Collection Account in accordance with the provisions of the Servicing Side Letter. Upon Buyers’ request, Seller shall provide reasonably promptly to Buyers a letter addressed to and agreed to each servicer of Loans, in form and substance reasonably satisfactory to Buyers, advising such servicer of such matters as Buyers may reasonably request. If Seller should discover that, for any reason whatsoever, Seller or any entity responsible to Seller or Guarantor by contract for managing or servicing any such Loan has failed to perform fully Seller’s or Guarantor’s obligations under the Program Documents with respect to the servicing of the Purchased Loans or any of the obligations of such entities with respect to the Purchased Loans, Seller shall promptly notify Buyers.

(e) Preservation of Collateral: Collateral Value . Each of Seller and Guarantor shall do all things necessary to preserve the Collateral so that it remains subject to a first priority perfected security interest hereunder. Without limiting the foregoing, Seller and Guarantor will comply with all applicable laws, rules, regulations and other laws of any Governmental Authority applicable to Seller or Guarantor relating to the Collateral and cause the Collateral to comply with all applicable laws, rules, regulations and other laws of any such Governmental Authority. Neither Seller nor Guarantor will allow any default to occur for which Seller or Guarantor is responsible under any Collateral or any Program Documents and Seller and Guarantor shall fully perform or cause to be performed when due all of its obligations under any Collateral or the Program Documents.

(f) Maintenance of Papers, Records and Files . Seller and Guarantor shall acquire, and Seller or Guarantor shall build, maintain and have available, a complete file in accordance with lending industry custom and practice for each Purchased Loan. Seller or Guarantor will maintain all such Records not in the possession of Custodian in good and complete condition in accordance with industry practices and preserve them against loss.

(i) Seller and Guarantor shall collect and maintain or cause to be collected and maintained all Records relating to the Purchased Loans in accordance with industry custom and practice, including those maintained pursuant to the preceding subsection, and all such Records shall be in Custodian's possession unless Buyers otherwise approve. Neither Seller nor Guarantor will cause or authorize any such papers, records or files that are an original or an only copy to leave Custodian's possession, except for individual items removed in connection with servicing a specific Loan, in which event Seller or Guarantor will obtain or cause to be obtained a receipt from the Custodian for any such paper, record or file.

(ii) For so long as Buyers have an interest in or lien on any Purchased Loan, Seller and Guarantor will hold or cause to be held all related Records in trust for Buyers. Seller or Guarantor shall notify, or cause to be notified, every other party holding any such Records of the interests and liens granted hereby.

(iii) Upon reasonable advance notice from Custodian or Buyers, Seller and Guarantor shall (x) make any and all such Records available to Custodian or Buyers to examine any such Records, either by its own officers or employees, or by agents or contractors, or both, and make copies of all or any portion thereof, (y) permit Buyers or their authorized agents to discuss the affairs, finances and accounts of Seller or Guarantor with its respective chief operating officer and chief financial officer and to discuss the affairs, finances and accounts of Seller or Guarantor with its independent certified public accountants.

(g) Financial Statements and Other Information; Financial Covenants .

(i) Guarantor shall keep or cause to be kept in reasonable detail books and records of Seller and Guarantor setting forth an account of their respective assets and business and shall clearly reflect therein the transfer of Purchased Loans to Buyers. Seller and Guarantor shall furnish or cause to be furnished to Buyers the following:

(A) Financial Statements . (x) As soon as available and in any event within ninety (90) days after the end of each fiscal year of Guarantor, the Guarantor's consolidated, audited balance sheets as of the end of each such fiscal year, and the Guarantor's consolidated, audited financial statements of income and changes in equity and audited statement of cash flows, each for such fiscal year, (y) as soon as available and in any event within forty-five (45) days after the end of each of the first three quarters of each fiscal year of Guarantor, the Guarantor's consolidated, unaudited balance sheets as of the end of each quarter, and the Guarantor's unaudited financial statements of income and changes in equity and unaudited statement of cash flows, each for the portion of the fiscal year then ended, and (z) within thirty (30) days after the end of each month, monthly consolidated and unaudited financial statements (excluding cash flow statements) and balance sheets as provided in clause (y), all of which shall have been prepared in accordance with GAAP. Seller and Guarantor shall furnish or cause to be furnished to Buyers any other financial information regarding Guarantor and/or Seller reasonably requested by Buyers.

(B) Loan Data . Monthly reports in form and scope satisfactory to Buyers, setting forth data regarding the performance of the Purchased Loans for the immediately preceding month, and such other information as Buyers may reasonably request, including, without limitation, all collections, delinquencies, losses and recoveries related to the Purchased Loans, any other information regarding the Purchased Loans requested by Buyers and the performance of any loans serviced by or on behalf of Servicer and any other financial information regarding Seller reasonably requested by Buyers.

(C) Monthly Servicing Diskettes . On or before the tenth (10th) day of each calendar month (or if such day is not a Business Day, the immediately following Business Day), or any other time as Buyers request, a computer tape or a diskette (or any other Electronic Transmission acceptable to Buyers) in a format acceptable to Buyers containing such information with respect to the Purchased Loans as Buyers may reasonably request.

(D) Other Information . Upon the request of Buyers, such other information or reports as Buyers may from time to time reasonably request.

(ii) Guarantor shall comply with the following financial covenants: (A) the Adjusted Tangible Net Worth of the Guarantor shall at all times exceed \$90,000,000; (B) the ratio of the Guarantor's Total Indebtedness to Adjusted Tangible Net Worth shall at no time exceed 15:1; (C) the Guarantor shall at all times maintain Liquidity of at least the greater of \$15,000,000 and one percent (1%) of the unpaid principal balance of all assets of Guarantor subject to a repurchase or secured credit arrangement to which the Guarantor is a party; and (D) the Guarantor's net income before taxes, for any period of two consecutive fiscal quarters (commencing with the period ending September 30, 2005), shall not be less than \$1.00.

(iii) Certifications. Seller shall execute and deliver a monthly certification substantially in the form of Exhibit A-1 attached hereto within thirty (30) days after the end of each calendar month and Guarantor shall execute and deliver a quarterly certification substantially in the form of Exhibit A-2 attached hereto within forty-five (45) days after the end of each fiscal quarter.

(h) Notice of Material Events. Each of Seller and Guarantor shall promptly inform Buyers in writing of any of the following:

(i) any Default, Event of Default or default or breach by Seller or Guarantor of any material obligation under any Program Document, or the occurrence or existence of any event or circumstance that Seller or Guarantor reasonably expects will with the passage of time become a Default, Event of Default or such a default or breach by Seller or Guarantor;

(ii) any material change in the insurance coverage required of Seller or Guarantor or any other Person pursuant to any Program Document, with copy of evidence of same attached;

(iii) any material dispute, licensing issue, litigation, investigation, proceeding or suspension between Seller or Guarantor, on the one hand, and any Governmental Authority or any other Person;

(iv) any material adverse change in accounting policies or financial reporting practices of Seller or Guarantor;

(v) the occurrence of any material employment dispute or licensing issue and a description of the strategy for resolving it; and

(vi) any event, circumstance or condition that has resulted, or has a reasonable likelihood of resulting in either a Material Adverse Change or a Material Adverse Effect with respect to Seller or Guarantor.

(i) Maintenance of Licenses. Each of Seller and Guarantor shall (i) maintain all licenses, permits or other approvals necessary for each of Seller and Guarantor to conduct its business and to perform its obligations under the Program Documents, (ii) remain in good standing under the laws of each state in which it conducts business or any Mortgage Property is located, and (iii) shall conduct its business strictly in accordance with applicable law.

(j) Taxes, Etc. The Seller shall pay and discharge or cause to be paid and discharged, when due all taxes, assessments and governmental charges or levies imposed upon them or upon their income and profits or upon any of its property, real, personal or mixed (including without limitation, the Purchased Loans) or upon any part thereof, as well as any other lawful claims which, if unpaid, might become a Lien upon such properties or any part thereof, except for any such taxes, assessments and governmental charges, levies or claims as are appropriately contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves are provided. The Seller shall file on a timely basis all federal, and material state and local tax and information returns, reports and any other information statements or schedules required to be filed by or in respect of it.

(k) Nature of Business. Neither Seller nor Guarantor shall make any material change in the nature of its business as carried on at the date hereof.

(l) Limitation on Distributions . Guarantor shall have the right to pay dividends or distributions at all times in order to maintain Guarantor's REIT Status. Guarantor shall have the right to make further dividends or distributions so long as Guarantor remains in compliance with the financial covenants set forth in Section 14(g)(ii) immediately following such dividend or distribution. Notwithstanding anything to the contrary herein , if a Default has occurred and is occurring, neither Seller nor Guarantor shall pay any dividends or distributions with respect to any capital stock or other equity interests in Seller or Guarantor (other than dividends or distributions necessary to maintain Guarantor's REIT Status), whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of Seller or Guarantor.

(m) Use of Custodian . Without the prior written consent of Buyers, Seller and Guarantor shall use no third party custodian as document custodian other than the Custodian with respect to third party purchasers, prospective third party purchasers, lenders and prospective third party lenders with respect to loans of the same type as the Purchased Loans.

(n) Merger of Guarantor . Guarantor shall not at any time, directly or indirectly, (i) liquidate or dissolve or enter into any consolidation or merger or be subject to a Change in Control without Buyers' prior consent; (ii) form or enter into any partnership, joint venture, syndicate or other combination which would have a Material Adverse Effect with respect to Guarantor; or (iii) make any Material Adverse Change with respect to Guarantor or Guarantor's Subsidiaries.

(o) Insurance . Seller will, and Seller and Guarantor shall cause NYMC and the Servicer to obtain and maintain insurance with responsible companies in such amounts and against such risks as are customarily carried by business entities engaged in similar businesses similarly situated, and will furnish Buyers on request full information as to all such insurance, and provide within fifteen (15) days after receipt of such request the certificates or other documents evidencing renewal of each such policy. Seller and NYMC shall continue to maintain coverage, for itself and its subsidiaries, that encompasses employee dishonesty, forgery or alteration, theft, disappearance and destruction, robbery and safe burglary, property (other than money and securities), and computer fraud in an aggregate amount of at least \$3,500,000.

(p) Affiliate Transaction . Neither Seller nor Guarantor will at any time, directly or indirectly, sell, lease or otherwise transfer any property or assets to, or otherwise acquire any property or assets from, or otherwise engage in any transactions with, any of their Affiliates unless the terms thereof are no less favorable to Seller or Guarantor, as applicable, than those that could be obtained at the time of such transaction in an arm's length transaction with a Person who is not such an Affiliate.

(q) Change of Fiscal Year . Neither Seller nor Guarantor will at any time, directly or indirectly, except upon ninety (90) days' prior written notice to Buyers, change the date on which Seller's or Guarantor's fiscal year begins from Seller's or Guarantor's current fiscal year beginning date.

(r) Delivery of Servicing Rights . With respect to the Servicing Rights of each Loan, Seller shall deliver such Servicing Rights to the designee of Buyers, within 30 days of a Purchase Date, unless otherwise stated in writing by Buyers; provided that on each Repurchase Date that is subject to a new Transaction, such delivery requirement is deemed restated for such new Transaction (and the immediately preceding delivery requirement is deemed to be rescinded) in the absence of directions to the contrary from Buyers, and a new 30 day period is deemed to commence as of such Repurchase Date. Seller's and Servicer's transfer of the Servicing Rights under this Section shall be in accordance with customary standards in the industry.

(s) Acquisition Guidelines or Underwriting Guidelines . No material modifications shall be made to the Acquisition Guidelines (referred to in (i) of the definition thereof) or the Underwriting Guidelines (referred to in (i) of the definition thereof) that will impact either the Buyers or the Purchased Loans without the prior consent of Buyers (such consent not to be unreasonably withheld). Seller agrees to deliver to Buyers copies of the Acquisition Guidelines (referred to in (i) of the definition thereof) or Underwriting Guidelines (referred to in (i) of the definition thereof) in the event that any changes are made thereto following the Closing Date.

(t) No Other Indebtedness. Without the prior written consent of the Buyers, the Seller shall not incur any Indebtedness or guaranty the Indebtedness of any other Person other than any Indebtedness deemed incurred under the Program Documents.

(u) MERS. The Seller will and will cause the Originator to comply in all material respects with the rules and procedures of MERS in connection with the servicing of the MERS Designated Mortgage Loans for as long as such Purchased Loans are registered with MERS.

(v) Non Usage Fee. The Seller agrees to pay to the Buyers on each Repurchase Date the accrued and unpaid Non Usage Fees.

(w) Establishment of Collection Account. Prior to the initial Purchase Date, the Seller shall establish, for the benefit of the Buyers, a collection account in the Buyers' name for the sole and exclusive benefit of the Buyers. The Seller shall segregate all amounts remitted by Servicer with respect to the Purchased Loans, to be held in trust for the benefit of the Buyers, and shall remit such collections in accordance with the Buyers' written instructions. No amounts deposited into such account shall be removed without the Buyers' prior written consent. The Seller shall follow the instructions of Buyers with respect to the Purchased Loans and deliver to Buyers any information with respect to the Purchased Loans reasonably requested by Buyers. Each of the Guarantor, Originator and Seller shall, and shall cause Servicer to, deposit or credit to the Collection Account all items to be deposited or credited thereto irrespective of any right of setoff or counterclaim arising in favor of it (or any third party claiming through it) under any other agreement or arrangement.

(x) Corporate Separateness. The Seller shall at all times comply with the separateness provisions set forth in its organizational documents, including but not limited to Articles V and X of its Certificate of Incorporation.

(y) Organizational Documents. Seller shall not amend, modify or supplement any of its organizational documents without the prior written consent of Buyers. The Seller's organizational documents shall at all times require at least one (1) independent director to serve on the board of directors of Seller.

(z) REIT Status. The Guarantor will take all steps necessary to maintain its status as a REIT.

(aa) Cooperative Loans. With respect to each Cooperative Loan, in the event that new, replacement, substitute or additional Stock Certificates are issued with respect to existing Cooperative Shares, the related Seller immediately shall deliver to the Custodian the new Stock Certificates, together with the related Stock Powers in blank. Such new Stock Certificates shall be subject to the related Pledge Instruments and shall be subject to all of the terms, covenants and conditions of this Agreement.

15. REPURCHASE DATE PAYMENTS/COLLECTIONS

On each Repurchase Date, Seller shall remit or shall cause to be remitted to the related Buyer the Repurchase Price together with any other Obligations then due and payable.

16. REPURCHASE OF PURCHASED LOANS; CHANGE OF LAW

(a) Upon discovery by Seller or Guarantor of a breach of any of the representations and warranties set forth on Exhibit B to this Agreement, Seller or Guarantor shall give prompt written notice thereof to Buyers. Upon any such discovery by Buyers, Buyers will notify Seller. It is understood and agreed that the representations and warranties set forth in Exhibit B to this Agreement with respect to the Purchased Loans shall survive delivery of the respective Mortgage Files to the Custodian with respect to the Purchased Loans and shall inure to the benefit of Buyers. The fact that Buyers have conducted or have failed to conduct any partial or complete due diligence investigation in connection with their purchase of any Purchased Loan shall not affect Buyers' right to demand repurchase as provided under this Agreement. Seller shall, within five (5) Business Days of the earlier of Seller's or Guarantor's discovery or either Seller or Guarantor receiving notice with respect to any Purchased Loan of (i) any breach of a representation or warranty contained in Exhibit B of this Agreement or (ii) any failure to deliver any of the items required to be delivered as part of the Mortgage File within the time period required for delivery pursuant to the Custodial Agreement, promptly cure such breach or delivery failure in all material respects. If within five (5) Business Days after the earlier of Seller's or Guarantor's discovery of such breach or delivery failure or Seller or Guarantor receiving notice thereof that such breach or delivery failure has not been remedied by Seller, Seller shall promptly upon receipt of written instructions from Buyers, at Buyers' option, either (i) repurchase such Purchased Loan at a purchase price equal to the Repurchase Price with respect to such Purchased Loan by wire transfer to the account designated by Buyers, or (ii) transfer comparable Substitute Loans to Buyers, as provided in Section 17 hereof.

(b) If Buyers determine that the introduction of, any change in, or the interpretation or administration of, any requirement of law has made it unlawful or commercially impracticable to engage in any Transactions with the applicable Pricing Rate based on LIBOR, then Seller (i) shall, upon its receipt of notice of such fact and demand from Buyers (with a copy of such notice to Custodian), repurchase the Purchased Loans subject to the Transaction on the next succeeding Business Day and, at Seller's election, concurrently enter into a new Transaction with Buyers with a Pricing Rate based on the Prime Rate plus the margin set forth in the Pricing Side Letter as part of the Pricing Rate and (ii) may elect, by giving notice to Buyers and Custodian, that all new Transactions shall have Pricing Rates based on the Prime Rate plus such margin.

(c) If Buyers determines in their sole discretion that any Change in Law or any change in accounting rules regarding capital requirements has or would have the effect of reducing the rate of return on Buyers' capital or on the capital of any Affiliate of Buyers as a consequence of such Change in Law on this Agreement, then from time to time Seller will compensate Buyers or Buyers' Affiliate, as applicable, for such reduced rate of return suffered as a consequence of such Change in Law on terms similar to those imposed by Buyers on their other similarly affected customers. Buyers shall provide Seller with prompt notice as to any Change in Law. Notwithstanding any other provisions in this Agreement, in the event of any such Change in Law, Seller will have the right to terminate all Transactions then outstanding as of a date selected by Seller, which date shall be prior to the then applicable Repurchase Date and which date shall thereafter for all purposes hereof be deemed to be the Repurchase Date.

17. SUBSTITUTION

Seller may, subject to agreement with and acceptance by Buyers upon one (1) Business Day's notice, substitute other assets which are substantially the same as the Purchased Loans (the "Substitute Loans") for any Purchased Loans. Such substitution shall be made by transfer to Buyers of such other Substitute Loans and transfer to Seller of such Purchased Loans (the "Reacquired Loans") along with the other information to be provided with respect to the applicable Purchased Loan as described in Section 4. After substitution, the Substitute Loans shall be deemed to be Purchased Loans, the Reacquired Loans shall no longer be deemed Purchased Loans, Buyers shall be deemed to have terminated any security interest that Buyers may have in the Reacquired Loans and any Collateral solely related to such Reacquired Loans to Seller unless such termination and release would give rise to or perpetuate a Margin Deficit. Concurrently with any termination and release described in this Section 17, Buyers shall execute and deliver to Seller upon request and Buyers hereby authorize Seller to file and record such documents as Seller may reasonably deem necessary or advisable in order to evidence such termination and release.

18. REPURCHASE TRANSACTIONS

Buyers may, in their sole election, engage in repurchase transactions with the Purchased Loans or otherwise pledge, hypothecate, assign, transfer or otherwise convey the Purchased Loans with a counterparty of Buyers' choice, in all cases subject to Buyers' obligation to reconvey the Purchased Loans (and not substitutes therefor) on the Repurchase Date. In the event Buyers engage in a repurchase transaction with any of the Purchased Loans or otherwise pledges or hypothecates any of the Purchased Loans, Buyers shall have the right to assign to Buyers' counterparty any of the applicable representations or warranties in Exhibit B to this Agreement and the remedies for breach thereof, as they relate to the Purchased Loans that are subject to such repurchase transaction.

19. EVENTS OF DEFAULT

With respect to any Transactions covered by or related to this Agreement, the occurrence of any of the following events shall constitute an "Event of Default":

(a) Seller fails to transfer the Purchased Loans to the related Buyer on the applicable Purchase Date (provided such Buyer has tendered the related Purchase Price);

(b) Seller either fails to repurchase the Purchased Loans on the applicable Repurchase Date or fails to perform its obligations under Section 6;

(c) Either Seller or Guarantor shall fail to perform, observe or comply with any other material term, covenant or agreement contained in the Program Documents (other than Exhibit B to this Agreement and the other "Events of Default" set forth in this Section 19) and such failure is not cured within the time period expressly provided or, if no such cure period is provided, within five (5) Business Days (or one (1) Business Day with respect to a default on any payment obligation of Seller or Guarantor under the Program Documents not otherwise addressed in this Section 19 or one (1) Business Day if the Purchased Loans exceed any applicable sublimits) of the earlier of (i) such party's receipt of written notice from Buyers or Custodian of such breach or (ii) the date on which such party obtains notice or knowledge of the facts giving rise to such breach;

(d) Any representation or warranty made by Seller or Guarantor (or any of Seller's or Guarantor's officers) in the Program Documents or in any other document delivered in connection therewith shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated (other than the representations or warranties in Exhibit B which shall be considered solely for the purpose of determining whether the related Purchased Loan is an Eligible Loan, unless Seller shall have made any such representations or warranties with the knowledge that they were materially false or misleading at the time made or repeated or deemed to have been made or repeated);

(e) Guarantor or any of Guarantor's Subsidiaries shall default under or shall otherwise fail to perform as requested under, or shall otherwise breach the material terms of, in each case beyond any applicable cure period, any instrument, agreement or contract relating to Indebtedness in excess of Two Million Dollars (\$2,000,000) and such default, failure or breach shall entitle any counterparty to declare such Indebtedness to be due and payable prior to the maturity thereof;

(f) A custodian, receiver, conservator, liquidator, trustee, sequestrator or similar official for Seller, Guarantor or any of Seller's or Guarantor's Subsidiaries, or of any of Seller's, Guarantor's or their respective Property (as a debtor or creditor protection procedure), is appointed or takes possession of such Property; or Seller, Guarantor or any of Seller's or Guarantor's Subsidiaries generally fails to pay Seller's, Guarantor's or Seller's or Guarantor's Subsidiaries debts as they become due; or Seller, Guarantor or any of Seller's or Guarantor's Subsidiaries is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code, or any successor or similar applicable statute, or any administrative insolvency scheme, against Seller, Guarantor or any of Seller's or Guarantor's Subsidiaries; or any of Seller's, Guarantor's or Seller's or Guarantor's Subsidiaries' Property is sequestered by court or administrative order; or a petition is filed against Seller, Guarantor or any of Seller's or Guarantor's Subsidiaries under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, moratorium, delinquency or liquidation law of any jurisdiction, whether now or subsequently in effect;

(g) Seller, Guarantor or any of Seller's or Guarantor's Subsidiaries files a voluntary petition in bankruptcy, seeks relief under any provision of any bankruptcy, reorganization, moratorium, delinquency, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, conservator, trustee, liquidator, sequestrator or similar official for Seller, Guarantor or any of Seller's or Guarantor's Subsidiaries, or of all or any part of Seller's, Guarantor's or Seller's or Guarantor's Subsidiaries Property; or makes an assignment for the benefit of Seller, Guarantor or Seller's or Guarantor's Subsidiaries' creditors;

(h) Any final judgment or order for the payment of money in excess of Ten Thousand Dollars (\$10,000) with respect to the Seller, or Two Million Dollars (\$2,000,000) with respect to the Guarantor in the aggregate (to the extent that it is, in the reasonable determination of Buyers, uninsured and provided that any insurance or other credit posted in connection with an appeal shall not be deemed insurance for these purposes) shall be rendered against Seller, Guarantor or any of Seller's or Guarantor's Subsidiaries by one or more courts, administrative tribunals or other bodies having jurisdiction over them and the same shall not be discharged (or provisions shall not be made for such discharge) satisfied, or bonded, or a stay of execution thereof shall not be procured, within thirty (30) days from the date of entry thereof and Seller, Guarantor or any of Seller's or Guarantor's Subsidiaries, as applicable, shall not, within said period of thirty (30) days, or such longer period during which execution of the same shall have been stayed or bonded, appeal therefrom and cause the execution thereof to be stayed during such appeal;

(i) Any Governmental Authority or any person, agency or entity acting or purporting to act under governmental authority shall have taken any action to condemn, seize or appropriate, or to assume custody or control of, all or any substantial part of the Property of Seller, Guarantor or any of Seller's or Guarantor's Subsidiaries, or shall have taken any action to displace the management of Seller, Guarantor or any of Seller's or Guarantor's Subsidiaries or to curtail its authority in the conduct of the business of Seller, Guarantor or any of Seller's or Guarantor's Subsidiaries, or takes any action in the nature of enforcement to remove, limit or restrict the approval of Seller, Guarantor or any of Seller's or Guarantor's Subsidiaries as an issuer, buyer or a seller/servicer of Loans or securities backed thereby;

- (j) Any Material Adverse Effect shall have occurred with respect to Seller, Guarantor or any of Seller's or Guarantor's Subsidiaries;
- (k) Either (i) Seller or Guarantor shall admit in writing its inability to, or intention not to, perform any of Seller's or Guarantor's respective material Obligations, or (ii) Buyers shall have determined in good faith that either of Seller or Guarantor is unable to meet its commitments;
- (l) Except as expressly permitted in this Agreement, Seller or Guarantor dissolves, merges or consolidates with another entity, or sells, transfers, or otherwise disposes of a material portion of Seller's or Guarantor's (as applicable) business or assets unless Buyers' written consent is given;
- (m) This Agreement shall for any reason cease to create a valid, first priority security interest or ownership interest upon transfer in any material portion of the Purchased Loans or Collateral purported to be covered hereby;
- (n) Either Seller's or Guarantor's audited annual financial statements or the notes thereto or other opinions or conclusions stated therein shall be qualified or limited by reference to the status of Seller or Guarantor as a "going concern" or a reference of similar import or shall indicate that Seller or Guarantor has a negative net worth or is insolvent;
- (o) A Change in Control of Guarantor, Servicer or Seller or a material change in the management of the Guarantor or Seller shall have occurred which has not been approved by Buyers, including the resignation, removal or other substantial change in the management responsibilities of David Akre, Steven Schnall or Michael Wirth;
- (p) Buyers shall reasonably request, specifying the reasons for such request, reasonable information, and/or written responses to such requests, regarding the financial well-being of Seller or Guarantor and such reasonable information and/or responses shall not have been provided within five (5) Business Days of such request;
- (q) If Seller or Guarantor admits its inability or is manifestly unable to perform fully when such performance will become due any obligation on Seller's or Guarantor's part to any broker, dealer, bank or other financial institution in respect of a transaction involving securities, commodities or other instruments not then due (regardless of whether Buyers have any right, title or interest therein);
- (r) Guarantor shall fail to satisfy any of the financial covenants set forth in Section 14(g)(ii) of this Agreement;
- (s) If the Seller, Guarantor or any of their Affiliates shall default in respect of any transaction with Buyers or any of their Affiliates and such breach is not remedied in one (1) Business Day;
- (t) Any material amendment is made to the Underwriting Guidelines (referred to in (i) of the definition thereof) or Acquisition Guidelines (referred to in (i) of the definition thereof) that shall not have been previously approved by Buyer;
- (u) An event of default (as defined in the Servicing Agreement) on the part of the Servicer under the Servicing Agreement shall have occurred and shall be continuing (a "Servicer Event of Default") but only if and when (1) such Servicer Event of Default shall have a material adverse effect upon the collectibility, enforceability or payment performance of the Purchased Loans, and (2) Seller has failed to either repurchase the affected Purchased Loans at the Repurchase Price or transfer servicing of the affected Purchased Loans to a successor servicer reasonably acceptable to the Buyers within sixty (60) days of such Servicer Event of Default;

(v) The failure of such Guarantor to continue to be (i) qualified as a REIT as defined in Section 856 of the Code and (ii) entitled to a dividend paid deduction under Section 857 of the Code with respect to dividends paid by it with respect to each taxable year for which it claims a deduction on its Form 1120 - REIT filed with the United States Internal Revenue Service for such year, or the entering into by a Guarantor of any material “prohibited transactions” as defined in Sections 857(b) and 856(c) of the Code; or

(w) After such time as a Guarantor has elected to be treated as a REIT, the failure of such Guarantor to satisfy any of the following asset or income tests and a Material Adverse Effect has occurred:

(i) At the close of each taxable year, at least 75 percent of such Guarantor’s gross income consists of (A) “rents from real property” within the meaning of Section 856(c)(3)(A) of the Code, (B) interest on obligations secured by mortgages on real property or on interests in real property, within the meaning of Section 856(c)(3)(B) of the Code, (C) gain from the sale or other disposition of real property (including interests in real property and interests in mortgages on real property) which is not property described in Section 1221(a)(1) of the Code, within the meaning of Section 856(c)(3)(C) of the Code, (D) dividends or other distributions on, and gain (other than gain from “prohibited transactions” within the meaning of Section 857(b)(6)(B)(iii) of the Code) from the sale or other disposition of, transferable shares (or transferable certificates of beneficial interest) in other qualifying REITs within the meaning of Section 856(d)(3)(D) of the Code, and (E) amounts described in Sections 856(c)(3)(E) through 856(c)(3)(I) of the Code;

(ii) At the close of each taxable year, at least 95 percent of such Guarantor’s gross income consists of (A) the items of income described in paragraph (i) hereof (other than those described in Section 856(c)(3)(I) of the Code), (B) gain realized from the sale or other disposition of stock or securities which are not property described in Section 1221(a)(1) of the Code, (C) interest and (D) dividends, in each case within the meaning of Section 856(c)(2) of the Code;

(iii) At the close of each quarter of the Guarantor’s taxable year, at least 75 percent of the value of such Guarantor’s total assets (as determined in accordance with Treasury Regulations Section 1.856-2(d)) has consisted of and will consist of real estate assets within the meaning of Sections 856(c)(4) and 856(c)(5)(B) of the Code, cash and cash items (including receivables which arise in the ordinary course of the Guarantor’s operations, but not including receivables purchased from another person), and Government Securities;

(iv) At the close of each quarter of each of the Guarantor’s taxable years, (A) not more than 25 percent of the Guarantor’s total asset value will be represented by securities (other than those described in paragraph 3), (B) not more than 20 percent of the Guarantor’s total asset value will be represented by securities of one or more taxable REIT subsidiaries, and (C) (1) not more than 5 percent of the value of the Guarantor’s total assets will be represented by securities of any one issuer (other than Government Securities and securities of taxable REIT subsidiaries), and (2) the Guarantor will not hold securities possessing more than 10 percent of the total voting power or value of the outstanding securities of any one issuer (other than Government Securities, securities of taxable REIT subsidiaries, and securities of a qualified REIT subsidiary within the meaning of Section 856(i) of the Code).

20. REMEDIES

Upon the occurrence of an Event of Default, Buyers, at their option (which option shall be deemed to have been exercised immediately upon the occurrence of an Event of Default pursuant to Section 19(f), (g) or (k) hereof), shall have the right to exercise any or all of the following rights and remedies:

(a) a) The Repurchase Date for each Transaction hereunder shall, if it has not already occurred, be deemed immediately to occur (except that, in the event that the Purchase Date for any Transaction has not yet occurred as of the date of such exercise or deemed exercise, such Transaction shall be deemed immediately canceled). Seller's obligations hereunder to repurchase all Purchased Loans at the Repurchase Price therefor on the Repurchase Date in such Transactions shall thereupon become immediately due and payable; all Income paid after such exercise or deemed exercise shall be remitted to and retained by Buyers and applied to the aggregate Repurchase Prices and any other amounts owing by Seller hereunder; each of Seller, Servicer (unless Servicer is not an Affiliate of Guarantor or Seller) and Guarantor shall immediately deliver to Buyers or their designee any and all original papers, records and files relating to the Purchased Loans subject to such Transaction then in its possession and/or control; and all right, title and interest in and entitlement to such Purchased Loans and Servicing Rights thereon shall be deemed transferred to Buyers or their designee.

(ii) Buyers may (A) sell, on or following the Business Day following the date on which the Repurchase Price became due and payable pursuant to Section 20(a)(i) without notice or demand of any kind, at a public or private sale and at such price or prices as Buyers may reasonably deem satisfactory any or all Purchased Loans and/or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Loans, to give Seller credit for such Purchased Loans in an amount equal to the Market Value of the Purchased Loans against the aggregate unpaid Repurchase Price and any other amounts owing by Seller hereunder. Seller shall remain liable to Buyers for any amounts that remain owing to Buyers following a sale and/or credit under the preceding sentence. The proceeds of any disposition of Purchased Loans shall be applied first to the reasonable costs and expenses incurred by Buyers in connection with or as a result of an Event of Default; second to Breakage Costs, costs of cover and/or related hedging transactions; third to the aggregate Repurchase Prices; and fourth to all other Obligations.

(iii) The parties recognize that it may not be possible to purchase or sell all of the Purchased Loans on a particular Business Day, or in a transaction with the same purchaser, or in the same manner because the market for such Purchased Loans may not be liquid. In view of the nature of the Purchased Loans, the parties agree that liquidation of a Transaction or the underlying Purchased Loans does not require a public purchase or sale and that a good faith private purchase or sale shall be deemed to have been made in a commercially reasonable manner. Accordingly, Buyers may elect the time and manner of liquidating any Purchased Loan and nothing contained herein shall obligate Buyers to liquidate any Purchased Loan on the occurrence of an Event of Default or to liquidate all Purchased Loans in the same manner or on the same Business Day or constitute a waiver of any right or remedy of Buyers. Notwithstanding the foregoing, the parties to this Agreement agree that the Transactions have been entered into in consideration of and in reliance upon the fact that all Transactions hereunder constitute a single business and contractual obligation and that each Transaction has been entered into in consideration of the other Transactions.

(b) Seller hereby acknowledges, admits and agrees that Seller's obligations under this Agreement are recourse obligations of Seller to which Seller pledges its full faith and credit. In addition to their rights hereunder, Buyers shall have the right to proceed against any of Seller's assets which may be in the possession of Buyers, any of Buyers' Affiliates or their designee (including the Custodian), including the right to liquidate such assets and to set-off the proceeds against monies owed by Seller to Buyers pursuant to this Agreement. Buyers may set off cash, the proceeds of the liquidation of the Purchased Loans and Additional Purchased Loans, any other Collateral or its proceeds and all other sums or obligations owed by Buyers to Seller against all of Seller's Obligations to Buyers, whether under this Agreement, under a Transaction, or under any other agreement between the parties, or otherwise, whether or not such Obligations are then due, without prejudice to Buyers' right to recover any deficiency.

(c) Buyers shall have the right to obtain physical possession of the Records and all other files of Seller relating to the Purchased Loans and all documents relating to the Purchased Loans which are then or may thereafter come into the possession of Seller or any third party acting for Seller and Seller shall deliver to Buyers such assignments as Buyers shall request.

(d) Buyers shall have the right to direct all Persons servicing the Purchased Loans to take such action with respect to the Purchased Loans as Buyers determine appropriate.

(e) Buyers shall, without regard to the adequacy of the security for the Obligations, be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of and protect, collect, manage, liquidate, and sell the Purchased Loans and any other Collateral or any portion thereof, collect the payments due with respect to the Purchased Loans and any other Collateral or any portion thereof, and do anything that Buyers are authorized hereunder to do. Seller shall pay all costs and expenses incurred by Buyers in connection with the appointment and activities of such receiver.

(f) Buyers may, at their option, enter into one or more Hedge Instruments covering all or a portion of the Purchased Loans, and the Seller shall be responsible for all damages, judgments, costs and expenses of any kind which may be imposed on, incurred by or asserted against the Lender relating to or arising out of such Hedge Instruments; including without limitation any losses resulting from such Hedge Instruments.

(g) In addition to all the rights and remedies specifically provided herein, Buyers shall have all other rights and remedies provided by applicable federal, state, foreign, and local laws, whether existing at law, in equity or by statute, including, without limitation, all rights and remedies available to a purchaser/secured party under the Uniform Commercial Code.

Except as otherwise expressly provided in this Agreement, Buyers shall have the right to exercise any of their rights and/or remedies without presentment, demand, protest or further notice of any kind other than as expressly set forth herein, all of which are hereby expressly waived by Seller.

Buyers may enforce their rights and remedies hereunder without prior judicial process or hearing, and Seller hereby expressly waives, to the extent permitted by law, any right Seller might otherwise have to require Buyers to enforce their rights by judicial process. Seller also waives, to the extent permitted by law, any defense Seller might otherwise have to the Obligations, arising from use of nonjudicial process, enforcement and sale of all or any portion of the Purchased Loans and any other Collateral or from any other election of remedies. Seller recognizes that nonjudicial remedies are consistent with the usages of the trade, are responsive to commercial necessity and are the result of a bargain at arm's length.

Seller shall cause all sums received by it or any of its Affiliates or the Servicer with respect to the Purchased Loans to be deposited with Buyers or Buyers' designee promptly upon receipt thereof. Seller shall be liable to Buyers for the amount of all expenses (plus interest thereon at a rate equal to the Default Rate), and Breakage Costs including, without limitation, all costs and expenses incurred within thirty (30) days of the Event of Default in connection with hedging or covering transactions related to the Purchased Loans, conduit advances and payments for mortgage insurance.

21. DELAY NOT WAIVER; REMEDIES ARE CUMULATIVE

No failure on the part of Buyers to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyers of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All rights and remedies of Buyers provided for herein are cumulative and in addition to any and all other rights and remedies provided by law, the Program Documents and the other instruments and agreements contemplated hereby and thereby, and are not conditional or contingent on any attempt by Buyers to exercise any of their rights under any other related document. Buyers may exercise at any time after the occurrence of an Event of Default one or more remedies, as they so desire, and may thereafter at any time and from time to time exercise any other remedy or remedies.

22. USE OF EMPLOYEE PLAN ASSETS

No assets of an employee benefit plan subject to any provision of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) shall be used by either party hereto in a Transaction.

23. INDEMNITY

(a) Seller and Guarantor agree to pay on demand (with interest thereon at the Default Rate following an Event of Default) (i) all reasonable out-of-pocket costs and expenses of Buyers and the Custodian in connection with the preparation, execution, delivery, modification, administration and amendment of the Program Documents (including, without limitation, (A) all collateral review and UCC search and filing fees and expenses and (B) the reasonable fees and expenses of counsel for Buyers with respect to advising Buyers as to their rights and responsibilities, or the perfection, protection or preservation of rights or interests, under this Agreement, with respect to negotiations with Seller or Guarantor or with other creditors of Seller or Guarantor or any of their Subsidiaries arising out of any Default or any events or circumstances that may give rise to a Default and with respect to presenting claims in or otherwise participating in or monitoring any bankruptcy, insolvency or other similar proceeding involving creditors’ rights generally and any proceeding ancillary thereto), (ii) all reasonable out-of-pocket expense and reasonable attorneys’ fees in connection with the taking of any action, including legal, required or permitted to be taken by Buyers and/or Custodian pursuant to the Program Documents, any “due diligence” or loan agent reviews conducted by Buyers on their behalf and (iii) all costs and expenses of Buyers in connection with the enforcement of this Agreement (including any waivers), whether in any action, suit or litigation, any bankruptcy, insolvency or other similar proceeding affecting creditors’ rights generally (including, without limitation, the reasonable fees and expenses of counsel for Buyers) whether or not the transactions contemplated hereby are consummated.

(b) Seller and Guarantor agree to indemnify and hold harmless Buyers and each of their Affiliates and their respective officers, directors, employees, agents and advisors (each, an “Indemnified Party”) from and against (and will reimburse each Indemnified Party as the same is incurred) any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel and allocated costs of internal counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including without limitation, in connection with) (i) any investigation, litigation or other proceeding (whether or not such Indemnified Party is a party thereto) relating to, resulting from or arising out of any of the Program Documents and all other documents related thereto, any breach of a representation or warranty of Seller or Guarantor or Seller’s or Guarantor’s officer in this Agreement or any other Program Document, and all actions taken pursuant thereto, (ii) the Transactions, the actual or proposed use of the proceeds of the Transactions, this Agreement or any of the transactions contemplated thereby, including, without limitation, any acquisition or proposed acquisition, or any indemnity payable under the Servicing Agreement or other servicing arrangement, (iii) the actual or alleged presence of hazardous materials on any Property or any environmental action relating in any way to any Property, or (iv) the actual or alleged violation of any federal, state, municipal or local predatory lending laws, except to the extent such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence or willful misconduct or is the result of a claim made by Seller or Guarantor against the Indemnified Party, and Seller or Guarantor is ultimately the successful party in any resulting litigation or arbitration. Seller and Guarantor also agree not to assert (and to cause Servicer not to assert) any claim against Buyers or any of their Affiliates, or any of their respective officers, directors, employees, attorneys and agents, on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to the Program Documents, the actual or proposed use of the proceeds of the Transactions, this Agreement or any of the transactions contemplated thereby. THE FOREGOING INDEMNITY AND AGREEMENT NOT TO ASSERT CLAIMS EXPRESSLY APPLIES, WITHOUT LIMITATION, TO THE NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF THE INDEMNIFIED PARTIES.

(c) If any action or proceeding (including any governmental investigation) shall be brought or asserted against any Indemnified Party in respect of which the indemnity provided above may be sought from Seller or Guarantor (the “Indemnifying Party”) each such Indemnified Party shall promptly notify the Indemnifying Party in writing, and the Indemnifying Party shall assume the defense thereof, including the employment of counsel satisfactory to the Indemnified Party and the payment of all expenses and reasonable legal fees; provided that failure to notify the Indemnifying Party shall not relieve it from any liability it may have to such Indemnified Party except to the extent that it shall be actually prejudiced thereby. The Indemnified Party shall have the right to employ separate counsel in any such action and to participate in the defense thereof at the expense of the Indemnified Party; provided, however that the fees and expenses of separate counsel to the Indemnified Party in any such proceeding shall be at the expense of the Indemnifying Party if (i) the Indemnifying Party has agreed to pay such fees and expenses, (ii) the Indemnifying Party shall have failed to assume the defense of such action or proceeding or employ counsel satisfactory to the Indemnified Party in any such action or proceeding within a reasonable time after the commencement of such action or (iii) the named parties to any such action or proceeding (including any impleaded parties) include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have been advised in writing by counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the Indemnifying Party which gives rise to a conflict of interest (in which case, if the Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense of such action or proceeding on behalf of such Indemnified Party, it being understood, however, that the Indemnifying Party shall not, in connection with any one such action or proceeding or separate but substantially similar or related actions or proceedings in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys at any time for the Indemnified Parties, which firm shall be designated in writing by the Indemnified Party and shall be acceptable to the Indemnified Party). The Indemnifying Party shall not be liable for any settlement of any such action or proceeding effected without its written consent to the extent that any such settlement shall be prejudicial to the Indemnifying Party (to which the Indemnified Party did not consent), but, if settled with its written consent, or if there is a final non-appealable judgment for the plaintiff in any such action or proceeding with respect to which the Indemnifying Party shall have received notice in accordance with this paragraph, the Indemnifying Party agrees to indemnify and hold the Indemnified Parties harmless from and against any loss or liability by reason of such settlement or judgment.

(d) Without limitation on the provisions of Section 6, if any payment of the Repurchase Price of any Transaction is made by Seller other than on the then scheduled Repurchase Date thereto as a result of an acceleration of the Repurchase Date pursuant to Section 20 or for any other reason, Seller shall upon demand by Buyers, pay to Buyers any Breakage Costs incurred as of a result of such payment.

(e) If Seller fails to pay when due any costs, expenses or other amounts payable by it under this Agreement, including, without limitation, reasonable fees and expenses of counsel and indemnities, such amount may be paid on behalf of Seller by Buyers, in their sole discretion and Seller shall remain liable for any such payments by Buyers. No such payment by Buyers shall be deemed a waiver of any of Buyers' rights under the Program Documents.

(f) Without prejudice to the survival of any other agreement of Seller hereunder, the covenants and obligations of Seller contained in this Section 23 shall survive the payment in full of the Repurchase Price and all other amounts payable hereunder and delivery of the Purchased Loans by Buyers against full payment therefore.

24. WAIVER OF REDEMPTION AND DEFICIENCY RIGHTS

Seller hereby expressly waives, to the fullest extent permitted by law, every statute of limitation on a deficiency judgment, any reduction in the proceeds of any Purchased Loans as a result of restrictions upon Buyers or Custodian contained in the Program Documents or any other instrument delivered in connection therewith, and any right that it may have to direct the order in which any of the Purchased Loans shall be disposed of in the event of any disposition pursuant hereto.

25. REIMBURSEMENT; SET-OFF

All sums reasonably expended by Buyers in connection with the exercise of any right or remedy provided for herein shall be and remain Seller's obligation. Seller agrees to pay, with interest at the Default Rate to the extent that an Event of Default has occurred, the reasonable out-of-pocket expenses and reasonable attorneys' fees incurred by Buyers and/or Custodian in connection with the preparation, negotiation, enforcement (including any waivers), administration and amendment of the Program Documents (regardless of whether a Transaction is entered into hereunder), the taking of any action, including legal or Guarantor action, required or permitted to be taken by Buyers (without duplication to Buyers) and/or Custodian pursuant thereto, any "due diligence" or loan agent reviews conducted by Buyers or on their behalf or by refinancing or restructuring in the nature of a "workout."

If Buyers determine that, due to the introduction of, any change in, or the compliance by Buyers with (i) any eurocurrency reserve requirement, or (ii) the interpretation of any law, regulation or any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), there shall be an increase in the cost to Buyers in engaging in the present or any future Transactions, then Seller agrees to pay to Buyers, from time to time, upon demand by Buyers (with a copy to Custodian) the actual cost of additional amounts as specified by Buyers to compensate Buyers for such increased costs. Notwithstanding any other provisions in this Agreement, in the event of any such change in the eurocurrency reserve requirement or the interpretation of any law, regulation or any guideline or request from any central bank or other Governmental Authority, Seller will have the right to terminate all Transactions then outstanding as of a date selected by Seller, which date shall be prior to the applicable Repurchase Date and which date shall thereafter for all purposes hereof, be deemed to be the Repurchase Date. In addition, Buyers shall promptly notify Seller if any events in clause (i) or (ii) of this Section 25 occur.

In addition to any rights and remedies of Buyers hereunder and by law, Buyers shall have the right, without prior notice to Seller, any such notice being expressly waived by Seller to the extent permitted by applicable law, upon any amount becoming due and payable by Seller hereunder (whether at the stated maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Buyers or any Affiliate thereof to or for the credit or the account of Seller, Guarantor or Originator. Buyers agrees to promptly notify Seller after any such set-off and application made by Buyers; provided that the failure to give such notice shall not affect the validity of such set-off and application.

26. FURTHER ASSURANCES

Seller and Guarantor agree to do such further acts and things and to execute and deliver to Buyers such additional assignments, acknowledgments, agreements, powers and instruments as are reasonably required by Buyers to carry into effect the intent and purposes of this Agreement, to perfect the interests of Buyers in the Purchased Loans or to better assure and confirm unto Buyers their rights, powers and remedies hereunder.

27. ENTIRE AGREEMENT; PRODUCT OF NEGOTIATION

This Agreement supersedes and integrates all previous negotiations, contracts, agreements and understandings between the parties relating to a sale and repurchase of Purchased Loans and Additional Purchased Loans thereto, and it, together with the other Program Documents, and the other documents delivered pursuant hereto or thereto, contains the entire final agreement of the parties. No prior negotiation, agreement, understanding or prior contract shall have any validity hereafter.

28. TERMINATION

This Agreement shall remain in effect until the Termination Date provided, however, that no such termination shall affect Seller's outstanding obligations to Buyers at the time of such termination. Seller's obligations to indemnify Buyers pursuant to this Agreement and the other Program Documents shall survive the termination hereof.

29. ASSIGNMENT

The Program Documents are not assignable by Seller or Guarantor. Buyers in their sole discretion may at any time assign all or a portion of their rights and obligations under this Agreement and the Program Documents; provided, however, that Buyers shall maintain, for review by Seller upon written request, a register of assignees and a copy of an executed assignment and acceptance by Buyers and assignee ("Assignment and Acceptance"), specifying the percentage or portion of such rights and obligations assigned. Upon such assignment, (a) such assignee shall be a party hereto and to each Program Document to the extent of the percentage or portion set forth in the Assignment and Acceptance, and shall succeed to the applicable rights and obligations of Buyers hereunder, and (b) Buyers shall, to the extent that such rights and obligations have been so assigned by it to either (i) an Affiliate of any Buyer which assumes the obligations of such Buyer or (ii) to another Person which assumes the obligations of such Buyer, be released from its obligations hereunder accruing thereafter and under the Program Documents. Unless otherwise stated in the Assignment and Acceptance, Seller shall continue to take directions solely from Buyers unless otherwise notified by Buyers in writing. Buyers may distribute to any prospective assignee any document or other information delivered to Buyers by Seller. Notwithstanding any assignment by Buyers pursuant to this Section 29, Buyers shall remain liable as to the Transactions.

30. AMENDMENTS, ETC.

No amendment or waiver of any provision of this Agreement nor any consent to any failure to comply herewith or therewith shall in any event be effective unless the same shall be in writing and signed by Guarantor, Seller and Buyers, and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

31. SEVERABILITY

If any provision of any Program Document is declared invalid by any court of competent jurisdiction, such invalidity shall not affect any other provision of the Program Documents, and each Program Document shall be enforced to the fullest extent permitted by law.

32. BINDING EFFECT; GOVERNING LAW

This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns, except that neither Guarantor nor Seller may assign or transfer any of their respective rights or obligations under this Agreement or any other Program Document without the prior written consent of Buyers. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF (EXCEPT FOR SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

33. WAIVER OF JURY TRIAL; CONSENT TO JURISDICTION AND VENUE; SERVICE OF PROCESS

EACH OF SELLER AND GUARANTOR HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PROGRAM DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH OF SELLER AND GUARANTOR HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENTS, ON BEHALF OF ITSELF AND ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF ANY COURT OF THE STATE OF NEW YORK, OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE PROGRAM DOCUMENTS IN ANY ACTION OR PROCEEDING. EACH OF SELLER AND GUARANTOR HERETO HEREBY SUBMITS TO, AND WAIVES ANY OBJECTION SUCH PARTY MAY HAVE TO, NON-EXCLUSIVE PERSONAL JURISDICTION AND VENUE IN THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, WITH RESPECT TO ANY DISPUTES ARISING OUT OF OR RELATING TO THE PROGRAM DOCUMENTS. EACH OF SELLER AND GUARANTOR HERETO HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF A SUMMONS AND COMPLAINT AND OTHER PROCESS IN ANY ACTION, CLAIM OR PROCEEDING BROUGHT BY ANOTHER PARTY IN CONNECTION WITH THIS AGREEMENT OR THE OTHER PROGRAM DOCUMENTS, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS, ON BEHALF OF ITSELF OR ITS PROPERTY, IN THE MANNER SPECIFIED IN THIS SECTION 33 AND TO SUCH PARTY'S ADDRESS SPECIFIED IN SECTION 36 OR SUCH OTHER ADDRESS AS SUCH PARTY SHALL HAVE PROVIDED IN WRITING TO THE OTHER PARTIES HERETO. NOTHING IN THIS SECTION 33 SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO (I) SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW, OR (II) BRING ANY ACTION OR PROCEEDING AGAINST ANY OTHER PARTY OR ITS PROPERTIES IN THE COURTS OF ANY OTHER JURISDICTIONS.

34. SINGLE AGREEMENT

Seller, Guarantor and Buyers acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, Seller, Guarantor and Buyers each agree (i) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, and (ii) that payments, deliveries and other transfers made by any of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transaction hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

35. INTENT

Seller and Buyers recognize that each Transaction is a “repurchase agreement” as that term is defined in Section 101 of Title 11 of the United States Code, as amended (“USC”), a “forward contract” as that term is defined in Section 101 of Title 11 of the USC, and a “securities contract” as that term is defined in Section 741 of Title 11 of the USC.

It is understood that each Buyer’s right to liquidate the Purchased Loans delivered to it in connection with the Transactions hereunder, to accelerate or terminate this Agreement or to exercise any other remedies pursuant to Section 20 hereof is a contractual right to liquidate, terminate and accelerate such Transaction as described in Sections 555 and 559 of Title 11 of the USC.

36. NOTICES AND OTHER COMMUNICATIONS

Except as provided herein, all notices required or permitted by this Agreement shall be in writing (including without limitation by Electronic Transmission, email or facsimile) and shall be effective and deemed delivered only when received by the party to which it is sent; provided, however, that a facsimile transmission shall be deemed to be received when transmitted so long as the transmitting machine has provided an electronic confirmation (without error message) of such transmission and notices being sent by first class mail, postage prepaid, shall be deemed to be received five (5) Business Days following the mailing thereof. Any such notice shall be sent to a party at the address or facsimile transmission number set forth below:

if to Seller : NYMC Mortgage Loan Corporation
1301 Avenue of the Americas
7th Floor
New York, New York 10019
Attention: President
Telephone: 212-634-9400
Facsimile: 212-655-6269

With a copy to: New York Mortgage Trust, Inc.
Attention: General Counsel
Telephone: 212-634-9400
Facsimile: 212-655-6269

if to Guarantor : New York Mortgage Trust, Inc.
1301 Avenue of the Americas
7th Floor
New York, New York 10019
Attention: President
Telephone: 212-634-9400
Facsimile: 212-655-6269

With a copy to: NYMC Mortgage Loan Corporation
Attention: General Counsel
Telephone: 212-634-9400
Facsimile: 212-655-6269

if to Aspen : Aspen Funding Corp.
60 Wall Street
New York, NY 10005
Attention: Vincent D'Amore
Telephone: (212) 250-7328
Facsimile: (212) 797-5160

if to Newport : Newport Funding Corp.
60 Wall Street
New York, NY 10005
Attention: Vincent D'Amore
Telephone: (212) 250-7328
Facsimile: (212) 797-5160

if to DBSP : DB Structured Products, Inc.
60 Wall Street
New York, NY 10005
Attention: Vincent D'Amore
Telephone: (212) 250-7328
Facsimile: (212) 797-5160

or to such other address or facsimile number as either party may notify to the other in writing from time to time. Notices required hereunder to be provided to one Buyer must be simultaneously provided to all Buyers.

37. CONFIDENTIALITY

The Program Documents and their respective terms, provisions, supplements and amendments, and transactions and notices hereunder, are proprietary to Buyers and Agent and shall be held by Seller and Guarantor (and Seller and Guarantor shall cause Servicer to hold it) in strict confidence and shall not be disclosed to any third party without the consent of Buyers except for (i) disclosure to Seller's or Guarantor's direct and indirect parent companies, directors, attorneys, agents or accountants, provided that such attorneys or accountants likewise agree to be bound by this covenant of confidentiality, or are otherwise subject to confidentiality restrictions or (ii) with prior written notice to Buyers, disclosure required by law, rule, regulation or order of a court or other regulatory body or (iii) with prior written notice to Buyers, disclosure to any approved hedge counterparty to the extent necessary to obtain any Hedge Instrument hereunder or (iv) with prior written notice to Buyers, any disclosures or filing required under Securities and Exchange Commission ("SEC") or state securities' laws; provided that in the case of (iv), the Seller and the Guarantor shall not file the Pricing Side Letter with the SEC or state securities office. Notwithstanding anything herein to the contrary, except as reasonably necessary to comply with applicable securities laws, each party (and each employee, representative, or other agent of each party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to it

relating to such tax treatment and tax structure. For this purpose, tax treatment and tax structure shall not include (i) the identity of any existing or future party (or any Affiliate of such party) to this Agreement or (ii) any specific pricing information or other commercial terms, including the amount of any fees, expenses, rates or payments arising in connection with the transactions contemplated by this Agreement.

38. DUE DILIGENCE

Each of Seller and Guarantor agrees to promptly provide Buyers and their agents with access to, copies of and extracts from any and all documents, records, agreements, instruments or information (including, without limitation, any of the foregoing in computer data banks and computer software systems) relating to its financial condition, the performance of its obligations under the Program Documents, the documents contained in the Servicing File or the Purchased Loans in the possession, or under the control, of Servicer, Seller or Guarantor. In addition, Buyers have the right to perform continuing due diligence reviews on a quarterly basis (or with respect to the Servicer, as provided in the Servicing Side Letter) (x) Seller, Servicer, Guarantor and their respective Affiliates, directors, officers, employees and significant shareholders, including, without limitation, their respective financial condition and performance of their obligations under the Program Documents, and (y) the Servicing File and the Purchased Loans. Seller shall also make available to Buyers a knowledgeable financial or accounting officer for the purpose of answering questions respecting the Purchased Loans. Without limiting the generality of the foregoing, Seller acknowledges that Buyers shall enter into transactions with Seller based solely upon the information provided by Seller to Buyers and the representations, warranties and covenants contained herein, and that Buyers, at their option, has the right at any time to conduct a partial or complete due diligence review on some or all of the Purchased Loans, including, without limitation, ordering new credit reports, new appraisals on the related Mortgaged Properties and otherwise re-generating the information used to originate such Purchased Loans. Seller and Guarantor shall pay Buyers' out-of-pocket costs and expenses incurred in connection with any due diligence hereunder or under the Servicing Side Letter.

39. NO PROCEEDINGS

(a) The Guarantor and Seller hereby covenant and agree (which agreement, shall, pursuant to the terms of this Agreement, be binding upon its successors and assigns) that it shall not institute against, or join any other Person in instituting against, Aspen or Newport any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding or other proceedings under any federal or state bankruptcy or similar law, for one year and a day after the latest maturing Commercial Paper Note (whether or not issued to fund a Transaction under this Agreement) issued by Aspen or Newport, as applicable, is paid. Notwithstanding anything in this Agreement to the contrary, any breach of the terms or conditions of this Section 39 shall not be subject to any grace or cure period. The agreements in this Section 39(a) shall survive the termination of this Agreement and the satisfaction of all Obligations under the Program Documents.

(b) The Guarantor hereby covenants and agrees that it will not at any time (until the expiration of one year and one day following the satisfaction of all Obligations under the Program Documents) institute against the Seller, or solicit or join in or cooperate with or encourage any institution against the Seller of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings under any United States Federal or State bankruptcy or similar law in connection with any obligations under the Program Documents. Notwithstanding anything to the contrary contained in this Agreement, any breach of the terms or conditions of this Agreement shall not be subject to any grace or cure period. The agreements in this Section 39(b) shall survive the termination of this Agreement and the satisfaction of all Obligations under the Program Documents.

[Signature Page Follows]

IN WITNESS WHEREOF, Seller, Guarantor and Buyers have caused their names to be signed to this Master Repurchase Agreement by their respective officers thereunto duly authorized as of the date first above written.

NYMC LOAN CORPORATION, as Seller

By: /s/ Steven B. Schnall
Name: Steven B. Schnall
Title: Chief Executive Officer

NEW YORK MORTGAGE TRUST, INC., as Guarantor

By: /s/ Steven B. Schnall
Name: Steven B. Schnall
Title: Chief Executive Officer

DB STRUCTURED PRODUCTS, INC., as Buyer and Agent, as applicable

By: /s/ Vincent D'Amore
Name: Vincent D'Amore
Title: Authorized Signature

By: _____
Name:
Title:

ASPEN FUNDING CORP., as Buyer and Agent, as applicable

By: /s/ Doris J. Hearn
Name: Doris J. Hearn
Title: Vice President

NEWPORT FUNDING CORP., as Buyer and Agent, as applicable

By: /s/ Doris J. Hearn
Name: Doris J. Hearn
Title: Vice President

ANNEX I

BUYER ACTING AS AGENT

This Annex I forms a part of the Master Repurchase Agreement dated as of December 13, 2005 (the “Agreement”) among DB Structured Products, Inc., Aspen Funding Corp., Newport Funding Corp., NYMC Loan Corporation and New York Mortgage Trust, Inc. This Annex I sets forth the terms and conditions governing all transactions in which the Buyer selling assets or buying assets, as the case may be (“Agent”), in a Transaction is acting as agent for one or more third parties (each, a “Principal”). Capitalized terms used but not defined in this Annex I shall have the meanings ascribed to them in the Agreement.

1. Additional Representations. Agent hereby makes the following representations, which shall continue during the term of any Transaction: Principal has duly authorized Agent to execute and deliver the Agreement on its behalf, has the power to so authorize Agent and to enter into the Transactions contemplated by the Agreement and to perform the obligations of Seller or the related Buyer, as the case may be, under such Transactions, and has taken all necessary action to authorize such execution and delivery by Agent and such performance by it.
2. Identification of Principals. Agent agrees (a) to provide the other party, prior to the date on which the parties agree to enter into any Transaction under the Agreement, with a written list of Principals for which it intends to act as Agent (which list may be amended in writing from time to time with the consent of the other party) and (b) to provide the other party, before the close of business on the next business day after orally agreeing to enter into a Transaction, with notice of the specific Principal or Principals for whom it is acting in connection with such Transaction. If (i) Agent fails to identify such Principal or Principals prior to the close of business on such next business day or (ii) the other party shall determine in its sole discretion any Principal or Principals identified by Agent are not acceptable to it, the other party may reject and rescind any Transaction with such Principal or Principals, return to Agent any Purchased Loans or portion of the Purchase Price, as the case may be, previously transferred to the other party and refuse any further performance under such Transaction, and Agent shall immediately return to the other party any portion of the Purchase Price or Purchased Loans, as the case may be, previously transferred to Agent in connection with such Transaction; provided, however, that (A) the other party shall promptly (and in any event within one business day) notify Agent of its determination to reject and rescind such Transaction and (B) to the extent that any performance was rendered by any party under any Transaction rejected by the other party, and such party shall remain entitled to any Price Differential or other amounts that would have been payable to it with respect to such performance if such Transaction had not been rejected. The other party acknowledges that Agent shall not have any obligation to provide it with confidential information regarding the financial status of its Principals; Agent agrees, however, that it will assist the other party in obtaining from Agent’s Principals such Information regarding the financial status of such Principals as the other party may reasonably request.
3. Limitation of Agent’s Liability. The parties expressly acknowledge that if the representations of Agent under the Agreement, including this Annex I, are true and correct in all material respects during the term of any Transaction and Agent otherwise complies with the provisions of this Annex I, then (a) Agent’s obligations under the Agreement shall not include a guarantee of performance by its Principal or Principals; provided that Agent shall remain liable for performance pursuant to Section 11 of the Agreement, and (b) the other party’s remedies shall not include a right of setoff in respect of rights or obligations, if any, of Agent arising in other transactions in which Agent is acting as principal.

4. Multiple Principals.

- (a) In the event that Agent proposes to act for more than one Principal hereunder, Agent and the other party shall elect whether (i) to treat Transactions under the Agreement as transactions entered into on behalf of separate Principals or (ii) to aggregate such Transactions as if they were transactions by a single Principal. Failure to make such an election in writing shall be deemed an election to treat Transactions under the Agreement as transactions on behalf of a single Principal.
- (b) In the event that Agent and the other party elect (or are deemed to elect) to treat Transactions under the Agreement as transactions on behalf of separate Principals, the parties agree that (i) Agent will provide the other party, together with the notice described in Section 2(b) of this Annex I, notice specifying the portion of each Transaction allocable to the account of each of the Principals for which it is acting (to the extent that any such Transaction is allocable to the account of more than one Principal); (ii) the portion of any individual Transaction allocable to each Principal shall be deemed a separate Transaction under the Agreement; (iii) the margin maintenance obligations of Seller under Section 6(a) of the Agreement shall be determined on a Transaction-by-Transaction basis (unless the parties agree to determine such obligations on a Principal-by-Principal basis); and (iv) Buyers' and Seller's remedies under the Agreement upon the occurrence of an Event of Default shall be determined as if Agent had entered into a separate Agreement with the other party on behalf of each of its Principals.
- (c) In the event that Agent and the other party elect to treat Transactions under the Agreement as if they were transactions by a single Principal, the parties agree that (i) Agent's notice under Section 2(b) of this Annex I need only identify the names of its Principals but not the portion of each Transaction allocable to each Principal's account; (ii) the margin maintenance obligations of Seller under Section 6(a) of the Agreement shall, subject to any greater requirement imposed by applicable law, be determined on an aggregate basis for all Transactions entered into by Agent on behalf of any Principal; and (iii) Buyer's and Seller's remedies upon the occurrence of an Event of Default shall be determined as if all Principals were a single Seller or Buyer, as the case may be.
- (d) Notwithstanding any other provision of the Agreement (including, without limitation, this Annex I), the parties agree that any Transactions by Agent on behalf of an employee benefit plan under ERISA shall be treated as Transactions on behalf of separate Principals in accordance with Section 4(b) of this Annex I (and all margin maintenance obligations of the parties shall be determined on a Transaction-by-Transaction basis).

5. Interpretation of Terms. All references to “Seller” or “Buyer”, as the case may be, in the Agreement shall, subject to the provisions of this Annex I (including, among other provisions, the limitations on Agent’s liability in Section 3 of this Annex 1), be construed to reflect that (i) each Principal shall have, in connection with any Transaction or Transactions entered into by Agent on its behalf, the rights, responsibilities, privileges and obligations of a “Seller” or “Buyer”, as the case may be, directly entering into such Transaction or Transactions with the other party under the Agreement, and (ii) Agent’s Principal or Principals have designated Agent as their sole agent for performance of Seller’s obligations to Buyers or Buyers’ obligations to Seller, as the case may be, and for receipt of performance by Buyers of their obligations to Seller or Seller of its obligations to Buyers as the case may be, in connection with any Transaction or Transactions under the Agreement (including, among other things, as Agent for each Principal in connection with transfers of securities, cash or other property and as agent for giving and receiving all notices under the Agreement). Both Agent and its Principal or Principals shall be deemed “parties” to the Agreement and all references to a “party” or “either party” in the Agreement shall be deemed revised accordingly.

EXHIBIT A-1

MONTHLY CERTIFICATION

I, _____, _____ of NYMC Loan Corporation (the "Company"), do hereby certify that the Company is in compliance with all provisions and terms of the Master Repurchase Agreement, dated as of December 13, 2005, by and among DB Structured Products, Inc., Aspen Funding Corp. and Newport Funding Corp., New York Mortgage Trust, Inc. and the Company.

IN WITNESS WHEREOF, I have signed this certificate.

Date: _____, 200_

NYMC LOAN CORPORATION

By: _____

Name:

Title:

[SEAL]

I, _____, _____ of the Company, do hereby certify that _____ is the duly elected or appointed, qualified and acting _____ of the Company, and the signature set forth above is the genuine signature of such officer on the date hereof.

EXHIBIT A-2
QUARTERLY CERTIFICATION

I, _____, _____ of New York Mortgage Trust, Inc. (the "Guarantor"), in accordance with that certain Master Repurchase Agreement ("Agreement"), dated as of December 13, 2005, by and among DB Structured Products, Inc., Aspen Funding Corp. and Newport Funding Corp., NYMC Loan Corporation and the Guarantor do hereby certify that:

- (i) there have not been any modifications to the Acquisition Guidelines (referred to in (i) of the definition thereof) or the Underwriting Guidelines (referred to in (i) of the definition thereof) that have not been approved by Buyer;
- (ii) all additional modifications to the Acquisition Guidelines (referred to in (i) of the definition thereof) or the Underwriting Guidelines (referred to in (i) of the definition thereof) since the date of the most recent disclosure to Buyers of any modification thereto are set forth herewith;
- (iii) the Adjusted Tangible Net Worth of the Guarantor exceeds \$90,000,000;
- (iv) the ratio of the Guarantor's Total Indebtedness to Adjusted Tangible Net Worth is less than 15:1;
- (v) the Guarantor has maintained at all times during this fiscal quarter Liquidity of at least the greater of \$15,000,000 and one percent (1%) of the unpaid principal balance of all assets of Guarantor under repurchase or secured credit arrangements to which the Guarantor is a party; and
- (vi) the Guarantor's net income before taxes, for any period of two consecutive fiscal quarters (commencing with the period ending September, 2005), is not less than \$1.00.

Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Agreement.

IN WITNESS WHEREOF, I have signed this certificate.

Date: _____, 200_

NEW YORK MORTGAGE TRUST, INC.

By: _____

Name:

Title:

[SEAL]

I, _____, _____ of the Guarantor, do hereby certify that _____ is the duly elected or appointed, qualified and acting _____ of the Guarantor, and the signature set forth above is the genuine signature of such officer on the date hereof.

EXHIBIT B-1

REPRESENTATIONS AND WARRANTIES WITH RESPECT TO LOANS OTHER THAN SMALL BALANCE COMMERCIAL LOANS

All capitalized terms below shall have the definitions set forth in the Agreement.

(a) Loans as Described. The information set forth on the Loan Schedule is complete, true and correct.

(b) Payments Current. Other than Delinquent Loans which are subject to the sub-limits set forth on Exhibit A to the Pricing Side Letter, all payments required to be made up to the related Purchase Date for the Loan under the terms of the Note have been made and credited. Other than Delinquent Loans which are subject to the sub-limits set forth in the Pricing Side Letter, as of the date of the related Purchase Date, no payment required under the Loan is Delinquent nor has any payment under the Loan been Delinquent for thirty (30) days or more.

(c) No Outstanding Charges. There are no defaults in complying with the terms of the Mortgage securing the Loan, and all taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, leasehold payments or ground rents which previously became due and owing have been paid, or an escrow of funds has been established in an amount sufficient to pay for every such item which remains unpaid and which has been assessed but is not yet due and payable. Neither the Seller nor the related Originator have advanced funds, or induced, solicited or knowingly received any advance of funds by a party other than the Mortgagor, directly or indirectly, for the payment of any amount required under the Loan, except for interest accruing from the date of the Note or date of disbursement of the Loan proceeds, whichever is earlier, to the day which precedes by one month the Due Date of the first installment of principal and interest.

(d) Original Terms Unmodified. The terms of the Note and Mortgage have not been impaired, waived, altered or modified in any respect, except by a written instrument which has been recorded, if necessary to protect the interests of Buyers and which has been delivered to Custodian and the terms of which are reflected in the Loan Schedule. The substance of any such waiver, alteration or modification has been approved by the title insurer, to the extent required by the policy, and its terms are reflected on the Loan Schedule. No Mortgagor has been released, in whole or in part, except in connection with an assumption agreement approved by the title insurer, to the extent required by the policy, and which assumption agreement is part of the Mortgage File delivered to Custodian and the terms of which are reflected in the Loan Schedule.

(e) No Defenses. The Loan is not subject to any right of rescission, set-off, counterclaim or defense, including without limitation the defense of usury, nor will the operation of any of the terms of the Note or the Mortgage, or the exercise of any right thereunder, render either the Note or the Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including without limitation the defense of usury, and no such right of rescission, set-off, counterclaim or defense has been asserted with respect thereto. No Mortgagor was or is a debtor in any state or federal bankruptcy or insolvency proceeding at, or subsequent to, the time the Loan was originated or as of the date hereof.

(f) Hazard Insurance. Pursuant to the terms of the Mortgage, all buildings or other improvements upon the Mortgaged Property are insured by a generally acceptable insurer against loss by fire, hazards of extended coverage and such other hazards as are customary in the area where the Mortgaged Property is located pursuant to insurance policies conforming to the requirements of Fannie Mae and Freddie Mac in an amount not less than the greater of (i) 100% of the replacement cost of all improvements to the Mortgaged Property or (ii) the outstanding principal balance of the Loan, but in any event at least equal to the amount necessary to avoid the operation of any co-insurance provisions with respect to the Mortgaged Property, and consistent with the amount that would have been required as of the date of origination in accordance with that required by Fannie Mae and Freddie Mac. If upon origination of the Loan, the Mortgaged Property was in an area identified in the Federal Register by the Federal Emergency Management Agency as having special flood hazards (and such flood insurance has been made available) a flood insurance policy meeting the requirements of the current guidelines of the Federal Flood Insurance Administration is in effect which policy conforms to the requirements of Fannie Mae and Freddie Mac. All individual insurance policies contain a standard mortgagee clause naming the originator and its successors and assigns as mortgagee, and all premiums thereon have been paid and such policies may not be reduced, terminated or cancelled without thirty (30) days' prior written notice to the mortgagee. The Mortgage obligates the Mortgagor thereunder to maintain the hazard insurance policy at the Mortgagor's cost and expense, and on the Mortgagor's failure to do so, authorizes the holder of the Mortgage to obtain and maintain such insurance at such Mortgagor's cost and expense, and to seek reimbursement therefor from the Mortgagor. Where required by state law or regulation, the Mortgagor has been given an opportunity to choose the carrier of the required hazard insurance, provided the policy is not a "master" or "blanket" hazard insurance policy covering the common facilities of a planned unit development. The hazard insurance policy is the valid and binding obligation of the insurer, is in full force and effect, and will be in full force and effect and inure to the benefit of Buyers upon the consummation of the transactions contemplated by this Agreement. Neither the Seller nor the related Originator have engaged in, and have no knowledge of the Mortgagor's or any subservicer's having engaged in, any act or omission which would impair the coverage of any such policy, the benefits of the endorsement provided for therein, or the validity and binding effect of either, including, without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other person or entity, and no such unlawful items have been received, retained or realized by the Seller or the related Originator.

(g) Compliance with Applicable Laws. Any and all requirements of any federal, state or local law including, without limitation, usury, truth-in-lending, real estate settlement procedures, consumer credit protection, equal credit opportunity or disclosure laws applicable to the Loan have been complied with, the consummation of the transactions contemplated hereby will not involve the violation of any such laws or regulations and the Seller shall maintain in its possession, available for Buyers' inspection, and shall deliver to Buyers, upon demand, evidence of compliance with all such requirements;

(h) No Satisfaction of Mortgage. The Mortgage has not been satisfied, canceled, subordinated or rescinded, in whole or in part, and the Mortgaged Property has not been released from the lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such release, cancellation, subordination or rescission. Neither the Seller nor the related Originator have waived the performance by the Mortgagor of any action, if the Mortgagor's failure to perform such action would cause the Loan to be in default, nor has the Seller or the related Originator waived any default resulting from any action or inaction by the Mortgagor.

(i) Location and Type of Mortgaged Property. The Mortgaged Property is a fee simple property located in the state identified in the Loan Schedule and is not secured by an interest in a leasehold estate, the Mortgaged Property consists of a single parcel of real property with a detached single family residence erected thereon, or a two- to four- family dwelling, or a Fannie Mae eligible condominium project, or an individual unit in a planned unit development or a co-operative unit and such residence or dwelling is not a mobile home or a manufactured home (other than a Manufactured Home), provided, however that any condominium unit or planned unit development shall not fall within any of the “Ineligible Projects” of part VIII, Section 102 of the Fannie Mae Selling Guide and shall conform with the Acquisition Guidelines or Underwriting Guidelines (as applicable). No portion of the Mortgaged Property is used for commercial purposes; provided that Mortgaged Properties which contain a home office shall not be considered as being used for commercial purposes as long as the Mortgaged Property has not been altered for commercial purposes and is not storing any chemicals or raw materials other than those commonly used for homeowner repair, maintenance and/or household purposes. With respect to each Loan that is a Manufactured Home, such unit is a “single family residence” within the meaning of Section 25(e)(1) of the Code, and has a minimum of 400 square feet of living space, a minimum width of 102 inches and is of a kind customarily used at a fixed location. The fair market value of the Manufactured Home securing each contract was at least equal to 80% of the adjusted issue price of the contract at either (i) the time the contract was originated (determined pursuant to the REMIC Provisions) or (ii) the time the contract is transferred to the purchaser.

(j) Valid First or Second Lien. The Mortgage (including any Negative Amortization that may arise thereunder in respect of an Option ARM Loan, to the extent permitted under the Pricing Side Letter) is a valid, subsisting, enforceable and perfected first or second priority lien and first or second priority security interest on the Mortgaged Property, including all buildings on the Mortgaged Property and all installations and mechanical, electrical, plumbing, heating and air conditioning systems located in or annexed to such buildings, and all additions, alterations and replacements made at any time with respect to the foregoing. The lien of the Mortgage is subject only to:

(A) the lien of current real property taxes and assessments not yet due and payable;

(B) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording acceptable to prudent mortgage lending institutions generally and specifically referred to in the lender’s title insurance policy delivered to the originator of the Loan and (i) referred to or otherwise considered in the appraisal made for the originator of the Loan or (ii) which do not adversely affect the Appraised Value of the Mortgaged Property set forth in such appraisal;

(C) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related Mortgaged Property; and

(D) with respect to each Second Lien Mortgage Loan, a prior mortgage lien on the Mortgaged Property.

Any Security Agreement, chattel mortgage or equivalent document related to and delivered in connection with the Loan establishes and creates a valid, subsisting and enforceable (i) first lien and first priority perfected security interest with respect to each First Lien Mortgage Loan, or (ii) second lien and second priority perfected security interest with respect to each Second Lien Mortgage Loan, in either case, on the property described therein and the Seller has full right to sell and assign the same to the related Buyer. Except with respect to any Second Lien Mortgage Loan, the Mortgaged Property was not, as of the date of origination of the Loan, subject to a mortgage, deed of trust, deed to secure debt or other security instrument creating a lien subordinate to the lien of the Mortgage.

(k) Validity of Loan Documents. The Note, the Mortgage and any other agreement executed and delivered by a Mortgagor or guarantor, if applicable, in connection with the Loan are genuine, and each is the legal, valid and binding obligation of the maker thereof enforceable in accordance with its terms. All parties to the Note, the Mortgage and any other related agreement had legal capacity to enter into the Loan and to execute and deliver the Note, the Mortgage and any other related agreement, and the Note, the Mortgage and any other related agreement have been duly and properly executed by such parties. The documents, instruments and agreements submitted for loan underwriting were not falsified and contain no untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the information and statements therein not misleading. No fraud, error, negligence, misrepresentation or omission of fact with respect to a Loan has taken place on the part of the Seller, the related Originator or the Mortgagor or any other party involved in the origination or servicing of the Loan. The Seller and the related Originator have reviewed all of the documents constituting the Servicing File and have made such inquiries as they deem necessary to make and confirm the accuracy of the representations set forth herein.

(l) Full Disbursement of Proceeds . The Loan has been closed and the proceeds of the Loan have been fully disbursed and there is no requirement for future advances thereunder, and any and all requirements as to completion of any on-site or off-site improvement and as to disbursements of any escrow funds therefor have been complied with. All costs, fees and expenses incurred in making or closing the Loan and the recording of the Mortgage were paid, and the Mortgagor is not entitled to any refund of any amounts paid or due under the Note or Mortgage.

(m) Ownership . Immediately prior to the date hereof, the related Originator, and on the date hereof the Seller is the sole owner of record and holder of the Loan. The Loan is not assigned or pledged, and the Seller has good, indefeasible and marketable title thereto, and has full right to transfer and sell the Loan therein to the related Buyer free and clear of any encumbrance, equity, participation interest, lien, pledge, charge, claim or security interest, and has full right and authority subject to no interest or participation of, or agreement with, any other party, to sell and assign each Loan pursuant to this Agreement and following the sale of each Loan, the related Buyer will own such Loan free and clear of any encumbrance, equity, participation interest, lien, pledge, charge, claim or security interest.

(n) Doing Business . All parties which have had any interest in the Loan, whether as Mortgagee, assignee, pledgee or otherwise, are (or, during the period in which they held and disposed of such interest, were) (1) in compliance with any and all applicable licensing requirements of the laws of the state wherein the Mortgaged Property is located, and (2) organized under the laws of such state, or (3) qualified to do business in such state, or (4) federal savings and loan associations or national banks having principal offices in such state, or (5) not doing business in such state.

(o) Title Insurance . The Loan is covered by an ALTA lender's title insurance policy or other generally acceptable form of policy of insurance acceptable to Fannie Mae or Freddie Mac, issued by a title insurer acceptable to Fannie Mae or Freddie Mac and qualified to do business in the jurisdiction where the Mortgaged Property is located, insuring the Mortgagee, its successors and assigns, as to the first priority lien of the Mortgage in the original principal amount of the Loan (including, to the extent a Note provides for Negative Amortization, the maximum amount of Negative Amortization in accordance with the Mortgage) , and against any loss by reason of the invalidity or unenforceability of the lien resulting from the provisions of the Mortgage providing for adjustment in the Mortgage Interest Rate, Monthly Payment and Negative Amortization, subject only to the exceptions contained in clauses (A), (B), and (C), and with respect to each Second Lien Mortgage Loan, clause (D) of Paragraph (j) of this Exhibit B. Where required by state law or regulation, the Mortgagor has been given the opportunity to choose the carrier of the required mortgage title insurance. Additionally, such lender's title insurance policy affirmatively insures ingress and egress, and against encroachments by or upon the Mortgaged Property or any interest therein. The title policy does not contain any special exceptions (other than the standard exclusions) for zoning and uses and has been marked to delete the standard survey exception or to replace the standard survey exception with a specific survey reading. The Mortgagee, its successors and assigns is the sole insured of such lender's title insurance policy, and such lender's title insurance policy is in full force and effect and will be in force and effect upon the consummation of the transactions contemplated by this Agreement. No claims have been made under such lender's title insurance policy, and no prior holder or servicer of the Mortgage, including Seller and Guarantor, have done, by act or omission, anything which would impair the coverage of such lender's title insurance policy, including, without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other Person, and no such unlawful items have been received, retained or realized by Seller or Guarantor.

(p) No Defaults. There is no default, breach, violation or event of acceleration existing under the Mortgage or the Note and no event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration, and neither Seller, Guarantor nor any of their predecessors have waived any default, breach, violation or event of acceleration. With respect to each Second Lien Mortgage Loan, (i) the prior mortgage is in full force and effect, (ii) there is no default, breach, violation or event of acceleration existing under such prior mortgage or the related mortgage note, (iii) no event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration thereunder, and either (A) the prior mortgage contains a provision which allows or (B) applicable law requires, the mortgagee under the Second Lien Mortgage Loan to receive notice of, and affords such mortgagee an opportunity to cure any default by payment in full or otherwise under the prior mortgage.

(q) No Mechanics' Liens. There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under the law could give rise to such liens) affecting the related Mortgaged Property which are or may be liens prior to, or equal or coordinate with, the lien of the related Mortgage.

(r) Location of Improvements; No Encroachments. All improvements which were considered in determining the Appraised Value of the Mortgaged Property lay wholly within the boundaries and building restriction lines of the Mortgaged Property and no improvements on adjoining properties encroach upon the Mortgaged Property. No improvement located on or being part of the Mortgaged Property is in violation of any applicable zoning and building law, ordinance or regulation.

(s) Origination; Payment Terms. At the time the Loan was originated, the originator was a mortgagee approved by the Secretary of Housing and Urban Development pursuant to Sections 203 and 211 of the National Housing Act or a savings and loan association, a savings bank, a commercial bank or similar banking institution which is supervised and examined by a Federal or State authority. Except for an Option ARM Loan (to the extent permitted under the Pricing Side Letter), no Loan is a Negative Amortization Loan. Except for an Interest-Only Loan or Option ARM Loan (each to the extent permitted under the Pricing Side Letter), principal payments on the Loan commenced no more than sixty (60) days after funds were disbursed in connection with the Loan. The Mortgage Interest Rate is adjusted, with respect to adjustable rate Loans, on each Adjustment Date to equal the applicable Index plus the Gross Margin (rounded up or down to the nearest 0.125%), subject to the Maximum Mortgage Interest Rate. Except for an Interest-Only Loan or Option ARM Loan (each to the extent permitted under the Pricing Side Letter), the Note is payable on the first day of each month in equal monthly installments of principal and interest, which installments of interest, with respect to an Adjustable Rate Mortgage Loan, are subject to change due to the adjustments to the Mortgage Interest Rate on each Adjustment Date, with interest calculated and payable in arrears, sufficient to amortize the Loan fully by the stated maturity date, over an original term of not more than thirty (30) years from commencement of amortization. The Due Date of the first payment under the Note is no more than sixty (60) days from the date of the Note. With respect to each Interest-Only Loan, the interest-only period shall not exceed the period specified on the Loan Schedule and following the expiration of such interest-only period, the remaining Monthly Payments shall be sufficient to fully amortize the original principal balance over the remaining term of the Loan. With respect to an Option ARM Loan (to the extent permitted under the Pricing Side Letter), the related Note requires a Monthly Payment which is sufficient during the period following each Payment Adjustment Date, to fully amortize the outstanding principal balance as of the first day of such period (including any Negative Amortization) over the then remaining term of such Note and to pay interest at the related Mortgage Interest Rate; provided that the Monthly Payment shall not increase to an amount that exceeds 107.5% of the amount of the Monthly Payment that was due immediately prior to the Payment Adjustment Date; provided, further, that the payment adjustment cap shall not be applicable with respect to the adjustment made to the Monthly Payment that occurs in a year in which the Loan has been outstanding for a multiple of five (5) years and in any such year the Monthly Payment shall be adjusted to fully amortize the Loan over the remaining term.

(t) Customary Provisions. The Mortgage contains customary and enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security provided thereby, including, (i) in the case of a Mortgage designated as a deed of trust, by trustee's sale, and (ii) otherwise by judicial foreclosure. Upon default by a Mortgagor on a Loan and foreclosure on, or trustee's sale of, the Mortgaged Property pursuant to the proper procedures, the holder of the Loan will be able to deliver good and merchantable title to the Mortgaged Property. There is no homestead or other exemption available to the Mortgagor which would interfere with the right to sell the Mortgaged Property at a trustee's sale or the right to foreclose the Mortgage subject to applicable federal and state laws and judicial precedent with respect to bankruptcy and right of redemption.

(u) Conformance with Acquisition Guidelines, Underwriting Guidelines and Agency Standards. The Loan was acquired or underwritten in accordance with the Acquisition Guidelines or the Underwriting Guidelines, as to the case may be, in effect at the time the Loan was originated. The Note and Mortgage are on forms acceptable to Fannie Mae or Freddie Mac and Seller and Guarantor have not made any representations to a Mortgagor that are inconsistent with the mortgage instruments used.

(v) Occupancy of the Mortgaged Property. As of the related Purchase Date the Mortgaged Property is lawfully occupied under applicable law. All inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Mortgaged Property and, with respect to the use and occupancy of the same, including but not limited to certificates of occupancy and fire underwriting certificates, have been made or obtained from the appropriate authorities. Seller and Guarantor have not received notification from any Governmental Authority that the Mortgaged Property is in material non-compliance with such laws or regulations, is being used, operated or occupied unlawfully or has failed to have or obtain such inspection, licenses or certificates, as the case may be. Seller and Guarantor have not received notice of any violation or failure to conform with any such law, ordinance, regulation, standard, license or certificate.

(w) No Additional Collateral. The Note is not and has not been secured by any collateral except the lien of the corresponding Mortgage and the security interest of any applicable Security Agreement or chattel mortgage referred to in Paragraph (j) above.

(x) Deeds of Trust. In the event the Mortgage constitutes a deed of trust, a trustee, authorized and duly qualified under applicable law to serve as such, has been properly designated and currently so serves and is named in the Mortgage, and no fees or expenses are or will become payable by Custodian or Buyers to the trustee under the deed of trust, except in connection with a trustee's sale after default by the Mortgagor.

(y) Acceptable Investment. The Mortgagor is not in bankruptcy or insolvent and Seller and Guarantor have no knowledge of any circumstances or conditions with respect to the Mortgage, the Mortgaged Property, the Mortgagor or the Mortgagor's credit standing that can reasonably be expected to cause private institutional investors to regard the Loan as an unacceptable investment, cause the Loan to become Delinquent, or adversely affect the value or marketability of the Loan.

(z) Delivery of Mortgage Loan Documents. Other than with respect to Wet-Ink Mortgage Loans, the Note, the Mortgage, the Assignment of Mortgage and any other documents required to be delivered by Seller under this Agreement have been delivered to Buyers or Custodian, and Seller is in possession of a complete, true and accurate Mortgage File in compliance with Section 2 of the Custodial Agreement, except for such documents the originals of which have been delivered to Buyers or Custodian.

(aa) Due on Sale. The Mortgage contains an enforceable provision for the acceleration of the payment of the unpaid principal balance of the Loan in the event that the Mortgaged Property is sold or transferred without the prior written consent of the Mortgagee thereunder.

(bb) Transfer of Loans. The Assignment of Mortgage is in recordable form and is acceptable for recording under the laws of the jurisdiction in which the Mortgaged Property is located.

(cc) No Buydown Provisions; No Graduated Payments or Contingent Interests. The Loan does not contain provisions pursuant to which Monthly Payments are paid or partially paid with funds deposited in any separate account established by Seller, the Mortgagor or anyone on behalf of the Mortgagor, or paid by any source other than the Mortgagor nor does it contain any other similar provisions currently in effect which may constitute a "buydown" provision. The Loan is not a graduated payment mortgage loan and the Loan does not have a shared appreciation or other contingent interest feature.

(dd) Consolidation of Future Advances. Any future advances made prior to the related Purchase Date have been consolidated with the outstanding principal amount secured by the Mortgage, and the secured principal amount, as consolidated, bears a single interest rate and single repayment term. The lien of the Mortgage securing the consolidated principal amount (including any Negative Amortization) is expressly insured as having first or second lien priority by a title insurance policy, an endorsement to the policy insuring the Mortgagee's consolidated interest (including any Negative Amortization) or by other title evidence acceptable to Fannie Mae and Freddie Mac. Except with respect to an Option ARM Loan (to the extent permitted under the Pricing Side Letter), the consolidated principal amount does not exceed the original principal amount of the Loan.

(ee) Mortgaged Property Undamaged. There is no proceeding pending or threatened for the total or partial condemnation of the Mortgaged Property. The Mortgaged Property is undamaged by waste, fire, earthquake or earth movement, windstorm, flood, tornado or other casualty so as to affect adversely the value of the Mortgaged Property as security for the Loan or the use for which the premises were intended.

(ff) Collection Practices; Escrow Deposits; Adjustable Rate Mortgage Loan Adjustments. The origination and collection practices used with respect to the Loan have been in accordance with Accepted Servicing Practices and in all respects in compliance with all applicable laws and regulations. With respect to escrow deposits and Escrow Payments (other than with respect to Second Lien Mortgage Loans for which the mortgagee under the prior mortgage lien is collecting Escrow Payments), all such payments are in the possession of Seller, Servicer or any third-party servicer and there exist no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made. Each Loan is covered by a life of loan tax service contract. All Escrow Payments have been collected in full compliance with state and federal laws. An escrow of funds is not prohibited by applicable law and has been established in an amount sufficient to pay for every item which remains unpaid and which has been assessed but is not yet due and payable. No escrow deposits or Escrow Payments or other charges or payments due Seller have been capitalized under the Mortgage or the Note. All Mortgage Interest Rate adjustments have been made in strict compliance with state and federal laws and the terms of the related Note. Any interest required to be paid pursuant to state and local laws has been properly paid and credited.

(gg) Appraisal. The Servicing File includes an appraisal of the Mortgaged Property signed prior to the final approval of the Mortgage application by an appraiser qualified under Fannie Mae and Freddie Mac guidelines who at that time (i) was licensed in the state where the Mortgaged Property is located, (ii) had no interest, direct or indirect, in the Mortgaged Property or in any Loan or the security therefor, and (iii) did not receive compensation that was affected by the approval or disapproval of the Loan. The appraisal shall have been made within one hundred and eighty (180) days of the origination of the Loan, be completed in compliance with the Uniform Standards of Professional Appraisal Practice and all applicable Federal and state laws and regulations. If the appraisal was made more than one hundred and twenty (120) days before the origination of the Loan, Seller shall have received and included in the Servicing File a recertification of the appraisal.

(hh) Servicemembers' Civil Relief Act. The Mortgagor has not notified Seller or Guarantor, and Seller and Guarantor have no knowledge of, any relief requested or allowed to the Mortgagor under the Servicemembers' Civil Relief Act or any similar state statute.

(ii) Environmental Matters. The Mortgaged Property is free from any and all toxic or hazardous substances and there exists no violation of any local, state or federal environmental law, rule or regulation. There is no pending action or proceeding directly involving any Mortgaged Property of which Seller and the related Originator are aware in which compliance with any environmental law, rule or regulation is an issue; and to the best of Seller's and the related Originator's knowledge, nothing further remains to be done to satisfy in full all requirements of each such law, rule or regulation consisting a prerequisite to use and enjoyment of said property.

(jj) No Construction Loans. No Loan was made in connection with (a) facilitating the trade-in or exchange of a Mortgaged Property or (b) the construction or rehabilitation of a Mortgaged Property, unless the Loan is a construction-to-permanent mortgage loan listed on the Loan Schedule which has been fully disbursed, all construction work is complete and a completion certificate has been issued.

(kk) No Denial of Insurance. No action, inaction, or event has occurred and no state of fact exists or has existed that has resulted or will result in the exclusion from, denial of, or defense to coverage under any applicable pool insurance policy, primary mortgage insurance policy, special hazard insurance policy, or bankruptcy bond, irrespective of the cause of such failure of coverage. In connection with the placement of any such insurance, no commission, fee, or other compensation has been or will be received by Seller or the related Originator or any designee of Seller or the related Originator or any corporation in which Seller or the related Originator or any officer, director, or employee had a financial interest at the time of placement of such insurance.

(ll) Regarding the Mortgagor. The Mortgagor is one or more natural persons and/or trustees for an Illinois land trust or a trustee under a "living trust" and such "living trust" is in compliance with Fannie Mae guidelines for such trusts.

- (mm) Mortgagor Acknowledgment. The Mortgagor has received all disclosure materials required by applicable law with respect to the making of Adjustable Rate Mortgage Loans. Seller shall maintain such documents in the Servicing File.
- (nn) Predatory Lending Regulations. No Loan is a High Cost Loan.
- (oo) Qualified Mortgage. The Loan is a “qualified mortgage” within the meaning of Section 860G(a)(3) or any successor provision thereof of the Code.
- (pp) Insurance. Seller has caused or will cause to be performed any and all acts required to preserve the rights and remedies of Buyers in any insurance policies applicable to the Loans including, without limitation, any necessary notifications of insurers, assignments of policies or interests therein, and establishments of coinsured, joint loss payee and mortgagee rights in favor of Buyer.
- (qq) Simple Interest Mortgage Loans. None of the Loans are simple interest Loans.
- (rr) Prepayment Fee. With respect to each Loan that has a prepayment fee feature, each such prepayment fee is enforceable and was originated in compliance with all applicable federal, state and local laws and will be enforced by Seller for the benefit of Buyers, and is only payable (i) with respect to a Loan originated prior to October 1, 2002, during the first 5 years of the term of the Loan, and (ii) with respect to a Loan originated on or after October 1, 2002, during the first 3 years of the term of the Loan.
- (ss) Flood Certification Contract. Seller shall have obtained a life of loan, transferable flood certification contract for each Loan and shall assign all such contracts to Buyer.
- (tt) CLTV. No First Lien Mortgage Loan or Second Lien Mortgage Loan has a CLTV in excess of 100%;
- (uu) Consent. Either (a) no consent for the Second Lien Mortgage Loan is required by the holder of the related first lien or (b) such consent has been obtained and is contained in the Servicing File.
- (vv) Wet-Ink Mortgage Loans. With respect to each Wet-Ink Mortgage Loan, the Settlement Agent has been instructed in writing by Seller to hold the related Mortgage File as agent and bailee for Buyers or Buyers’ agent and to promptly forward such Mortgage File in accordance with the provisions of the Custodial Agreement and the Escrow Instruction Letter.
- (ww) No Equity Participation. No document relating to the Loan provides for any contingent or additional interest in the form of participation in the cash flow of the Mortgaged Property or a sharing in the appreciation of the value of the Mortgaged Property. The indebtedness evidenced by the Note is not convertible to an ownership interest in the Mortgaged Property or the Mortgagor and Seller and Guarantor have not financed nor do they own directly or indirectly, any equity of any form in the Mortgaged Property or the Mortgagor.
- (xx) Proceeds of Loan. The proceeds of the Loan have not been and shall not be used to satisfy, in whole or in part, any debt owed or owing by the Mortgagor to Seller or any Affiliate or correspondent thereof unless such debt was originated more than 12 months prior to the origination of such Loan.
- (yy) Withdrawn Loans. If the Loan has been released to Seller or its designee pursuant to a Request for Release as permitted under Section 5(a) or 5(b) of the Custodial Agreement, then the Note relating to the Loan was returned to Custodian within ten (10) calendar days and if released under a bailee letter pursuant to Section 5(c), such Note was returned within forty-five (45) calendar days.

- (zz) Origination Date. Other than Delinquent Loans which are subject to the sub-limits set forth in the Pricing Side Letter, the origination date is no earlier than ninety (90) days prior to the date the Loan is initially purchased by the related Buyer.
- (aaa) No Exception. Custodian has not noted any material exceptions on a Loan Schedule as an Exception (as defined in the Custodial Agreement) with respect to the Loan which would materially and adversely affect the Loan or the related Buyer's ownership of the Loan, unless consented to by the related Buyer.
- (bbb) Mortgage Submitted for Recordation. The Mortgage either has been or will promptly be submitted for recordation in the appropriate governmental recording office of the jurisdiction where the Mortgaged Property is located.
- (ccc) Endorsements. Each Note has been endorsed by a duly authorized officer of Seller or Guarantor for its own account and not as a fiduciary, trustee, trustor or beneficiary under a trust agreement.
- (ddd) Accuracy of Information. All information provided to Buyers by Seller and Guarantor with respect to the Loans is accurate in all material respects.
- (eee) Servicing. The Servicer is the servicer of the Loans.
- (fff) Single Premium Credit Insurance. No Mortgagor is offered or required to purchase single premium credit insurance in connection with the origination of the related Loan.
- (ggg) Insured Closing Letters. With respect to each Eligible Loan that is a Wet-Ink Mortgage Loan, Seller has received an insured closing letter from the related Settlement Agent.
- (hhh) MIP Insurance. With respect to each Loan insured by HUD or the Department of Veterans Affairs, all insurance premiums ("MIP") payable to HUD or the Department of Veterans Affairs, as applicable, in connection with such Loan were paid within the timeframe required by such agency to avoid the imposition of any late fees or penalty fees.
- (iii) MIP Insurance Certificate. With respect to each Loan insured by HUD or the Department of Veterans Affairs, Seller or Guarantor have received the related insurance certificate from the applicable agency evidencing such insurance within sixty (60) days of the origination date of such Loan.
- (jjj) MIP Documents. With respect to each Loan insured by HUD or the Department of Veterans Affairs, Seller or Guarantor have submitted all documents required by the applicable agency to insure such Loan (regardless of whether such documents are required to be contained in the related Servicing File) within thirty (30) days of the origination date of such Loan.
- (kkk) MIP Access. With respect to each Loan insured by HUD or the Department of Veterans Affairs, Seller or Guarantor have provided access to Buyers to the lender number, password or any other information that may be required by the applicable agency or otherwise for Buyers to verify that the related MIP payments have been made.

(lll) Georgia Loans . No Loan originated on or after October 1, 2002 and prior to March 7, 2003 is secured by property located in the State of Georgia.

(mmm) [Reserved]

(nnn) Fair Credit Reporting Act . Each of the Seller and any predecessor servicer has fully furnished, in accordance with the Fair Credit Reporting Act and its implementing regulations, accurate and complete information (e.g., favorable and unfavorable) on its borrower credit files to Equifax, Experian and Trans Union Credit Information Company (three of the credit repositories), on a monthly basis; and the Seller will fully furnish, in accordance with the Fair Credit Reporting Act and its implementing regulations, accurate and complete information (e.g., favorable and unfavorable) on its borrower credit files to Equifax, Experian and Trans Credit Information Company (three of the credit repositories), on a monthly basis.

(ooo) Predatory Lending Practices . No predatory, abusive or deceptive lending practices, including but not limited to, the extension of credit to a Mortgagor without regard for the Mortgagor's ability to repay the Loan and the extension of credit to a Mortgagor which has no tangible net benefit to the Mortgagor, were employed in connection with the origination of the Loan. Each Loan is in compliance with the anti-predatory lending eligibility for purchase requirements of Fannie Mae's Selling Guide.

(ppp) USA Patriot Act of 2001 . Each of the Seller and Guarantor has complied with all applicable anti-money laundering laws and regulations, including without limitation the USA Patriot Act of 2001 (collectively, the "Anti-Money Laundering Laws"). Each of the Seller and Guarantor has established an anti-money laundering compliance program as required by the Anti-Money Laundering Laws, has conducted the requisite due diligence in connection with the origination of each Loan for purposes of the Anti-Money Laundering Laws, including with respect to the legitimacy of the applicable mortgagor and the origin of the assets used by the said mortgagor to purchase the property in question, and maintains, and will maintain, sufficient information to identify the applicable mortgagor for purposes of the Anti-Money Laundering Laws. No Loan is subject to nullification pursuant to Executive Order 13224 (the "Executive Order") or the regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury (the "OFAC Regulations") or in violation of the Executive Order or the OFAC Regulations, and no Mortgagor is subject to the provisions of such Executive Order or the OFAC Regulations nor listed as a "blocked person" for purposes of the OFAC Regulations.

(qqq) Compliance with Predatory Laws . Any and all requirements of any federal, state or local predatory and abusive lending laws applicable to the origination and servicing of mortgage loans of a type similar to the Loans have been complied with and the consummation of the transactions contemplated hereby will not involve the violation of any such laws, and the Seller shall maintain in its possession, available for the inspection of the Buyers or their designees, and shall deliver to the Buyers or their designees, upon two business days' request, evidence of compliance with such requirements.

(rrr) Eligibility Criteria . The Loan is an Eligible Loan and complies with any other eligibility requirements set forth in the Pricing Side Letter.

(sss) MERS Designated Mortgage Loans . With respect to each MERS Designated Mortgage Loans, a Mortgage Identification Number has been assigned by MERS and such Mortgage Identification Number is accurately provided on the Loan Schedule. The related Assignment of Mortgage to MERS has been duly and properly recorded. With respect to each MERS Mortgage Loan, no Mortgagor has received any notice of liens or legal actions with respect to such Mortgage Loan and no such notices have been electronically posted by MERS.

(ttt) No Litigation. There is no pending or to the knowledge of the Seller, threatened action, proceeding or investigation by or before any court, governmental or administrative agency or arbitrator affecting any of the loans.

(uuu) Validity of Loans. With respect to each Cooperative Loan, each Coop Pledge Agreement creates a valid, enforceable and subsisting first security interest in the collateral securing the related Mortgage Note subject only to (a) the lien of the related Cooperative for unpaid assessments representing the Mortgagor's pro rata share of the Cooperative's payments for its blanket mortgage, current and future real property taxes, insurance premiums, maintenance fees and other assessments to which like collateral is commonly subject and (b) other matters to which like collateral is commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Coop Pledge Agreement; provided, however, that the appurtenant Proprietary Lease may be subordinated or otherwise subject to the lien of any mortgage on the Project. There are no liens against or security interests in the collateral which have priority over the lender's security interest in the collateral, and such priority interest cannot be created in the future.

(vvv) Due Execution. With respect to each Cooperative Loan, all parties to the Mortgage Note and the Mortgage Loan had legal capacity to execute and deliver the Mortgage Note, the Coop Pledge Agreement, the Proprietary Lease, the Stock Power, the Recognition Agreement, the Financing Statement and the Assignment of the Proprietary Lease and such documents have been duly and properly executed by such parties. Each Stock Power (i) has all signatures guaranteed or (ii) if all signatures are not guaranteed, then such Cooperative Shares will be transferred by the stock transfer agent of the Cooperative if the Seller undertakes to convert the ownership of the collateral securing the related Cooperative Loan.

(www) No Default. With respect to each Cooperative Loan, there is no default in complying with the terms of the Mortgage Note, the Coop Pledge Agreement and the Proprietary Lease and all maintenance charges and assessments (including assessments payable in the future installments, which previously became due and owing) have been paid. The Seller has the right under the terms of the Mortgage Note, Coop Pledge Agreement and Recognition Agreement to pay any maintenance charges or assessments owed by the Mortgagor.

(xxx) Cooperative Lien Search. With respect to each Cooperative Loan, a Cooperative Lien Search has been made by a company competent to make the same which company is acceptable to FNMA and qualified to do business in the jurisdiction where the Cooperative Apartment is located.

(yyy) Coop Pledge Agreement. With respect to each Cooperative Loan, each Coop Pledge Agreement contains enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization of the benefits of the security provided thereby. The Coop Pledge Agreement contains an enforceable provision for the acceleration of the payment of the unpaid principal balance of the Mortgage Note in the event the Cooperative Apartment is transferred or sold without the consent of the holder thereof.

(zzz) Lawful Occupation. In the case of a Cooperative Loan, the related Cooperative Apartment is lawfully occupied under applicable law; all inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Cooperative Apartment and the related Project and, with respect to the use and occupancy of the same, including but not limited to certificates of occupancy, have been made or obtained from the appropriate authorities.

(aaaa) Proprietary Lease. With respect to each Cooperative Loan, (i) the terms of the related Proprietary Lease is longer than the terms of the Cooperative Loan, (ii) there is no provision in any Proprietary Lease which requires the Mortgagor to offer for sale the Cooperative Shares owned by such Mortgagor first to the Cooperative, (iii) there is no prohibition in any Proprietary Lease against pledging the Cooperative Shares or assigning the Proprietary Lease and (iv) the Recognition Agreement is on a form of agreement published by the Aztech Document Systems, Inc. or includes provisions which are no less favorable to the lender than those contained in such agreement.

(bbb) Financing Statements. With respect to each Cooperative Loan, each original UCC financing statement, continuation statement or other governmental filing or recordation necessary to create or preserve the perfection and priority of the first priority lien and security interest in the Cooperative Shares and Proprietary Lease has been timely and properly made. Any security agreement, chattel mortgage or equivalent document related to the Cooperative Loan establishes in the Seller a valid and subsisting perfected first lien on and security interest in the Mortgaged Property described therein, and the Seller has full right to sell and assign the same.

EXHIBIT B-2

REPRESENTATIONS AND WARRANTIES WITH RESPECT TO LOANS THAT ARE SMALL BALANCE COMMERCIAL LOANS

All capitalized terms used below shall have the definitions set forth in the Agreement.

- (a) Loan Schedule. The information set forth on the Loan Schedule is complete, true and correct.
- (b) Status of Loan. Each Loan is current with respect to all payments of interest and principal due prior to the related Closing Date.
- (c) Whole Loan; Ownership of Mortgage Loans. Each Loan is a whole loan and not a participation interest in a mortgage loan. Immediately prior to the date hereof, the related Originator, and on the date hereof the Seller has good title to, and is the sole owner of, each Loan and has full right, power and authority to transfer, pledge and assign each of the Loans to the Buyers free and clear of any and all pledges, liens, charges, security interests and/or other encumbrances. Each holder of the Loan was qualified and appropriately licensed (or was exempt from such qualification or license) to transact business in the jurisdiction in which the related Mortgaged Property is located at the time such entity had possession of the Mortgage Note except where the failure to be qualified or licensed would not have a material adverse effect on the Mortgage Loans. The pledge of the Loans to the related Buyer does not require the Seller to obtain any governmental or regulatory approval or consent that has not been obtained. None of the Mortgage Loan Documents restricts the Seller's right to transfer the Loan to the related Buyer.
- (d) Taxes and Other Assessments and Ground Lease Rents. There are no delinquent real estate taxes, ground rents, water charges, sewer rents, Ground Lease rents, assessments, insurance premiums, leasehold payments, including assessments payable in future installments or other outstanding charges affecting the Mortgage Property.
- (e) Lien; Valid Assignment. The Mortgage related to and delivered in connection with each Loan constitutes a valid and, subject to the exceptions set forth below, enforceable first priority lien upon the related Mortgaged Property, prior to all other liens and encumbrances, except for (a) the lien for current real estate taxes and assessments not yet past due and payable, (b) covenants, conditions and restrictions, rights of way, easements and other matters that are of public record and/or are referred to in the related lender's title insurance policy, (c) exceptions and exclusions specifically referred to in such lender's title insurance policy, and (d) other matters to which like properties are commonly subject, none of which matters referred to in clauses (b), (c) or (d), individually or in the aggregate, materially interferes with the security intended to be provided by such Mortgage, the value or current use or operation of the Mortgaged Property or the current ability of the Mortgaged Property to generate operating income sufficient to service the Loan debt (the foregoing items (a) through (d) being herein referred to as the "Permitted Encumbrances"). The related Assignment of Mortgage executed and delivered to the Custodian in blank, is otherwise in recordable form and constitutes a legal, valid and binding assignment, and, assuming that the assignee has the capacity to acquire such Mortgage, sufficient to convey to the assignee named therein all of the assignor's right, title and interest in, to and under such Mortgage. Notwithstanding the fact that the Seller shall not be required to file Uniform Commercial Code financing statements or continuation statements, such Mortgage, together with any separate security agreements, chattel mortgages or equivalent instruments, establishes and creates a valid and, subject to the exceptions set forth in this paragraph (iv) above, enforceable security interest in favor of the holder thereof in all of the related Mortgagor's personal property used in the operation of the related Mortgaged Property. The Mortgage Note and the Mortgage have not been assigned or pledged, other than to lenders whose liens will be released prior to the related Closing Date or simultaneously with the related Buyer's purchase hereunder, on the related Closing Date. Any security agreement, chattel mortgage or equivalent document related to and delivered in connection with the Loan establishes and creates a valid, existing and enforceable first or second lien and first or second priority security interest on the property described therein. As of the related Closing Date, Seller is the sole owner thereof and has full right to transfer and sell the Loans to Buyers free and clear of any lien or encumbrance equity, charge, claim or other security interest;

(f) Assignment of Leases and Rents. The assignment of leases, rents and profits or similar agreement delivered in connection with each Loan and executed by the Mortgagor, assigning to the mortgagee all of the income, rents and profits derived from the ownership, operation leasing or disposition of all or a portion of each Mortgaged Property, in the form which was duly executed, acknowledged and delivered, and as amended, modified, renewed or extended through the date hereof and from time to time hereafter (each an “Assignment of Leases and Rents”) establishes and creates a valid and enforceable first priority collateral assignment in the related Mortgagor’s interest in all leases, sub-leases, licenses or other agreements pursuant to which any person is entitled to occupy, use or possess all or any portion of the real property subject to the related Mortgage, subject to legal limitations of general applicability to Loans similar to the Mortgage Loans, and the Mortgagor and each assignor of such Assignment of Leases and Rents to the Seller have the full right to assign the same. The related assignment of any Assignment of Leases and Rents not included in a Mortgage has been executed and delivered to the Buyers’ custodian in blank, is otherwise in recordable form and constitutes a legal, valid and binding assignment, sufficient to convey to the assignee named therein (assuming that the assignee has the capacity to acquire such Assignment of Leases and Rents) all of the assignor’s right, title and interest in, to and under such Assignment of Leases and Rents.

(g) Servicing. The servicing and collection practices with respect to each Mortgage Note and Mortgage have been in all respects legal, proper, prudent and customary in the mortgage servicing business, as conducted by prudent mortgage lending institutions which service Loans of the same type in the jurisdiction in which the Mortgaged Property is located and in accordance with the terms of the Mortgage Note, Mortgage and other loan documents, whether such servicing was done by Seller, its affiliates or any servicing agent of any of the foregoing; the servicer of the Loan has not assessed the Mortgagor any delinquent payment fees that are not specifically permitted in the Mortgage or Mortgage Note, including but not limited to demand letter charges, or assessed the Mortgagor interest on any advances made by the servicer.

(h) Mortgage Status; Waivers and Modifications. No Mortgage has been satisfied, cancelled, rescinded or (except for Permitted Encumbrances) subordinated in whole or in part, and the related Mortgaged Property has not been released from the lien of such Mortgage, in whole or in part, nor has any instrument been executed that would effect any such satisfaction, cancellation, subordination (except for Permitted Encumbrances), rescission or release, in any manner that, in each case, materially and adversely affects the value of the related Mortgaged Property except for any partial reconveyances of real property that are included in the related Mortgage File. None of the terms of any Mortgage Note, Mortgage or Assignment of Leases and Rents has been impaired, waived, altered or modified, in each case in any material respect. Any non-material waivers, alterations or modifications with respect to any Loan are evidenced by written instruments, all of which are included in the related Mortgage File.

(i) Condition of Property; Condemnation. The Mortgaged Property for each Loan is in good repair and condition and free of any structural deficiencies or deferred maintenance that would influence the originator’s decision to originate any such Loan. As of the date of its origination, there was no proceeding pending for the total or partial condemnation of any related Mortgaged Property that materially affects the value thereof, there is no pending proceeding for the total or partial condemnation of the related Mortgaged Property that materially affects the value thereof. As of the date of the origination of each Mortgage Loan, all of the material improvements on the related Mortgaged Property that were considered in determining the value of the Mortgaged Property lay wholly within the boundaries of such property, except for encroachments that are insured against by the lender’s title insurance policy referred to herein or that do not materially and adversely affect the value or marketability of such Mortgaged Property, and no improvements on adjoining properties materially encroached upon such Mortgaged Property so as to materially and adversely affect the value or marketability of such Mortgaged Property, except those encroachments that are insured against by the Title Policy referred to herein.

(j) Title Insurance . Each Mortgaged Property is covered by an American Land Title Association (or an equivalent form of) lender's title insurance policy or pro forma policy (the "Title Policy") in the original principal amount of the related Loan after all advances of principal. Each Title Policy insures the Seller and its successors and assigns that the related Mortgage is a valid first priority lien on such Mortgaged Property, subject only to the Permitted Encumbrances stated therein (or a marked up title insurance commitment or pro forma policy marked as binding and counter-signed by the title insurer or its authorized agent on which the required premium has been paid exists which evidences that such Title Policy will be issued). Each Title Policy (or, if it has yet to be issued, the coverage to be provided thereby) is in full force and effect, all premiums thereon have been paid, no material claims have been made thereunder and no claims have been paid thereunder. Neither the Seller nor any prior holder under the related Mortgage has done, by act or omission, anything that would materially impair the coverage under such Title Policy. The insurer issuing such Title Policy is qualified to do business in the jurisdiction in which the related Mortgaged Property is located. Such Title Policy contains no exclusions for or affirmatively insures (other than in jurisdictions where affirmative insurance is unavailable), (i) access to public roads, and (ii) against material losses due to encroachments of any part of the building thereon over easements.

(k) No Holdbacks . The proceeds of each Loan have been fully disbursed and there is no obligation for future advances with respect thereto. With respect to each Loan, any and all requirements as to completion of any on-site or off-site improvement and as to disbursements of any funds escrowed for such purpose that were to have been complied with on or before the related Closing Date have been complied with, or any such funds so escrowed have not been released. All costs, fees and expenses incurred in making or closing the Loan and the recording of the Mortgage have been paid, and the Mortgagor is not entitled to any refund or any amounts paid or due to the Mortgagee pursuant to the Mortgage Note or Mortgage.

(l) Mortgage Provisions . The Mortgage Note or Mortgage for each Loan, together with applicable state law, contains customary and enforceable provisions (subject to the exceptions set forth in paragraph (e) above), including foreclosure, such as to render the rights and remedies of the holder thereof adequate for the practical realization against the related Mortgaged Property of the principal benefits of the security intended to be provided thereby. The related Mortgage Loan Documents provide for the appointment of a receiver of rents following an event of default under such loan documents, to the extent available under applicable law.

(m) Trustee under Deed of Trust . If any Mortgage is a deed of trust, (a) a trustee, duly qualified under applicable law to serve as such, is properly designated and serving under such Mortgage, and (b) no fees or expenses are payable to such trustee by the Seller, the Buyers or any transferee thereof except in connection with a trustee's sale after default by the related Mortgagor or in connection with any full or partial release of the related Mortgaged Property or related security for the related Loan.

(n) Environmental Conditions. Each Loan will be covered an environmental insurance policy issued by Zurich American Insurance Company or a comparable insurance company acceptable to the Buyers in its reasonable discretion. Such insurance policy shall cover losses resulting from an environmental condition on a Mortgaged Property after the default of the related Mortgagor and the insured amount under each such insurance policy, in the aggregate, will be at least equal to 125% of the aggregate principal balance of all Loans purchased by the Buyers pursuant to this Agreement. In the event that the originator has obtained an environmental site assessment meeting ASTM standards and assessing all hazards generally assessed for similar properties (as of the date of such assessment), including type, use and tenants for such similar properties (“Environmental Report”) with respect to any Mortgaged Property in connection with the origination of any Mortgage Loan, the Seller shall provide such Environmental Report to the Buyers, upon the Buyers’ request.

With respect to each Mortgaged Property for which an Environmental Report was prepared, other than as disclosed in such Environmental Report, to the best of Seller’s knowledge, (X) no Hazardous Material is present on such Mortgaged Property, such that (1) the value, use or operations of such Mortgaged Property is materially and adversely affected, or (2) under applicable federal, state or local law and regulations, (i) such Hazardous Material could be required to be eliminated, remediated or otherwise responded to at a cost or in a manner materially and adversely affecting the value, use or operations of the Mortgaged Property before such Mortgaged Property could be altered, renovated, demolished or transferred or (ii) the presence of such Hazardous Material could (upon action by the appropriate governmental authorities) subject the owner of such Mortgaged Property, or the holders of a security interest therein, to liability for the cost of eliminating, remediating or otherwise responding to such Hazardous Material or the hazard created thereby at a cost or in a manner materially and adversely affecting the value, use or operations of the Mortgaged Property, and (Y) such Mortgaged Property is in material compliance with all applicable federal, state and local laws and regulations pertaining to Hazardous Materials or environmental hazards, any noncompliance with such laws or regulations does not have a material adverse effect on the value, use or operations of such Mortgaged Property and neither Seller nor the related Mortgagor or any current tenant thereon, has received any notice of any violation or potential violation of any such law or regulation. With respect to any condition disclosed in the Environmental Report, which condition constituted a violation of applicable laws or regulations or would materially and adversely affect the value, use or operations of the related Mortgaged Property if not remedied, such condition has either been satisfactorily remedied, consistent with prudent multi-family, commercial or mixed-use mortgage lending practices (as applicable), or the applicable loan documents contain provisions which address such condition to the satisfaction of the Seller, consistent with prudent multi-family, commercial and or mixed-use mortgage lending practices (as applicable), and adequate funding or resources, consistent with prudent multi-family, commercial or mixed-use mortgage lending practices (as applicable), were available to remedy or otherwise respond to such condition.

Each Mortgage requires the related Mortgagor to comply with all applicable federal, state and local environmental laws and regulations.

“Hazardous Materials” means gasoline, petroleum products, explosives, radioactive materials, polychlorinated biphenyls or related or similar materials, and any other substance, material or waste as may be defined as a hazardous or toxic substance, material or waste by an federal, state or local environmental law, ordinance, rule, regulation or order, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.), the Clean Air Act, as amended (42 U.S.C. §§ 7401 et seq.), and any regulations promulgated pursuant thereto.

(o) Loan Document Status. Each Mortgage Note, Mortgage and other agreement that evidences or secures such Loan and that was executed by or on behalf of the related Mortgagor is genuine and each the legal, valid and binding obligation of the maker thereof (subject to any non-recourse provisions contained in any of the foregoing agreements and any applicable state anti-deficiency or market value limit deficiency legislation), enforceable in accordance with its terms, except with respect to provisions relating to default interest, yield maintenance charges and prepayment premiums and as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally, and by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law) and free from any right of offset, counterclaim, rescission or other claim or defense, including the defense of usury. All parties to the Mortgage Note and the Mortgage had the legal capacity to enter into the Loan and to execute and deliver the Mortgage Note and the Mortgage and the Mortgage Note and the Mortgage have been duly and properly executed by such parties. The obligor under the Mortgage Note is a natural person.

(p) Status of Mortgage. The Mortgage has not been satisfied, cancelled, subordinated or rescinded, in whole or in part, and the Mortgaged Property has not been released from the lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such satisfaction, cancellation, subordination, rescission or release.

(q) Insurance. Each Mortgaged Property is required (or the holder of the Mortgage can require) pursuant to the related Mortgage to be, and at origination the originator received evidence that such Mortgaged Property was, insured by (a) a fire and extended perils insurance policy providing coverage against loss or damage sustained by reason of fire, lightning, hail, windstorm (except with respect to the Loans set forth in a written notice to the Buyers upon the Buyers' request), explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke, and, to the extent required as of the date of origination by the originator of such Loan consistent with its normal multi-family, commercial or mixed use mortgage lending practices (as applicable), against other risks insured against by persons operating like properties in the locality of the Mortgaged Property, in an amount not less than the lesser of the principal balance of the related Loan and the replacement cost of the improvements on the Mortgaged Property, and with no provisions for a deduction for depreciation in respect of awards for the reconstruction of the improvements, and not less than the amount necessary to avoid the operation of any co-insurance provisions with respect to the Mortgaged Property; and (b) a flood insurance policy (if any portion of buildings or other structures (excluding parking) on the Mortgaged Property are located in an area identified by the Federal Emergency Management Agency ("FEMA") as a special flood hazard area (which "special flood hazard area" does not include areas designated by FEMA as Zones B, C or X)). With respect to each Mortgaged Property, such Mortgaged Property is required pursuant to the related Mortgage to be (or the holder of the Mortgage can require that the Mortgaged Property be), and at origination the originator received evidence that such Mortgaged Property was, insured by a multi-family, commercial or mixed use general liability insurance policy (as applicable) in amounts as are generally required by multi-family, commercial or mixed use mortgage lenders (as applicable) for similar properties, and in any event not less than \$1 million per occurrence. Under such insurance policies either (A) the originator and its successors and assigns is named as mortgagee under a standard mortgagee clause or (B) the originator and its successors and assigns is named as an additional insured, and is entitled to receive prior notice as the holder of the Mortgage of termination or cancellation. No such notice has been received, including any notice of nonpayment of premiums, that has not been cured. Each Mortgage obligates the related Mortgagor to maintain or cause to be maintained all such insurance and, upon such Mortgagor's failure to do so, authorizes the holder of the Mortgage to maintain or to cause to be maintained such insurance at the Mortgagor's cost and expense and to seek reimbursement therefor from such Mortgagor. Each Loan provides that casualty insurance proceeds will be applied either to the restoration or repair of the related Mortgaged Property or to the reduction of the principal amount of the Mortgage Loan. Each Mortgage provides that any related insurance proceeds, other than for a total loss or taking, will be applied either to the repair or restoration of all or part of the related Mortgaged Property, with the mortgagee or a trustee appointed by the mortgagee having the right to hold and disburse such proceeds as the repair or restoration progresses (except in such cases where a provision entitling another party to hold and disburse such proceeds would not be viewed as commercially unreasonable by a prudent multi-family, commercial or mixed-use mortgage lender(as applicable)), or to the payment of the outstanding principal balance of the Loan together with any accrued interest thereon, and any insurance proceeds in respect of a total or substantially total loss or taking may be applied either to payment of outstanding principal and interest on the Loan (except as otherwise provided by law) or to rebuilding of the Mortgaged Property.

(r) Mortgagor Bankruptcy. No Mortgagor is a debtor in any state or federal bankruptcy or insolvency proceeding and no Mortgaged Property or any portion thereof is subject to a plan in any such proceeding.

(s) Leasehold Estate. Each Mortgaged Property consists of the related Mortgagor's fee simple estate in real estate (the "Fee Interest") or the related Loan is secured in whole or in part by the interest of the related Mortgagor as a lessee under a ground lease of the Mortgaged Property (a "Ground Lease"), and if secured in whole or in part by a Ground Lease, either (1) the ground lessor's fee interest is subordinated to the lien of the Mortgage and the Mortgage will not be subject to any lien or encumbrances on the ground lessor's fee interest, other than Permitted Encumbrances, and the holder of the Mortgage is permitted to foreclose the ground lessor's fee interest within a commercially reasonable time period or (2) the following apply to such Ground Lease:

1. Such Ground Lease or a memorandum thereof has been or will be duly recorded; such Ground Lease (or the related estoppel letter or lender protection agreement between the originator and related lessor) permits the interest of the lessee thereunder to be encumbered by the related Mortgage; does not restrict the use of the related Mortgaged Property by the lessee or its permitted successors and assigns in a manner that would materially and adversely affect the security provided by the related Mortgage; and there has been no material change in the payment terms of such Ground Lease since the origination of the related Mortgage Loan, with the exception of material changes reflected in written instruments that are a part of the related Mortgage File;

2. The lessee's interest in such Ground Lease is not subject to any liens or encumbrances superior to, or of equal priority with, the related Mortgage, other than the ground lessor's related fee interest and Permitted Encumbrances;

3. The Mortgagor's interest in such Ground Lease is assignable to the Buyers and its successors and assigns upon notice to, but (except in the case where such consent cannot be unreasonably withheld) without the consent of, the lessor thereunder (or, if such consent is required, it has been obtained prior to the related Closing Date) and, in the event that it is so assigned, is further assignable by the Buyers and its successors and assigns upon notice to, but without the need to obtain the consent of, such lessor (except in the case where such consent cannot be unreasonably withheld);

4. Such Ground Lease is in full force and effect, and the Seller has received no notice that an event of default has occurred thereunder, and, to the best of Seller's knowledge, there exists no condition that, but for the passage of time or the giving of notice, or both, would result in an event of default under the terms of such Ground Lease;

5. Such Ground Lease, or an estoppel letter or other agreement, requires the lessor under such Ground Lease to give notice of any material default by the lessee to the mortgagee (concurrent with notice given to the lessee), provided that the mortgagee has provided the lessor with notice of its lien in accordance with the provisions of such Ground Lease, and such Ground Lease, or an estoppel letter or other agreement, further provides that no notice of termination given under such Ground Lease is effective against the mortgagee unless a copy has been delivered to the mortgagee. The Seller has provided the lessor under the Ground Lease with notice of the Seller's lien on the Mortgaged Property in accordance with the provisions of such Ground Lease;

6. A mortgagee is permitted a reasonable opportunity (including, where necessary, sufficient time to gain possession of the interest of the lessee under such Ground Lease) to cure any default under such Ground Lease, which is curable after the receipt of notice of any such default, before the lessor thereunder may terminate such Ground Lease by reason of such default;

7. Such Ground Lease has an original term, along with any extensions set forth in such Ground Lease, not less than 10 years beyond the full amortization term of the Mortgage Loan;

8. Under the terms of such Ground Lease and the related Mortgage, taken together, any related insurance proceeds, other than for a total loss or taking, will be applied either to the repair or restoration of all or part of the related Mortgaged Property, with the mortgagee or a trustee appointed by the mortgagee having the right to hold and disburse such proceeds as the repair or restoration progresses (except in such cases where a provision entitling another party to hold and disburse such proceeds would not be viewed as commercially unreasonable by a prudent multi-family, commercial or mixed-use mortgage lender (as applicable)), or to the payment of the outstanding principal balance of the Loan together with any accrued interest thereon, and any insurance proceeds in respect of a total or substantially total loss or taking may be applied either to payment of outstanding principal and interest on the Loan (except as otherwise provided by law) or to rebuilding of the Mortgaged Property;

9. Such Ground Lease does not impose any restrictions on subletting which would be viewed, as of the date of origination of the related Mortgage Loan, as commercially unreasonable by the Seller; and such Ground Lease contains a covenant that the lessor thereunder is not permitted, in the absence of an uncured default, to disturb the possession, interest or quiet enjoyment of any subtenant of the lessee, or in any manner, which would materially and adversely affect the security provided by the related Mortgage;

10. Such Ground Lease or an estoppel or other agreement requires the lessor to enter into a new lease with the Seller or its successors or assigns under terms which do not materially vary from the economic terms of the Ground Lease, in the event of a termination of the Ground Lease by reason of a default by the Mortgagor under the Ground Lease, including rejection of the Ground Lease in a bankruptcy proceeding; and

11. Such Ground Lease may not be materially amended, modified or, except in the case of a default, cancelled or terminated without the prior written consent of the holder of the Mortgage Loan, and any such action without such consent is not binding on such holder, including any increase in the amount of rent payable by the lessee thereunder during the term of the Mortgage Loan.

(t) Escrow Deposits . All escrow deposits and payments relating to each Loan that are required to be deposited or paid have been so deposited or paid, and those escrow deposits and payments are under control of the Seller or its agents.

(u) No Fraud . There has been no error, omission, fraud, dishonesty, misrepresentation, negligence or similar occurrence on the part of any person, including without limitation the mortgagor, the related Originator, any appraiser, any builder or developer, or any other party in connection with the solicitation of the Loan, the origination of the Loan, the application of any insurance in relation to such Loan or in connection with the sale of such Loan to Buyers.

(v) Advancement of Funds . Neither the Seller nor the related Originator has advanced funds, or induced, solicited or knowingly received any advance of funds from a party other than the owner of the related Mortgaged Property (or any tenant required to make its lease payments directly to the holder of the related Loan), directly or indirectly, for the payment of any amount required by such Loan.

(w) Assignment of Mortgage . The Assignment of Mortgage is in recordable form, except for the insertion of the name of the assignee, and is acceptable for recording under the laws of the jurisdiction in which the Mortgaged Property is located. The endorsement of the Mortgage Note is valid, legal and enforceable under the laws of the jurisdiction in which the Mortgaged Property is located.

(x) No Mechanics' Liens . Each Mortgaged Property is free and clear of any and all mechanics' and materialmen's liens that are prior or equal to the lien of the related Mortgage and no rights are outstanding that under law could give rise to any such lien that would be prior or equal to the lien of the related Mortgage except, in each case, for liens insured against by the Title Policy referred to herein, or, if any such liens existing are not insured against by the Title Policy referred to herein, such liens will not have a material adverse effect on the value of the related Mortgaged Property.

(y) Cross-collateralization . No Loan is cross-collateralized or cross-defaulted with any loan other than one or more other Loans.

(z) Compliance with Laws . To the extent required under applicable law, each originator and subsequent mortgagee or servicer of the Loan complied with all licensing requirements and was authorized to transact and do business in the jurisdiction in which the related Mortgaged Property is located at all times when it held or serviced the Loan. Any and all requirements of any federal, state or local laws or regulations, including, without limitation, usury, truth-in-lending, consumer credit protection, abusive lending, fair credit reporting, unfair collection practice, equal credit opportunity, fair housing and disclosure laws and regulations, applicable to the solicitation, origination, collection and servicing of such Loan have been complied with in all material respects; and any obligations of the holder of the Mortgage Note, Mortgage and other loan documents have been complied with in all material respects and the consummation of the transaction contemplated hereby will not involve the violation of any such laws or regulations, and Seller shall maintain in its possession, available for inspection of Buyers or their designee, and shall deliver to Buyers or their designee, upon two (2) Business Days' request, evidence of compliance with such requirements.

(aa) Releases of Mortgaged Property . No Mortgage Note or Mortgage requires the mortgagee to release all or any material portion of the related Mortgaged Property that was included in the valuation for such Mortgaged Property, and/or generates income, from the lien of the related Mortgage except upon payment in full of all amounts due under the related Loan, or upon satisfaction of the defeasance provisions of such Loan, other than the Loans that require the mortgagee to grant a release of a portion of the related Mortgaged Property upon (a) the satisfaction of certain legal and underwriting requirements where the portion of the related Mortgaged Property permitted to be released was not considered by the originator to be material in underwriting the Loan or, in the case of a substitution, where the Mortgagor is entitled to substitute a replacement parcel at its unilateral option upon the satisfaction of specified conditions, and/or (b) the payment of a release price and prepayment consideration in connection therewith, consistent with the related Originator's normal multi-family, commercial or mixed-use mortgage lending practices (as applicable) (and in both (a) and (b), any release of the Mortgaged Property has been reflected in the Loan Schedule). Except as described in the prior sentence (other than with respect to defeasance and substitution), no Loan permits the full or partial release or substitution of collateral unless (1) the Mortgagor is entitled to substitute a replacement parcel at its unilateral option upon satisfaction of specified conditions, and (2) the mortgagee or servicer can require the Mortgagor to provide an opinion of tax counsel to the effect that such release or substitution of collateral (a) would not constitute a "significant modification" of such Loan within the meaning of Treas. Reg. §1.1001-3 and (b) would not cause such Loan to fail to be a "qualified mortgage" within the meaning of Section 860G(a)(3)(A) of the Code. The loan documents with respect to each Loan that permits the full or partial release or substitution of collateral require the related Mortgagor to bear the cost of such opinion.

(bb) No Equity Participation or Contingent Interest . No Loan is a negative amortization mortgage loan, contains any equity participation or provides for any contingent or additional interest in the form of participation in the cash flow of the related Mortgaged Property. Neither the Seller nor any Affiliate thereof has any obligation to make any capital contribution to the Mortgagor under the Loan or otherwise.

(cc) No Material Default . There exists no material default, breach, violation or event giving the lender the right to accelerate the Loan (and, no event has occurred which, with the passage of time or the giving of notice, or both, would constitute any of the foregoing) under the documents evidencing or securing the Mortgage Loan, in any such case to the extent the same materially and adversely affects the value of the Loan and the related Mortgaged Property. Neither the related Originator nor the Seller has waived any material default, breach, violation or event of acceleration under any of such documents and under the terms of each Mortgage Loan, each related Mortgage Note, each related Mortgage and the other Mortgage Loan Documents, no person or party other than the mortgagee may declare an event of default or accelerate the related indebtedness under such Loan, Mortgage Note or Mortgage.

(dd) Local Law Compliance . The improvements located on or forming part of each Mortgaged Property comply with applicable zoning laws and ordinances, or constitute a legal non-conforming use or structure or, if any such improvement does not so comply, such non-compliance does not materially and adversely affect the value of the related Mortgaged Property, such value as determined by the appraisal or internal or external market study performed at origination. The Mortgage Property is lawfully occupied under applicable law; all inspections, licenses and certificates required in connection with the origination of any Loan with respect to the occupancy of the same, including but not limited to certificates of occupancy and fire underwriting certificates, have been made or obtained from the appropriate authorities.

(ee) Junior Liens . Except as otherwise approved by the prior written consent of the Lender, none of the Loans permits the related Mortgaged Property to be encumbered by any lien (other than a Permitted Encumbrance) junior to or of equal priority with the lien of the related Mortgage.

(ff) Actions Concerning Loans . There are no actions, suits or proceedings before any court, administrative agency or arbitrator concerning any Loan, Mortgagor or related Mortgaged Property that could reasonably be expected to adversely affect title to the Mortgaged Property or the validity or enforceability of the related Mortgage or that could reasonably be expected to materially and adversely affect the value of the Mortgaged Property as security for the Loan or the use for which the premises were intended.

- (gg) Licenses and Permits . The related Mortgagor is in possession of all material licenses, permits and franchises required by applicable law for the ownership and operation of the related Mortgaged Property as it is operated.
- (hh) Collateral in Trust . The Mortgage Note for each Loan is not secured by a pledge of any collateral that has not been assigned to the Buyers.
- (ii) Due on Sale/Due on Encumbrance . Each Loan contains a “due on sale” clause, which provides for the acceleration of the payment of the unpaid principal balance of the Loan if, without prior written consent of the holder of the Mortgage, the property subject to the Mortgage or any material portion thereof, is transferred, sold or encumbered by a junior mortgage or deed of trust; provided, however, that certain Loans provide a mechanism for the assumption of the loan by a third party upon the Mortgagor’s satisfaction of certain conditions precedent, and upon payment of a transfer fee, if any, or transfer of interests in the Mortgagor or constituent entities of the Mortgagor to a third party or parties related to the Mortgagor upon the Mortgagor’s satisfaction of certain conditions precedent.
- (jj) Recourse . Subject to the requirements and restrictions of governing law, each Loan provides for full recourse to the Mortgagor or the guarantor. Either the Mortgagor or a guarantor with respect to each Loan is a natural person.
- (kk) Servicemembers’ Civil Relief Act . The Mortgagor has not notified Seller and Seller has no knowledge of any relief requested or allowed to the Mortgagor under the Servicemembers’ Civil Relief Act or similar state laws.
- (ll) Underwriting Policies . Each Loan was either originated, purchased, acquired or arranged by the originator thereof, and each such origination, purchase, acquisition or arrangement of such Loan substantially complied in all material respects with the Underwriting Guidelines and Acquisition Guidelines in effect as of such Mortgage Loan’s origination date.
- (mm) REMIC Eligibility . Each Loan is a “qualified mortgage” as such term is defined in Section 860G(a)(3) of the Code (without regard to Treasury Regulations Section 1.860G-2(f)(2), which treats certain defective Loans as qualified mortgages). Each Mortgaged Property will qualify as foreclosure property within the meaning of Section 856(e) of the Code if obtained by foreclosure or deed in lieu of foreclosure.
- (nn) Property Appraisal . Each Loan will contain an appraisal, which appraisal is signed by an appraiser, who had no interest, direct or indirect, in the Mortgaged Property or the Mortgagor or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Mortgage Loan. Each appraisal of the Loan was made in accordance with the relevant provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Such appraisal conforms to Uniform Standards of Professional Appraisal Practice guidelines. For each Loan with an original principal balance greater than \$1,000,000, the Seller has provided a full self-contained report written in summary format including three valuation approaches and for each Loan with an original principal balance less than \$1,000,000, the Seller has provided either a full self-contained report written in summary format including three valuation approaches or a report in summary form prepared in the standard Freddie Mac format (FHLMC Form 71(B)) or form UCIAR-EP 7/90.
- (oo) Yield Maintenance Premium . Subject to the requirements and restrictions of governing law, each yield maintenance premium is consistent with that charged by the related Originator in its customary lending practices with respect to Loans of the size and character of the Loans.

- (pp) No Construction or Rehabilitation Loans . No Loan was made in connection with (A) the construction or rehabilitation of a Mortgaged Property or (B) facilitating the trade in or exchange of a Mortgage Property.
- (qq) Residential Leases . If the Mortgaged Property is shown as Multifamily Property on the Loan Schedule , at least 80% of the related Mortgage Property (calculated on the basis of net rentable space) is used for residential purposes and at least 80% of the gross income from the related Mortgage Property is derived from residential leases.
- (rr) Loan Provisions . No Loan contains a provision that by its terms would automatically or at the unilateral option of the Mortgagor cause such Loan not be a “qualified mortgage” as such term is defined in Section 860G(a)(3) of the Code.
- (ss) Defeasance and Assumption Costs . If the related Mortgage Loan Documents provide for defeasance, such documents provide that the related Mortgagor is responsible for the payment of all reasonable costs and expenses of Buyers incurred in connection with the defeasance of such Loan and the release of the related Mortgaged Property. The related Mortgage Loan Documents require the related Mortgagor to pay all reasonable costs and expenses of Buyers associated with the approval of an assumption of such Loan.
- (tt) Defeasance . No Loan provides that it can be defeased prior to the date that is two years after the related origination date.
- (uu) Confidentiality . There are no provisions in any Mortgage Note, Mortgage or related loan documents with respect to any Loan, nor any other agreements or enforceable understandings with any Mortgagor, Mortgagor principal or guarantor, which restrict the dissemination of information regarding any Mortgagor, Mortgagor principal, guarantor or Mortgaged Property by the owner or holder of the Loan or requires such owner or holder to treat any information regarding any Mortgagor, Mortgagor principal, guarantor or Mortgaged Property as confidential; provided, however that state and federal laws may specifically limit the use and/or dissemination of such information.
- (vv) No Predatory Practices . No predatory or deceptive lending practices, including but not limited to, the extension of credit to the Mortgagor without regard for the Mortgagor’s ability to repay the Loan and the extension of credit to the Mortgagor which has no apparent benefit to the Mortgagor, were employed by the originator of the Loan in connection with the origination of the Loan.
- (ww) No Residential Mortgage Loans . All of the Loans secured by residential properties that have fewer than five units have commercial use.
- (xx) Compliance with Anti-Money Laundering Laws . Seller has complied with all applicable anti-money laundering laws and regulations, including without limitation the USA PATRIOT Act of 2001 (collectively, the “ Anti-Money Laundering Laws ”); Seller has established an anti-money laundering compliance program as required by the Anti-Money Laundering Laws, has conducted the requisite due diligence in connection with the origination of each Loan for purposes of the Anti-Money Laundering Laws, including with respect to the legitimacy of the applicable Mortgagor and the origin of the assets used by the said Mortgagor to purchase the property in question, and maintains, and will maintain, sufficient information to identify the applicable Mortgagor for purposes of the Anti-Money Laundering Laws; no Loan is subject to nullification pursuant to Executive Order 13224 (the “ Executive Order ”) or the regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury (the “ OFAC Regulations ”) or in violation of the Executive Order or the OFAC Regulations, and no Mortgagor is subject to the provisions of such Executive Order or the OFAC Regulations nor listed as a “blocked person” for purposes of the OFAC Regulations.

(yy) Eligibility Criteria. The Loan is an Eligible Loan and complies with any other eligibility requirements set forth in the Pricing Side Letter.

(zz) Separate Tax Lots. Each Mortgaged Property contains one or more separate tax lots (or will constitute separate tax lots when the next tax maps are issued) or is subject to an endorsement under the related Title Policy.

(aaa) Insured Closing Letters. With respect to each Eligible Loan that is a Wet-Ink Mortgage Loan, Seller has received an insured closing letter from the related Settlement Agent if such Settlement Agent is not a title insurance company. _

(bbb) MERS Designated Mortgage Loans. With respect to each MERS Designated Mortgage Loans, a Mortgage Identification Number has been assigned by MERS and such Mortgage Identification Number is accurately provided on the Loan Schedule. The related Assignment of Mortgage to MERS has been duly and properly recorded. With respect to each MERS Mortgage Loan, no Mortgagor has received any notice of liens or legal actions with respect to such Mortgage Loan and no such notices have been electronically posted by MERS.

EXHIBIT C

ACQUISITION GUIDELINES

[Please See Attached CD]

EXHIBIT D

UNDERWRITING GUIDELINES

[Please see Exhibit C]

EXHIBIT E

FORM OF SECURITY RELEASE CERTIFICATION

I. Release of Security Interest

Effective as of [DATE], [NAME OF SECURED PARTY] hereby relinquishes any and all right, title and interest it may have in and to the Mortgage Loans described in Exhibit A attached hereto upon purchase thereof by [DB Structured Products, Inc.] [Aspen Funding Corp.] [Newport Funding Corp.] from the Seller named below pursuant to that certain Master Repurchase Agreement, dated as of December 13, 2005 as of the date and time of receipt by [NAME OF SECURED PARTY] of \$_____ for such Mortgage Loans (the "Date and Time of Sale") and certifies that all notes, mortgages, assignments and other documents in its possession relating to such Mortgage Loans have been delivered and released to the Seller named below or its designees as of the Date and Time of Sale.

Name and Address of Secured Party:

[NAME OF SECURED PARTY]
[]
For Credit Account No. []
Attention: []
Phone: []
Further Credit - []

By: _____
Name:
Title:

II. CERTIFICATION OF RELEASE

The Seller named below hereby certifies to [DB Structured Products, Inc.] [Aspen Funding Corp.][Newport Funding Corp.] that, as of the Date and Time of Sale of the above mentioned Mortgage Loans to [DB Structured Products, Inc.] [Aspen Funding Corp.][Newport Funding Corp.] , the security interests in the Mortgage Loans released by the above named corporation comprise all security interests relating to or affecting any and all such Mortgage Loans. The Seller warrants that, as of such time, there are and will be no other security interests affecting any or all of such Mortgage Loans.

NYMC LOAN CORPORATION, as Seller

By: _____
Name: _____
Title: _____

EXHIBIT TO SECURITY RELEASE CERTIFICATION

[List of Mortgage Loans]

EXHIBIT F

LITIGATION

Wanek v. The New York Mortgage Company, LLC, No.: 05-C-4774 (United States District Court for the Northern District of Illinois). Plaintiff has filed this purported class action against NYMC alleging violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”). Plaintiff asserts that an NYMC mailing sent to him offering an FHA streamline refinance loan violated FCRA in two respects. First, plaintiff contends that the mailing failed to constitute a “firm offer of credit” under section 1681b of FCRA because it did not contain specific terms. Second, plaintiff asserts that the mailing did not contain the “clear and conspicuous” disclosures mandated by section 1681m of FCRA regarding a consumer’s ability to prohibit the use of credit information in a transaction not initiated by the consumer.

NYMC has moved to dismiss plaintiff’s Complaint on the ground that there is no longer a private right of action under section 1681m of FCRA that requires “clear and conspicuous” disclosures. As to the section 1681b claim that NYMC’s offer was not a “firm offer of credit,” given the specialized type of loan product involved, New York Mortgage asserts that the offer letter was sufficiently detailed for purposes of FCRA. NYMC has retained the Washington, DC law firm of Weiner Brodsky Sidman Kider PC, experts in the areas of regulatory compliance and consumer class action defense, to handle this litigation. The motion to dismiss has been fully briefed and is currently pending before the Court. Because this case is still in its early stages, we are unable to predict the outcome of the lawsuit or estimate the potential financial exposure to NYMC, if any.

It is not possible for the Guarantor to determine with certainty whether the legal proceedings listed below are or will be material to NYMC, the Seller, the Guarantor or its Subsidiaries. By disclosing these legal proceedings on this Schedule, the Guarantor does not intend to imply, and is not admitting, that the legal proceedings are in fact material legal proceedings within the meaning of Item 103 of Regulation S-K under the federal securities laws or SEC Staff Accounting Release 99.

EXHIBIT G

THIRD PARTY GUIDELINES

INVESTOR GUIDELINE LINKS

PRIME

Agency (FNMA/FHLMC)

<http://www.allregs.com/>

Chase Correspondent (03) :

<http://www.chaseb2b.com/content/portal/body/Correspondent/OnLineGuidesFrame.html>

Ohio Savings (04)

https://www2.gemstoneohio.com/MtgMktg/products/matrix/group/ohio_matrix.pdf

Thornburg (05)

<http://www.thornburgmortgage.com/PDFs/SELLERS%20GUIDE%20October%202005.pdf>

Citimortgage (10)

<https://correspondent.citimortgage.com/Correspondent/GetManual.do>

Aurora (11)

<https://www.alservices.com/Conduit/UI/SSL/SellersGuide/TOC.aspx>

Wells Fargo (12)

<https://ilnet.wellsfargo.com/ildocs/guidelines/lendersalliance/index.jsp>

Astoria Federal (15)

https://www.astoriarmortgage.com/policies_procedures/index.jsp

Countrywide (33)

<https://cld.countrywide.com/cld/>

Indymac (43)

<https://new-e-mits.indymacb2b.com/eMITS/Frames.asp>

CSFB (49)

<https://www.csfbconnect.com/UWGuidelines.asp>

Bayview Financial (51) - mixed use/mult-family

http://www.silverhillfinancial.com/client_learning.jsp

FHA

<http://www.hud.gov>

Connecticut Bond - CHFA

<http://www.chfa.org>

Delaware Bond - DSHA

http://www2.state.de.us/dsha/research_frame.htm

New Hampshire Bond - NHHFA

<http://www.nhhfa.org/>

Pennsylvania Bond - PHFA

<http://www.phfa.org/>

Rhode Island Bond

<http://www.rihousing.com/>

SUB-PRIME

Countrywide Sub-prime (S-1)

<https://cld.countrywide.com/cld/>

New Century (S-4)

<https://www.newcentury.com/sellersGuide/index.jsp>

WMC (S-5)

<https://www.wmcdirect.com/default.asp>

Deutsche Bank (S-6)

<https://clg.db.com/pages/corrlend/home.html>

Impac Sub-prime (S-9)

<http://www.impacfundingcorp.com/SellerGuide2003/sellersguide.asp>

Novastar (S-11)

http://www.novastaris.com/manuals/netbranch_manuals.asp

Option One (S-12)

http://oomc.com/acquisitions/acquisitions_uwpolicies.asp

Decision One (S-13)

https://www.d1online.com/content/d1_corr_guidelines.pdf

ALT-A BULK INVESTORS

Impac (9)
Citigroup (10A)
Nomura (16)
Indymac (43)
Bear Stearns (44)
Wintergroup (45)
UBS Warburg (46)
Greenwich Capital (47)
CSFB (49)
Countrywide Securities (52)
US Bank (54)
Greenpoint Correspondent (55)
Lehman Brothers Sec (56)
RFC (58)
WAMU Securities (59)
Merrill Lynch (60)
Goldman Sachs (62)
Morgan Stanley (63)
WMC (S-5)
Deutsche Bank (S-6)
Option One (S-12)
Wells Fargo Sub-prime (12SP)
BB&T
FNMA
JP Morgan
Opteum Funding
Smith Barney
Wachovia
Bank of America
Sovereign Securities
CDC
C-Bass

CUSTODIAL AGREEMENT

Among:

DB STRUCTURED PRODUCTS, INC., as Buyer

ASPEN FUNDING CORP., as Buyer

NEWPORT FUNDING CORP., as Buyer

NYMC LOAN CORPORATION, as Seller

NEW YORK MORTGAGE TRUST, INC., as Guarantor

and

LASALLE BANK NATIONAL ASSOCIATION, as Custodian,

Dated as of December 13, 2005

TABLE OF CONTENTS

Section 1	Definitions	1
Section 2	Delivery of Mortgage File	6
Section 3	Trust Receipt and Loan Schedule and Exception Report	8
Section 4	Obligations of the Custodian	9
Section 5	Release of Purchased Loans	10
Section 6	Fees and Expenses of Custodian	12
Section 7	Removal or Resignation of Custodian	13
Section 8	Examination of Mortgage Files	13
Section 9	Insurance of Custodian	13
Section 10	Representations and Warranties	14
Section 11	Statements	14
Section 12	No Adverse Interest of Custodian	15
Section 13	Indemnification of Custodian	15
Section 14	Concerning the Custodian	16
Section 15	Term of Custodial Agreement	16
Section 16	Notices	17
Section 17	GOVERNING LAW	17
Section 18	Authorized Representatives	17
Section 19	Amendment	17
Section 20	Cumulative Rights	17
Section 21	Binding Upon Successors	17
Section 22	Entire Agreement; Severability	18
Section 23	Execution In Counterparts	18
Section 24	Tax Reports	18
Section 25	Assignment	18
Section 26	Transmission of Mortgage Files	19
Section 27	Submission To Jurisdiction; Waivers	19
Section 28	Confidentiality	20

ANNEXES

Annex 1	Required Fields for Loan Schedule
Annex 1-A	Required Fields for Loan Schedule with respect to Wet-Ink Mortgage Loans
Annex 2	Form of Trust Receipt
Annex 3	Form of Notice of Sale and Request for Release
Annex 4	Review Procedures
Annex 5	Request For Release and Receipt
Annex 6	Authorized Representatives of Buyers
Annex 7	Authorized Representatives of Seller
Annex 8	Authorized Representatives of Guarantor
Annex 9	Authorized Representatives of Custodian
Annex 10	Form of Lost Note Affidavit
Annex 11	Notice of Assignment
Annex 12	(Third Party) Transmittal Letter
Annex 13	Attorney's Bailee Letter
Annex 14	Exception Codes

Annex 15	List of Unapproved Settlement Agents
Annex 16	Mortgage File Submission Package
Annex 17	Form of Escrow Letter
Annex 18	Notice By Assignee To Custodian Of The Buyer's Default

EXHIBITS

Exhibit A	Form of Transaction Notice
-----------	----------------------------

CUSTODIAL AGREEMENT

CUSTODIAL AGREEMENT (this “Custodial Agreement”) dated as of December 13, 2005, made by and among:

- (i) **NYMC LOAN CORPORATION** (“**Seller**”);
- (ii) **NEW YORK MORTGAGE TRUST , INC.** (“**Guarantor**”)
- (iii) **LASALLE BANK NATIONAL ASSOCIATION** , as custodian for Buyers (in such capacity, the “**Custodian**”);
- (iv) **DB STRUCTURED PRODUCTS, INC .** (including its successors in interest , “**DBSP** ”)
- (v) **ASPEN FUNDING CORP.** (including its successors in interest , “**Aspen** ”); and
- (vi) **NEWPORT FUNDING CORP.** (including its successors in interest , “**Newport** ” and collectively with DBSP and Aspen, the “**Buyers** ” and individually, a “**Buyer**”).

RECITALS

Seller, Buyers and Guarantor are parties to the Master Repurchase Agreement, dated as of December 13, 2005 (as amended, supplemented or otherwise modified and in effect from time to time, the “Repurchase Agreement”), pursuant to which Buyers and Seller have agreed, subject to the terms and conditions of the Repurchase Agreement, to enter into Transactions (as defined therein) in which Buyers have agreed to purchase from time to time from Seller certain Loans, with a simultaneous agreement by Seller to repurchase such Loans .

It is a condition precedent to the effectiveness of the Repurchase Agreement that the parties hereto execute and deliver this Custodial Agreement to provide for the appointment of the Custodian as custodian hereunder. Accordingly, the parties hereto agree as follows:

Section 1. Definitions .

Unless otherwise defined herein, terms defined in the Repurchase Agreement shall have their respective assigned meanings when used herein, and the following terms shall have the following meanings:

“Acceptable Attorney” shall mean any attorney-at-law to which the Custodian has sent an Attorney’s Bailee Letter, except for an attorney whom Buyers have notified the Custodian and the Seller in writing that such attorney is not reasonably satisfactory to Buyers.

“Acquisition Guidelines” means (i) NYMC’s loan acquisition guidelines set forth in Exhibit C to the Repurchase Agreement and (ii) certain acquisition guidelines of third parties listed in Exhibit G to the Repurchase Agreement in accordance with which NYMC acquires Loans, as the same may be amended from time to time in accordance with the terms of the Repurchase Agreement.

“Additional Documents” shall have the meaning specified in Section 2(b) hereof.

“ AM Funded Wet-Ink Mortgage Loans ” shall mean Wet-Ink Mortgage Loans that will be funded before 10:30 a.m. (New York City time) on any Business Day.

“ Applicable Guide ” shall mean with respect to Fannie Mae or Freddie Mac, the applicable guide published by either Fannie Mae or Freddie Mac setting forth the requirements each Loan needs to satisfy in order to be eligible for purchase by Fannie Mae or Freddie Mac, as such guide may be amended or supplemented from time to time or any other set of criteria established by Fannie Mae or Freddie Mac that a Loan must satisfy in order to be eligible for purchase by Fannie Mae or Freddie Mac.

“ Approved Purchaser ” shall mean any third party purchaser of a Mortgage Loan, except for any person whom the Buyer has notified the Custodian and the Seller in writing that such person is not reasonably satisfactory to the Buyer.

“ Approved Title Insurance Company ” shall mean a title insurance company that has not been disapproved by Buyers in their sole discretion in a written notice to the Custodian by the Buyer.

“ Assignment of Mortgage ” shall mean with respect to any Mortgage, an assignment of the Mortgage, notice of transfer or equivalent instrument in recordable form (excluding only the name of the assignee), reflecting the assignment and pledge of the Mortgage.

“ Attorney’s Bailee Letter ” shall mean a letter substantially in the form of Annex 13 hereto.

“ Authorized Representative ” shall have the meaning specified in Section 18 hereof.

“ Business Day ” means any day other than (i) a Saturday or Sunday or (ii) a day upon which the banking institutions in the State of New York or any of Custodian, Seller or Buyers are authorized or obligated by law or executive order to be closed.

“ Computer Tape ” shall mean a computer tape or other electronic medium generated by or on behalf of Seller and delivered or transmitted to Buyers and Custodian which provides information relating to the Purchased Loans, including the information set forth in the Loan Schedule, in a format acceptable to Buyers and the Custodian.

“ Custodial Delivery Failure ” shall have the meaning specified in Section 13 hereof.

“ Daily Aged Report ” shall have the meaning set forth in Section 3(g) hereof.

“ Disbursement Account ” shall mean the Disbursement Account established by the Disbursement Agent in accordance with the Disbursement Agreement.

“ Disbursement Agent ” shall mean Deutsche Bank National Trust Company and any successor thereto.

“ Disbursement Agreement ” shall mean the Disbursement Agreement among the Disbursement Agent, Seller, Guarantor and Buyers dated as of December 13, 2005, as the same may be amended, supplemented or otherwise modified from time to time.

“ Dry Mortgage Loan ” shall mean a first or second lien Mortgage Loan which is underwritten in accordance with the Underwriting Guidelines which Mortgage File contains all required Mortgage Loan Documents and is received by the Custodian.

“Electronic Agent” shall mean MERSCORP, Inc.

“Electronic Tracking Agreement” shall mean the Electronic Tracking Agreement, dated as of the date hereof, among Seller, Buyers, Servicer, the Electronic Agent and MERS, as the same may be amended, supplemented or otherwise modified from time to time.

“Electronic Transmission” shall mean the delivery of information in an electronic format acceptable to the applicable recipient thereof. An Electronic Transmission shall be considered written notice for all purposes hereof (except when a request or notice by its terms requires execution).

“Escrow Letter” shall mean an escrow or closing letter from Seller to the Settlement Agent in the form of Annex 17.

“Event of Default” shall have the meaning provided in Section 19 of the Repurchase Agreement.

“Exception” shall mean, with respect to any Mortgage Loan, any of the following: (a) any variance from the requirements of Annex 4 hereof with respect to the Mortgage Files (taking into consideration the Seller’s right to deliver certified copies in lieu of original documents in certain circumstances); (b) any Exception identified on Annex 14 hereto or as otherwise reasonably determined by Buyers; or (c) any Mortgage Loan with respect to which a Responsible Officer of the Custodian receives written notice or has actual knowledge of a lien or security interest in favor of a Person other than any Buyer with respect to such Mortgage Loan.

“Loan” means (i) a first lien or second lien, fixed rate or adjustable rate, closed-end, wet or dry-funded, home equity residential mortgage loan either originated in accordance with the Underwriting Guidelines or acquired in accordance with the Acquisition Guidelines and in each case, meets the representations and warranties attached as Exhibit B to the Repurchase Agreement and deemed by Buyers to be eligible for securitization in the normal course of business, (ii) such other type of loan, lease or other receivable as shall be agreed upon by the parties in writing, or (iii) any interest in, or secured by, any such loan, lease or other receivable.

“Loan Schedule” shall mean a computer-readable transmission in a standardized text format delivered by the Seller to Buyers, the Custodian and the Disbursement Agent incorporating the fields identified on Annex 1, with respect to Dry Mortgage Loans, or Annex 1-A, with respect to Wet-Ink Mortgage Loans, or as otherwise mutually agreed upon by Buyers, Seller and the Custodian.

“Loan Schedule and Exception Report” shall mean in the case of each Mortgage Loan, a computer-readable transmission containing the following information to be delivered by the Custodian to the related Buyer pursuant to this Custodial Agreement: the Mortgage Loan number, Mortgagor’s name, a code indicating whether the Mortgage Loan is a MERS Designated Mortgage Loan, and if so, the MERS Identification Number, codes indicating Exceptions and, with respect to any Mortgage Files which have been released (i) to the Seller pursuant to Section 5(a) hereof pursuant to a Request for Release and Receipt, (ii) as described in Section 5(b) hereof, or (iii) pursuant to an Attorney Bailee Letter as described in Section 5(c) hereof, the date such Mortgage Files were released and to whom they were released. The Custodian shall incorporate all current data provided by Seller to the Custodian into the Loan Schedule and Exception Report.

“Margin Deficit” shall have the meaning assigned thereto in the Repurchase Agreement.

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

“ MERS Designated Mortgage Loan ” shall mean any Mortgage Loan as to which the related Mortgage or Assignment of Mortgage has been recorded in the name of MERS, as agent for the holder from time to time of the Mortgage Note and which is identified as a MERS Mortgage Loan on the related Loan Schedule.

“ MERS Identification Number ” shall mean the eighteen digit number permanently assigned to each MERS Mortgage Loan.

“ Midday Funded Wet-Ink Mortgage Loans ” shall mean Wet-Ink Mortgage Loans that will be funded after 10:30 a.m. (New York City time), but on or prior to 1:30 p.m. (New York City time) on any Business Day.

“ Mortgage ” shall mean the mortgage, deed of trust or other instrument, which creates a valid lien on the fee simple or leasehold estate in such real property.

“ Mortgage File ” shall mean, as to each Mortgage Loan, those documents listed on Annex 16 hereto that are delivered to the Custodian or which at any time come into the possession of the Custodian.

“ Mortgage Loan ” shall mean a Loan which the Custodian has been instructed to hold for Buyers pursuant to this Custodial Agreement.

“ Mortgage Loan Documents ” shall mean, with respect to a Mortgage Loan, the documents comprising the Mortgage File for such Mortgage Loan.

“ Mortgage Note ” shall mean the original executed promissory note or other evidence of the indebtedness of a Mortgagor with respect to a Mortgage Loan and secured by the related Mortgaged Property.

“ Mortgaged Property ” means the real property (including all improvements, buildings, fixtures, building equipment and personal property affixed thereto and all additions, alterations and replacements made at any time with respect to the foregoing) and all other collateral securing repayment of the debt evidenced by a Mortgage Note.

“ Mortgagor ” means the obligor on a Mortgage Note.

“ Notice and Information ” shall have the meaning specified in Section 2(a)(i) hereof.

“ Notice of Sale and Request for Release ” shall mean a notice to the Custodian and Buyers in the form of Annex 3 hereto that certain of the Mortgage Loans are being sold and specifying the date of such sale and the amount of the Repurchase Price being paid off with the proceeds of such sale and requesting that certain documents with respect to such Mortgage Loans be delivered to the related third party purchaser.

“ NYMC ” shall mean The New York Mortgage Company, LLC and any successors or permitted assigns.

“ Officer’s Certificate ” shall mean a certificate signed by a Responsible Officer of the Person delivering such certificate and delivered as required by this Custodial Agreement.

“ Opinion of Counsel ” shall mean a written opinion letter of counsel in form and substance reasonably acceptable to the party receiving such opinion letter.

“ Person ” means any legal person, including any individual, corporation, partnership, association, joint stock company, trust, limited liability company, unincorporated organization, governmental entity or other entity of similar nature.

“ PM Funded Wet-Ink Mortgage Loans ” shall mean Wet-Ink Mortgage Loans that will be funded after 1:30 p.m. (New York City time) but on or prior to 4:30 p.m. (New York City time) on any Business Day.

“ Pricing Side Letter ” means the pricing side letter, dated as of December 13, 2005, among Seller, Guarantor and Buyers, as the same may be amended, supplemented or modified from time to time.

“ Program Documents ” shall have the meaning assigned thereto in the Repurchase Agreement.

“ Purchase Date ” means the date on which a Transaction is entered into pursuant to the Repurchase Agreement.

“ Purchased Loan ” means a Loan purchased by a Buyer in a Transaction pursuant to the Repurchase Agreement.

“ Purchase Price ” shall have the meaning assigned thereto in the Pricing Side Letter.

“ Repurchase Price ” means the price at which Purchased Loans are to be transferred from the related Buyer to Seller upon termination of a Transaction, which will be determined in each case according to the Repurchase Agreement.

“ Rescission ” shall mean the right of a Mortgagor to rescind the related Mortgage Note and related documents pursuant to applicable law and regulation.

“ Responsible Officer ” shall mean, as to any Person, the chief executive officer or, with respect to financial matters, the chief financial officer of such Person; provided, that in the event any such officer is unavailable at any time he or she is required to take any action hereunder, Responsible Officer shall mean any officer authorized to act on such officer’s behalf as demonstrated by a certificate of corporate resolution. With respect to the Custodian, Responsible Officer shall mean any managing director, director, associate, principal, vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Custodian customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“ Review Procedures ” shall have the meaning specified in Section 3(a) hereof.

“ Servicer ” means Cenlar F.S.B. and any successor thereto.

“ Settlement Agent ” shall mean, with respect to any Wet-Ink Mortgage Loan, the Person specified in the Transaction Notice (which may be a title company, escrow company or attorney in accordance with local law and practice in the jurisdiction where the related Wet-Ink Mortgage Loan is being originated and which is not listed as an Unapproved Settlement Agent on Annex 15 attached hereto as revised from time to time by Buyers) to which the proceeds of the related Purchase Price with respect to such Wet-Ink Mortgage Loan are to be distributed by the Disbursement Agent.

“ Transaction ” shall mean a transaction pursuant to which Seller transfers to the related Buyer certain Loans against the transfer of funds by the related Buyer, with a simultaneous agreement by the related Buyer to transfer to Seller such Loans on a date certain, against the transfer of funds by Seller.

“ Transaction Notice ” means a written request of Seller to enter into a Transaction, in the form attached hereto as Exhibit A or such other form as shall be mutually agreed upon among Seller and Buyers which is delivered to the related Buyer, the Disbursement Agent and the Custodian.

“ Transmittal Letter ” shall mean a letter substantially in the form of Annex 12 hereto.

“ Trust Receipt ” shall mean the trust receipt in the form annexed hereto as Annex 2 delivered to the related Buyer by the Custodian covering the Mortgage Loans subject to this Custodial Agreement from time to time , as reflected on the Loan Schedule and Exception Report attached thereto in accordance with Section 3.

“ Underwriting Guidelines ” shall mean NYMC’s loan underwriting guidelines set forth as Exhibit D to the Repurchase Agreement and (ii) certain underwriting guidelines of third parties listed in Exhibit G to the Repurchase Agreement in accordance with which NYMC underwrites Loans, as the same may be amended from time to time in accordance with terms of the Repurchase Agreement.

“ Wet-Ink Mortgage Loan ” means a first lien or second lien Loan that is sold to the related Buyer simultaneously with the origination thereof by The New York Mortgage Company, LLC, which origination is in accordance with the Underwriting Guidelines and is funded in part or in whole with proceeds of the sale of the Loan to the related Buyer paid directly to a Settlement Agent and for which all of the Mortgage Loan Documents specified in Annex 16 have not been delivered to Custodian in accordance with Section 2 of this Agreement. For the avoidance of doubt Wet-Ink Mortgage Loans shall include each Wet-Ink Conforming Loan, Wet-Ink Alt-A Loan, Wet-Ink HELOC, Wet-Ink Subprime Loan, Wet-Ink Jumbo Loan and Wet-Ink Small Balance Commercial Loan.

“ Wire Instruction Data ” shall mean the applicable information provided relating to funding for the origination of a Wet-Ink Mortgage Loan, which data shall include the amount of the related wire transfer and related depository information as required by Buyers.

Section 2. Delivery of Mortgage File .

(a) The Seller shall from time to time deliver Mortgage Files to the Custodian to be held hereunder, which shall be reviewed by the Custodian as provided in Section 3.

(i) With respect to each Transaction, the Seller shall provide written notice, in the form of a Transaction Notice together with the related Loan Schedule and a Computer Tape (collectively, the “ Notice and Information ”), to the related Buyer, Custodian and Disbursement Agent, as applicable, with respect to such Mortgage Loans which are to be purchased.

(ii) With respect to Dry Mortgage Loans, Seller shall deliver to the related Buyer and the Custodian, no later than 11:00 a.m. (New York City time) two (2) Business Days prior to the requested Purchase Date (a “ Notice Date ”), (a) the related Notice and Information and (b) the related Mortgage File.

(iii) With respect to Wet-Ink Mortgage Loans, Seller shall notify the related Buyer of an estimate of the Purchase Price of such Wet-Ink Mortgage Loans no later than prior to 3:00 p.m. (New York City time) one (1) Business Day prior to the requested Purchase Date.

(iv) With respect to any AM Funded Wet-Ink Mortgage Loans, prior to 5:00 p.m. (New York City time) one (1) Business Day prior to the requested Purchase Date (also a “ Notice Date ”), Seller shall deliver, by facsimile or Electronic Transmission (a) the related Notice and Information to the related Buyer, the Disbursement Agent and the Custodian, and (b) copies of the Escrow Letters with respect to such Wet-Ink Mortgage Loans which are to be purchased to the Custodian.

(v) With respect to Midday Funded Wet-Ink Mortgage Loans, prior to 12:30 (New York City time) on the requested Purchase Date (also a “ Notice Date ”), Seller shall deliver, by facsimile or Electronic Transmission (a) the related Notice and Information to the related Buyer, the Disbursement Agent and the Custodian, and (b) copies of the Escrow Letters with respect to such Wet-Ink Mortgage Loans which are to be purchased to the Custodian.

(vi) With respect to PM Funded Wet-Ink Mortgage Loans, prior to 3:00 p.m. (New York City time) on the requested Purchase Date (also a “ Notice Date ”), Seller shall deliver, by facsimile or Electronic Transmission (a) the related Notice and Information to the related Buyer, the Disbursement Agent and the Custodian, and (b) copies of the Escrow Letters with respect to such Wet-Ink Mortgage Loans which are to be purchased to the Custodian.

Notwithstanding anything herein to the contrary, in the event that more than 250 Mortgage Files are to be delivered on any Purchase Date, the Custodian shall have such additional time to complete its review of such Mortgage Files in excess of 250 as agreed between the Custodian and the Seller. In such event, the Seller shall deliver the Mortgage Files to the Custodian so that the Custodian shall have the time required to complete its review and issue the required Trust Receipts on the Purchase Date.

(b) From time to time, the Seller shall forward to the Custodian additional original documents or additional documents evidencing any assumption, modification, consolidation or extension of a Mortgage Loan approved by the Seller, or other documents with respect to a Mortgage Loan (such additional documents, “ Additional Documents ”), in accordance with the terms of the Repurchase Agreement, and upon receipt thereof, the Custodian shall hold such Additional Documents for the Buyers hereunder. The Custodian shall receive such Additional Documents, but shall not be required to review any such Additional Documents other than to determine that such Additional Documents appear on their face to be the documents required to be delivered.

With respect to any documents which have been delivered or are being delivered to recording offices for recording and have not been returned to the Seller in time to permit their delivery hereunder at the time required, in lieu of delivering such original documents, the Seller shall deliver to the Custodian a copy thereof certified by the Seller, originating Lender, Settlement Agent, title company or escrow closing company as a true, correct and complete copy of the original which has been transmitted for recordation. The Seller shall deliver such original documents to the Custodian promptly when they are received if the related Mortgage Loan is then subject to this Custodial Agreement.

(c) With respect to any Mortgage Loan, if the Custodian has identified such Mortgage Loan as having any Exception or if the Seller has knowledge of any Exception, the Seller shall promptly and diligently notify Buyers of any such Exception and shall promptly and diligently attempt to cure any such Exception.

(d) The parties hereto acknowledge and agree that the Seller may cause The New York Mortgage Company, LLC, on Seller’s behalf, to deliver the Mortgage Files and the other documents required to be delivered hereunder to the Custodian and the other parties hereto.

Section 3. Trust Receipt and Loan Schedule and Exception Report.

(a) If the Custodian has received a Mortgage File for a Mortgage Loan identified on the Loan Schedule as provided in the preceding section, the Custodian shall review the documents required to be delivered pursuant to Section 2(a)(ii) above and Annex 16 and shall indicate on its records that Custodian maintains possession of such documents for Buyers hereunder.

(b) Not later than 12:00 noon (New York City time) on each Purchase Date, with respect to Dry Mortgage Loans, and not later than 5:00 p.m. (New York City time) on each Purchase Date with respect to Wet-Ink Mortgage Loans, the Custodian shall deliver to the related Buyer, (i) in accordance with the delivery procedures set forth below in Section 3(e), a Trust Receipt in respect of all Loans (including Wet-Ink Mortgage Loans) sold to such Buyer on such Purchase Date and any prior Purchase Date and held by Custodian hereunder to such Buyer, (ii) via facsimile or Electronic Transmission, a Loan Schedule and Exception Report for Loans which are not Wet-Ink Mortgage Loans to the related Buyer, and (iii) via facsimile or Electronic Transmission, a detailed listing of all Wet-Ink Mortgage Loans to the related Buyer, Seller and Disbursement Agent, which shall be attached to the related Trust Receipt. Each Loan Schedule and Exception Report and detailed listing of Wet-Ink Mortgage Loans delivered by Custodian to the related Buyer shall supersede and cancel the Loan Schedule and Exception Report and detailed listing of Wet-Ink Mortgage Loans previously delivered by Custodian to the related Buyer hereunder, and shall replace the then existing Loan Schedule and Exception Report and detailed listing of Wet-Ink Mortgage Loans to be attached to the Trust Receipt. In no event shall Custodian list any Loan on a Loan Schedule and Exception Report if Custodian has not yet reviewed the related Mortgage File.

(c) (i) With respect to Wet-Ink Mortgage Loans, the delivery of the Transaction Notice and Loan Schedule to the Custodian by the Seller shall be deemed to constitute required documents with respect to the related Wet-Ink Mortgage Loan (and shall be deemed to be a certification by such Seller that such Mortgage Loan is a Wet-Ink Mortgage Loan) and the Mortgage File shall not be required to be delivered with respect to such Wet-Ink Mortgage Loan on the related Purchase Date. Notwithstanding the foregoing, the Seller shall deposit with the Custodian the Mortgage File for such Wet-Ink Mortgage Loan as soon as possible and, in any event, within seven (7) Business Days after the date the Purchase is made with respect to such Wet-Ink Mortgage Loan. The Custodian shall notify the related Buyer within one (1) Business Day of the failure by the Seller to deliver any document by the time provided in the previous sentence.

(ii) If the Custodian receives the Mortgage File with respect to Wet-Ink Mortgage Loans by 1:30 p.m. (New York City time) on a Business Day, the Custodian shall deliver the related Trust Receipt and Loan Schedule and Exception Report to the related Buyer, in accordance with Section 3(e) below, no later than 5:00 p.m. (New York City time) on that Business Day; provided that if the Custodian receives the Mortgage File after 1:30 p.m. (New York City time) on a Business Day, the Custodian shall make such delivery by no later than the following Business Day.

(iii) The Seller hereby represents, warrants and covenants to Buyers and Custodian that the Seller and any person or entity acting on behalf of the Seller that has possession of any of the Mortgage File for such Wet-Ink Mortgage Loan prior to the deposit thereof with Custodian will hold such documents in trust for Buyers.

(d) The delivery of each Trust Receipt and Loan Schedule and Exception Report to Buyers as provided below shall be the Custodian's representation that, other than the Exceptions listed: (i) all documents in respect of such Mortgage Loan required to be delivered at such time pursuant to Section 2(a)(i), and (ii) of this Custodial Agreement, and the documents listed in Sections (i), (ii), (iii), (iv) and, (v) of Annex 16 (and if actually delivered to the Custodian, the documents listed at Sections (vi) - (xi) of Annex 16), have been delivered and are in the possession of the Custodian as part of the Mortgage File for such Mortgage Loan; (ii) all such documents have been reviewed by the Custodian in accordance with the review procedures attached hereto as Annex 4 (the "Review Procedures") and appear on their face to be regular and to relate to such Mortgage Loan and to satisfy the requirements set forth in Section 2 of this Custodial Agreement; and (iii) each Mortgage Loan identified in such Loan Schedule and Exception Report is being held by the Custodian as bailee for the Buyer and/or its designees pursuant to this Custodial Agreement.

(e) The Custodian shall deliver each original Trust Receipt and Loan Schedule and Exception Report to Buyers at 60 Wall Street, New York, New York, 10005, Attention: Vincent D'Amore (telephone: (212) 250-7328) on each Purchase Date, or day that mortgage files are released following any sale of the related Mortgage Loan, by overnight delivery using a nationally recognized overnight delivery service at the Seller's expense. Alternatively, a Trust Receipt and Loan Schedule and Exception Report may be delivered electronically to the related Buyers on the related Purchase Date; provided that the Custodian shall deliver the original Trust Receipt and Loan Schedule and Exception Report to the related Buyers by overnight mail pursuant to the preceding sentence. Each Trust Receipt and Loan Schedule and Exception Report subsequently delivered by the Custodian to Buyers shall supersede and cancel the Trust Receipt and Loan Schedule and Exception Report previously delivered by the Custodian to Buyers hereunder, and shall replace the then existing Loan Schedule and Exception Report and the then existing Trust Receipt; provided that any Trust Receipt issued in respect of Wet-Ink Mortgage Loans shall only supercede any Trust Receipt previously issued in respect of such Wet-Ink Mortgage Loans, any Trust Receipt issued in respect of Dry Mortgage Loans shall only supercede any Trust Receipt previously issued in respect such Dry Mortgage Loans.

(f) In connection with any Trust Receipt and Loan Schedule and Exception Report delivered hereunder by the Custodian, the Custodian makes no representations as to and shall not be responsible to verify (A) the validity, legality, enforceability, due authorization, recordability, sufficiency, or genuineness of any of the documents contained in each Mortgage File or (B) the collectability, insurability, effectiveness or suitability of any such Mortgage Loan. Subject to the following sentence, the Seller and Buyers hereby give the Custodian notice that from and after the Purchase Date, Buyers shall own (or, alternatively, have a security interest in) each Mortgage Loan identified on a Loan Schedule and Exception Report until such time that the Custodian receives written notice from the Buyer that the Buyer no longer owns or has a security interest in such Mortgage Loan.

(g) No later than 5:00 p.m. (New York City time) on each Business Day, Custodian shall also deliver to Seller and the related Buyer, by electronic transmission, a daily aging report setting forth such information with respect to the Purchased Loans as may be reasonably required by the related Buyer (the "Daily Aged Report"). Custodian shall monitor each Loan on a daily basis in order that all information set forth on the Daily Aged Report is accurate as of the time such Daily Aged Report is delivered. Disbursement Agent shall provide to Custodian all information in its possession that Custodian requires in order to complete and deliver each Daily Aged Report.

Section 4. Obligations of the Custodian.

(a) The Custodian shall maintain continuous custody of all items constituting the Mortgage Files in secure facilities in accordance with customary standards for such custody and shall reflect in its records the interest of Buyers therein. Each Mortgage Note (and Assignment of Mortgage) shall be maintained in fire resistant facilities.

(b) With respect to the documents constituting each Mortgage File, the Custodian shall (i) act exclusively as the bailee of, and custodian for, Buyers, (ii) hold all documents constituting such Mortgage File received by it for the exclusive use and benefit of Buyers, and (iii) make disposition thereof only in accordance with the terms of this Custodial Agreement or with written instructions furnished by Buyers; provided, however, that in the event of a conflict between the terms of this Custodial Agreement and the written instructions of Buyers, the Buyers' written instructions shall control.

(c) In the event that (i) a Buyer, the Seller or the Custodian shall be served by a third party with any type of levy, attachment, writ or court order with respect to any Mortgage File or any document included within a Mortgage File or (ii) a third party shall institute any court proceeding by which any Mortgage File or a document included within a Mortgage File shall be required to be delivered otherwise than in accordance with the provisions of this Custodial Agreement, the party receiving such service shall promptly deliver or cause to be delivered to the other parties to this Custodial Agreement copies of all court papers, orders, documents and other materials concerning such proceedings. The Custodian shall, to the extent permitted by law or any court order continue to hold and maintain all the Mortgage Files that are the subject of such proceedings pending a final, nonappealable order of a court of competent jurisdiction permitting or directing disposition thereof. Upon final determination of such court, the Custodian shall dispose of such Mortgage File or any document included within such Mortgage File as directed by Buyers which shall give a direction consistent with such determination. Expenses of the Custodian (including reasonable attorneys' fees and related expenses) incurred as a result of such proceedings shall be borne by the Seller.

(d) Buyers hereby acknowledges that the Custodian shall not be responsible for the validity of Buyers' ownership interest or the validity and perfection of the Buyers' security interest in the Purchased Loans under the Repurchase Agreement, other than the Custodian's obligation to take possession of Mortgage Loans as set forth in Section 2 hereof.

(e) During the term of this Custodial Agreement, if the Custodian discovers any nonconformity with the review criteria in Annex 4 with respect to any Mortgage File, the Custodian shall, by means of the Loan Schedule and Exception Report, give written or electronic specification of such nonconformity to Buyers and the Seller.

Section 5. Release of Purchased Loans .

(a) From time to time until the Custodian is otherwise notified in writing by an Authorized Representative of a Buyer (and a copy thereof shall be sent by Buyers to Seller), the Custodian is hereby authorized upon receipt of written request of the Seller to release Mortgage Files relating to Mortgage Loans in the possession of the Custodian to the Seller, or its designee, for the purpose of servicing or correcting documentary deficiencies relating thereto against a request for release of Mortgage Files and receipt (a "Request for Release and Receipt") executed by the Seller in the form of Annex 5 hereto, which Request for Release and Receipt must also be executed by Buyers in the event that more than five (5) Mortgage Files would be released following such requested release. The Custodian shall not restrict such releases, but shall promptly notify Buyers of the occurrence of each such release of Mortgage Files and shall keep track of each such release of Mortgage Files. The Seller or its designee shall return to the Custodian each Mortgage File previously released by the Custodian within ten (10) calendar days after receipt thereof other than for any Mortgage Loan which has been paid in full by the related Mortgagor or any Mortgage Loan as to which the related Mortgage File has been released pursuant to Section 5(c) to an Acceptable Attorney pursuant to an Attorney's Bailee Letter. The Seller hereby further represents and warrants to Buyers that any such request by the Seller for release of Purchased Loans shall be solely for the purposes set forth in the Request for Release and Receipt and that the Seller has requested such release in compliance with all terms and conditions of such release set forth in the Repurchase Agreement. Notwithstanding anything to the contrary contained in the foregoing, any request for release of Mortgage Notes shall be deemed to be a representation by the Seller (upon which the Custodian may rely) that such release is being requested only for the purpose of (i) ultimate sale or exchange or (ii) presentation, collection, renewal or registration of transfer.

(b) (i) From time to time until otherwise notified in writing by Buyers (and a copy thereof shall be sent by Buyers to Seller), the Custodian is hereby authorized upon receipt of written request of the Seller at least two (2) Business Days prior to the date of the anticipated sale, to release Mortgage Files in the possession of the Custodian to a third-party purchaser (subject to the written consent of Buyers if such third party purchaser is not an Approved Purchaser) for the purpose of resale thereof against a Notice of Sale and Request for Release executed by the Seller and Buyers (in their discretion) in the form of Annex 3 hereto. On such Notice of Sale and Request for Release, the Seller shall indicate the Mortgage Loans to be sold, such information to be provided in electronic medium acceptable to the Seller and the Custodian, the approximate amount of sale proceeds anticipated to be received, the date of such anticipated sale, the name and address of the third-party purchaser, whether the shipment is made pursuant to the sale of the Mortgage Loans to a third party or pursuant to the formation of a mortgage pool supporting a mortgage-backed or asset-backed security (an “MBS”), and the preferred method and date of delivery. For the avoidance of doubt, under no circumstances shall any Buyer have any obligation to consent to any such Notice of Sale and Request for Release after the occurrence of a Default or an Event of Default.

(ii) Any transmittal of a Mortgage File for a Mortgage Loan in the possession of the Custodian in connection with the sale thereof to a third-party purchaser will be under cover of a Transmittal Letter substantially in the form attached hereto as Annex 12 duly completed by the Custodian and executed by the Custodian. Promptly upon receipt by Buyers of the full amount of the takeout proceeds (constituting not less than the “Payoff Amount”) with respect to such Mortgage Loan into the account set forth in such Transmittal Letter, Buyers shall notify the Custodian thereof in writing and Custodian shall reflect in its records the release and sale of such Mortgage Loan. Any Payoff Amount sent by a third-party purchaser of Mortgage Loans shall be sent to the account designated by Buyers.

(c) (i) From time to time until otherwise notified in writing by Buyers, which notice shall be given by Buyers only following the occurrence of an Event of Default (and a copy thereof shall be sent by Buyers to Seller), and as appropriate for the foreclosure of any of the Mortgage Loans, the Custodian is hereby authorized, upon receipt of a Request for Release and Receipt from the Seller to send to an Acceptable Attorney copies or originals of the Mortgage Files listed in the Request for Release and Receipt. The Custodian shall not send to an Acceptable Attorney an original Mortgage File unless the Custodian shall have retained a complete and accurate copy of such Mortgage File. The Custodian may destroy any such copies retained upon receipt of written instructions from Buyers to destroy such copies. In accordance with the terms of the Attorney’s Bailee Letter, the Acceptable Attorney to whom such Mortgage Files are sent is instructed to acknowledge receipt of each such document by faxing to Buyers and the Custodian a list of such Mortgage Files confirming that such Acceptable Attorney is holding the same as bailee of Buyers under the applicable Attorney’s Bailee Letter, for receipt as soon as possible and in any event no later than three (3) Business Days following receipt thereof by such Acceptable Attorney. Buyers may, by written notice to the Custodian and the Seller, respectively, exclude any attorney-at-law with whom Buyers are not reasonably satisfied, from being an Acceptable Attorney. The Custodian shall promptly notify Buyers that it has released any Mortgage File to an Acceptable Attorney.

(ii) In accordance with each Attorney’s Bailee Letter, no later than three (3) Business Days prior to the foreclosure of any Mortgage Loan, the Acceptable Attorney party thereto shall notify the Seller of the scheduled date of foreclosure of each such Mortgage Loan (the “Scheduled Foreclosure Date”), and of any subsequent changes to the Scheduled Foreclosure Date. The Seller hereby agrees in any event to promptly notify the Custodian and Buyer in writing upon completion of any foreclosure. On the date of foreclosure, such Mortgage Loan shall be deemed deleted from any Trust Receipt then outstanding.

(d) From time to time until the Custodian is otherwise notified by Buyers, and with the prior written consent of Buyers (and a copy thereof shall be sent by Buyers to Seller), the Seller may substitute for one or more Eligible Mortgage Loans constituting the Purchased Loans one or more substitute Eligible Mortgage Loans having aggregate Purchase Prices equal to or greater than the Purchase Prices of the Mortgage Loans being substituted for, or obtain the release of one or more Mortgage Loans constituting Purchased Loans hereunder; provided that, after giving effect to such substitution or release, no Margin Deficit shall occur, which determination shall be made solely by the Buyer in accordance with the Repurchase Agreement. In connection with any such requested substitution or release, the Seller will provide notice to the Custodian and Buyers no later than 12:00 p.m. (New York City time), on the date of such request, specifying the Mortgage Loans to be substituted for or released and the substitute Mortgage Loans to be purchased in substitution therefor, if any, and shall deliver with such notice a revised Loan Schedule indicating any substitute Mortgage Loans. If the Custodian and Buyers have received notice in accordance with the preceding sentence, the Custodian will effect the requested substitution or release no later than 3:00 p.m. (New York City time), two (2) Business Days following the day on which such request was made after the Custodian has certified to Buyers on such Business Day that the matters set forth in Section 3(a) hereof with respect to any substitute Mortgage Loans are true and correct. Each such substitution or release shall be deemed to be a representation and warranty by the Seller that any substitute Mortgage Loans are eligible for purchase under the Repurchase Agreement and that after giving effect to such substitution or release, no Margin Deficit shall occur.

(e) So long as no Event of Default has occurred and is continuing and to the extent written notice has been provided to the Custodian, the Custodian and Buyers shall take such steps as they may reasonably be directed from time to time by the Seller in writing, which the Seller deems necessary and appropriate, to transfer promptly and deliver to the Seller any Mortgage File in the possession of the Custodian relating to any Mortgage Loan previously purchased by Buyers but which the Seller, with the written consent of Buyers, has notified the Custodian has ceased to be subject to the terms of the Repurchase Agreement, or any Mortgage Loan in respect of which the Seller has paid the applicable Repurchase Price in full.

(f) The Custodian shall provide a notice to Buyers as to any Mortgage Loan which (i) has been released to the Seller pursuant to Section 5(a) hereof in excess of ten (10) calendar days; (ii) has been released under Section 5(b) hereof under any Transmittal Letter in excess of the time period stated in such Transmittal Letter for release.

Section 6. Fees and Expenses of Custodian .

The Custodian shall charge such fees for its services under this Custodial Agreement as are set forth in a separate agreement between the Custodian and the Seller, the payment of which fees, together with the Custodian's expenses incurred in connection herewith, shall be solely the obligation of the Seller. The failure of Seller to pay any such fees shall not excuse the performance by Custodian of any of its obligations hereunder. The obligations of the Seller under this Section 6 shall survive the termination of this Custodial Agreement and the resignation or removal of the Custodian.

Section 7. Removal or Resignation of Custodian.

(a) The Custodian may at any time resign and terminate its obligations under this Custodial Agreement upon at least 60 days' prior written notice to the Seller and Buyers. Promptly after receipt of notice of the Custodian's resignation, Buyers shall appoint, by written instrument, a successor custodian, subject to written approval by Seller (which approval shall not be unreasonably withheld). One original counterpart of such instrument of appointment shall be delivered to each of the Buyers, the Seller, the Custodian and the successor custodian. If the successor Custodian shall not have been appointed within 60 days of the Custodian's providing such notice, the Custodian may petition any court of competent jurisdiction to appoint a successor Custodian.

(b) Buyers (with the consent of Seller, which consent shall not be unreasonably withheld), upon at least 30 days' prior written notice to the Custodian, may remove and discharge the Custodian (or any successor custodian thereafter appointed) from the performance of its obligations under this Custodial Agreement. Promptly after the giving of notice of removal of the Custodian, Buyers shall appoint, by written instrument, a successor custodian, which appointment shall be reasonably acceptable to the Seller. One original counterpart of such instrument of appointment shall be delivered to each of the Buyers, the Seller, the Custodian and the successor custodian.

(c) In the event of any such resignation or removal, the Custodian shall, promptly upon the simultaneous surrender of any outstanding Trust Receipts held by Buyer, transfer to the successor custodian, as directed in writing, all the Mortgage Files being administered under this Custodial Agreement. The cost of the shipment of Mortgage Files arising out of the resignation of the Custodian shall be at the expense of the Custodian unless such resignation is due to the nonpayment of its fees and expenses hereunder, in which case such expense shall be paid by the Seller; and any cost of shipment arising out of the removal of the Custodian by Buyers or the Seller for cause shall be at the expense of the Custodian. The cost of shipment arising out of the removal of the Custodian by Buyers or the Seller without cause shall be at the expense of the Seller. The Seller shall be responsible for the fees and expenses of the successor custodian and the fees and expenses for endorsing the Mortgage Notes and assigning the Mortgages to the successor custodian if required pursuant to this paragraph.

Section 8. Examination of Mortgage Files.

Upon reasonable prior notice to the Custodian (which shall be two (2) Business Days or such shorter period of time agreed to by the Custodian and Buyers) and upon reasonable terms and conditions and at the Seller's expense, Buyers and each of its respective agents, accountants, attorneys and auditors will be permitted during normal business hours to examine, inspect, and make copies of the Mortgage Files, documents, records and other papers in the possession of or under the control of the Custodian relating to any or all of the Mortgage Loans.

Section 9. Insurance of Custodian.

At its own expense, the Custodian shall maintain at all times during the existence of this Custodial Agreement and keep in full force and effect fidelity insurance, theft of documents insurance, forgery insurance and errors and omissions insurance. All such insurance shall be in amounts, with standard coverage and subject to deductibles, all as is customary for insurance typically maintained by institutions which act as custodian of assets substantially similar to the Purchased Loans and act in a collateral agent capacity. The minimum coverage under any such bond and insurance policies shall be at least equal to the corresponding amounts required by Fannie Mae or Freddie Mac in the Applicable Guide. Upon request, Buyers or the Seller shall be entitled to receive a certificate of the respective insurer that such insurance is in full force and effect.

Section 10. Representations and Warranties .

The Custodian represents and warrants to Buyers that:

(a) The Custodian is (i) a national banking association duly organized, validly existing and in good standing under laws of the United States and (ii) duly qualified and in good standing and in possession of all requisite authority, power, licenses, permits and franchises in order to execute, deliver and comply with its obligations under the terms of this Custodial Agreement.

(b) The Custodian has all requisite right, power and authority to execute and deliver this Custodial Agreement and to perform all of its duties as the Custodian hereunder.

(c) The execution, delivery and performance of this Custodial Agreement have been duly authorized by all necessary corporate action on the part of the Custodian, and neither the execution and delivery of this Custodial Agreement by the Custodian in the manner contemplated herein nor the Custodian's performance of and compliance with the terms hereof will violate, contravene or create a default under any charter document or bylaw of the Custodian.

(d) Neither the execution and delivery of this Custodial Agreement by the Custodian, nor its performance of and compliance with its obligations and covenants hereunder, require the consent or approval of any governmental authority or, if such consent or approval is required, it has been obtained.

(e) This Custodial Agreement, when executed and delivered by the Custodian, will constitute valid, legal and binding obligations of the Custodian, enforceable against the Custodian in accordance with their respective terms, except as the enforcement thereof may be limited by applicable debtor relief laws and that certain equitable remedies may not be available regardless of whether enforcement is sought in equity or at law.

(f) The Custodian is not an Affiliate of the Seller or Guarantor.

(g) At all times the Custodian shall be a corporation or association organized and doing business under the laws of the United States of America or of any State, and shall be authorized under such laws to exercise corporate trust powers, subject to supervision or examination by the United States of America or any such State, and shall have (x) a short-term, unsecured debt rated at least P-1 by Moody's Investors Service, Inc. (or such lower rating as may be acceptable to Seller and Buyer) and (y) a short term deposit rating of at least A-1 from Standard & Poor's Ratings Services (or such lower rating as may be acceptable to Seller and Buyer).

(h) The Custodian shall at all times have a combined capital and surplus of at least \$50,000,000 as set forth in its then most recent published annual report of condition.

Section 11. Statements .

Upon the request of Buyers or the Seller, the Custodian shall provide Buyers or the Seller, as applicable, with a list of all the Mortgage Loans for which the Custodian holds a Mortgage File pursuant to this Custodial Agreement. Such list shall be in the form of a Loan Schedule and Exception Report. Upon the request of Buyers, the Custodian shall provide Buyers with any reports or information reasonably requested by Buyers.

Section 12. No Adverse Interest of Custodian.

By execution of this Custodial Agreement, the Custodian represents and warrants that it currently holds, and during the existence of this Custodial Agreement shall hold, no adverse interest, by way of security or otherwise, in any Mortgage Loan, and hereby waives and releases any such interest which it may have in any Mortgage Loan as of the date hereof. The Mortgage Loans shall not be subject to any security interest, lien or right to set-off by Custodian or any third party claiming through Custodian, and Custodian shall not pledge, encumber, hypothecate, transfer, dispose of, or otherwise grant any third party interest in, the Mortgage Loans.

Section 13. Indemnification of Custodian.

The Seller and Guarantor, jointly and severally, agree to reimburse, indemnify and hold the Custodian and its directors, officers, agents and employees harmless against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, or out-of-pocket expenses of any kind or nature whatsoever, including reasonable attorney's fees, that may be imposed on, incurred by, or asserted against it or them in any way relating to or arising out of this Custodial Agreement or any action taken or not taken by it or them hereunder unless such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, or out-of-pocket expenses were imposed on, incurred by or asserted against the Custodian because of the breach by the Custodian of its obligations hereunder, or caused by the negligence, lack of good faith or willful misconduct on the part of the Custodian or any of its directors, officers, agents or employees. The foregoing indemnification shall survive any resignation or removal of the Custodian or the termination or assignment of this Custodial Agreement.

In the event that the Custodian fails to produce a Mortgage Note, Assignment of Mortgage or any other document related to a Mortgage Loan that was in its possession pursuant to Section 2 within two (2) Business Days after written request therefor by Buyers or the Seller in accordance with the terms and conditions of this Custodial Agreement; provided that (i) Custodian previously delivered to Buyers a Trust Receipt and a Loan Schedule and Exception Report which did not list such document as an Exception on the related Purchase Date; (ii) such document is not outstanding pursuant to a Request for Release and Receipt in the form annexed hereto as Annex 5; and (iii) such document was held by the Custodian on behalf of the Seller or the Buyer, as applicable (a "Custodial Delivery Failure"), then the Custodian shall (a) with respect to any missing Mortgage Note, promptly deliver to the Buyer or the Seller, upon request, a Lost Note Affidavit in the form of Annex 10 hereto and (b) with respect to any missing document related to such Mortgage Loan, including but not limited to a missing Mortgage Note, indemnify the Seller and Buyer in accordance with the succeeding paragraph of this Section 13. Notwithstanding the foregoing, in the event that the Custodian fails to produce a Mortgage Note with respect to a Mortgage Loan requested pursuant to Section 5(b) hereof which was not otherwise released by the Custodian pursuant to the terms of this Custodial Agreement, the Custodian shall then promptly (but no later than two (2) Business Days following such request) provide the Buyer or the Seller, as applicable, with a Lost Note Affidavit. In the event that such original Mortgage Note is subsequently found and delivered to the Buyers or the Seller, as applicable, such party shall return the Lost Note Affidavit to the Custodian. For the avoidance of doubt, the Custodian shall not release to the Seller any Mortgage Note or the related Mortgage File, unless the Buyers shall otherwise consent or direct, until the Buyer(s) have received the related Repurchase Price together with any and all other Obligations then due and payable, and the Buyers have so notified the Custodian.

The Custodian agrees to indemnify and hold the Buyer and Seller, and their and their respective present or former affiliates, directors, officers, employees, agents, representatives and designees harmless against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, or out-of-pocket expenses, including reasonable attorney's fees, that may be imposed on, incurred by, or asserted against it or them in any way relating to or arising out of a Custodial Delivery Failure or the Custodian's negligence, lack of good faith or misconduct or any breach of the conditions, representations or warranties contained herein. The foregoing indemnification shall survive any termination or assignment of this Custodial Agreement.

Section 14. Concerning the Custodian.

In the absence of bad faith on the part of the Custodian, the Custodian may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any request, instruction, certificate, opinion or other document furnished to the Custodian, reasonably believed by the Custodian to be genuine and to have been signed or presented by the proper party or parties and conforming to the requirements of this Custodial Agreement; but in the case of any Mortgage Loan Document or other request, instruction, document or certificate which by any provision hereof is specifically required to be furnished to the Custodian, the Custodian shall be under a duty to examine the same in accordance with the requirements of this Custodial Agreement.

The Custodian undertakes to perform such duties and only such duties as are specifically set forth in this Custodial Agreement. The Custodian shall not have any duties or responsibilities except those expressly set forth in this Custodial Agreement.

The Custodian shall not be liable for any error of judgment made in good faith by an officer or officers of the Custodian, unless it shall be conclusively determined by a court of competent jurisdiction that the Custodian was grossly negligent in ascertaining the pertinent facts.

The Custodian shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with any direction of the Seller or Buyers given under this Custodial Agreement.

None of the provisions of this Custodial Agreement shall require the Custodian to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

The Custodian may consult with nationally recognized counsel and the written advice or any written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or opinion of counsel.

Any entity into which the Custodian may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Custodian shall be a party, or any entity succeeding to the business of the Custodian shall be the successor of the Custodian hereunder without the execution or filing of any paper with any parties hereto or any further act on the part of any of the parties hereto except where an instrument or transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

Section 15. Term of Custodial Agreement.

Promptly after written notice from Buyers of the termination of the Repurchase Agreement and payment in full of all amounts owing to Buyers thereunder, the Custodian shall deliver all documents remaining in the Mortgage Files to the Seller, and this Custodial Agreement shall thereupon terminate.

Section 16. Notices.

All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given when received by the recipient party at the address shown on its signature page hereto, or at such other addresses as may hereafter be furnished to each of the other parties by like notice. Any such demand, notice or communication hereunder shall be deemed to have been received on the date delivered to or received at the premises of the addressee. Any demand, notice or communication hereunder shall be (i) sent by telecopy, (ii) delivered in person, (iii) transmitted by a recognized private (overnight) courier service, or (iv) by Electronic Transmission. The Custodian's office is located at the address set forth on its signature page hereto, and each party hereto agrees to notify each other party if its address should change.

Section 17. GOVERNING LAW.

THIS CUSTODIAL AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAW OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF (EXCEPT FOR SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

Section 18. Authorized Representatives.

Each individual designated as an authorized representative of a Buyer or its successors or assigns, the Seller, the Guarantor and the Custodian, respectively (an "Authorized Representative"), is authorized to give and receive notices, requests and instructions and to deliver certificates and documents in connection with this Custodial Agreement on behalf of Buyers, the Seller, the Guarantor and the Custodian, as the case may be, and the specimen signature for each such Authorized Representative, initially authorized hereunder, is set forth on Annexes 6, 7, 8 and 9 hereof, respectively. From time to time, Buyers, the Seller, the Guarantor or the Custodian or their respective successors or permitted assigns may, by delivering to the others a revised annex, change the information previously given pursuant to this Section 18, but each of the parties hereto shall be entitled to rely conclusively on the then current annex until receipt of a superseding annex.

Section 19. Amendment.

This Custodial Agreement may be amended from time to time by written agreement signed by the Seller, Guarantor, Buyers and the Custodian.

Section 20. Cumulative Rights.

The rights, powers and remedies of the Custodian and Buyers under this Custodial Agreement shall be in addition to all rights, powers and remedies given to the Custodian and Buyers by virtue of any statute or rule of law, the Repurchase Agreement or any other agreement, all of which rights, powers and remedies shall be cumulative and may be exercised successively or concurrently without impairing Buyers' ownership or security interest in the Purchased Loans.

Section 21. Binding Upon Successors.

Subject to the provisions of Section 25, all rights of the Custodian, the Seller, Guarantor and Buyers under this Custodial Agreement shall inure to the benefit of the Custodian, the Seller, Guarantor and Buyers and their successors and permitted assigns.

Section 22. Entire Agreement; Severability.

This Custodial Agreement and the other Program Documents contain the entire agreement with respect to the Purchased Loans among the Custodian, Buyers, Guarantor and the Seller. If any of the provisions of this Custodial Agreement shall be held invalid or unenforceable, this Custodial Agreement shall be construed as if not containing such provisions, and the rights and obligations of the parties hereto shall be construed and enforced accordingly.

Section 23. Execution In Counterparts.

This Custodial Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

Section 24. Tax Reports.

The Custodian shall not be responsible for the preparation or filing of any reports or returns relating to federal, state or local income taxes with respect to this Custodial Agreement, other than in respect of the Custodian's compensation or for reimbursement of expenses.

Section 25. Assignment.

This Agreement may not be assigned in whole or in part by Seller, Custodian or Guarantor without the prior written consent of Buyers. Buyers shall have free and unrestricted use of the Mortgage Loans and may engage in financing, repurchase, purchase and sale, sale, or similar transactions with the Mortgage Loans and otherwise pledge, repledge, transfer, hypothecate or rehypothecate the Mortgage Loans and all rights of Buyers under the Repurchase Agreement (and this Custodial Agreement) to any assignee designated by Buyers (each, an "Assignee"). The Seller hereby irrevocably consents to any such assignment. Upon receipt of written notice to the Custodian of any such assignment in the form attached hereto as Annex 11, the Custodian shall mark its records to reflect the pledge or assignment of the Mortgage Loans by Buyers to the Assignee. The Custodian's records shall reflect the pledge or assignment of the Mortgage Loans by Buyers to the Assignee until such time as the Custodian receives written instructions from the Buyer with consent from the Assignee that the Mortgage Loans are no longer pledged or assigned by the Buyer to the Assignee, at which time the Custodian shall change its records to reflect the release of the pledge or assignment of the Mortgage Loans, and that the Custodian is holding the Mortgage Loans, as custodian for, and for the benefit of, Buyers.

If at any time after a Buyer shall have made such an assignment or pledge, the Assignee shall deliver to the Custodian a notice in the form of Annex 18 to the Custodian of the Buyer's default under an agreement between Buyer and Assignee relating to the financing by Assignee of the Buyer's advances with respect to the Mortgage Loans (a "Default Notice"), Assignee may, subject to any limitations in any such agreement between Assignee and such Buyer, (i) require Custodian to act with respect to the related Mortgage Loans solely in the capacity of custodian for, and bailee of, Assignee, but nevertheless subject to and only in accordance with the terms of this Custodial Agreement, (ii) require Custodian to hold such Mortgage Loans for the exclusive use and benefit of Assignee, and (iii) assume the rights of the Buyer under this Agreement to furnish instructions to the Custodian as to the disposition of such Mortgage Loans and such rights shall be exercisable solely by Assignee. In addition, within three (3) Business Days of Custodian's receipt of such Default Notice executed by the Buyer and receipt by the Custodian of the Trust Receipt from the Assignee, the Custodian shall deliver, in accordance with the written instructions of the Assignee, a Trust Receipt issued in the name of the Assignee and to the place indicated in any such written direction from the Assignee. Custodian shall assume that any assignment from Buyer(s) to the Assignee is subject to no limitations that are not expressly set forth in this Agreement. Until such time as the Custodian receives a Default Notice that there exists an event of default with respect to a pledge or assignment of its interest in the Mortgage Loans and Mortgage Files, the Custodian shall take directions solely from Buyer and shall have no responsibility or obligation to accept, acknowledge or act upon notice or communications from or otherwise deal in any way with such Assignee.

Section 26. Transmission of Mortgage Files.

Prior to any shipment of any Mortgage Files, or other Mortgage Loan Documents hereunder, the Seller shall deliver to the Custodian written instructions as to the method of shipment and shipper(s) the Custodian is to utilize in connection with the transmission of Mortgage Files or other Mortgage Loan Documents in the performance of the Custodian's duties hereunder. The Seller shall arrange for the provision of such services at its sole cost and expense (or, at the Custodian's option, reimburse the Custodian for all costs and expenses incurred by the Custodian consistent with such instructions) and will maintain such insurance against loss or damage to Mortgage Files or other Mortgage Loan Documents as the Seller deems appropriate. Without limiting the generality of the provisions of Section 13 above, it is expressly agreed that in no event shall the Custodian have any liability for any losses or damages to any person, including without limitation, the Seller, arising out of actions of the Custodian consistent with the instructions of the Seller. In the event the Custodian does not receive such written instructions, the Custodian shall be authorized and shall be indemnified as provided herein to utilize a nationally recognized courier service.

Section 27. SUBMISSION TO JURISDICTION; WAIVERS.

EACH OF BUYER, SELLER, GUARANTOR AND CUSTODIAN HEREBY IRREVOCABLY AND UNCONDITIONALLY:

(a) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND THE OTHER PROGRAM DOCUMENTS, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND APPELLATE COURTS FROM ANY THEREOF;

(b) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND, TO THE EXTENT PERMITTED BY LAW, WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

(c) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO ITS ADDRESS SET FORTH UNDER ITS SIGNATURE BELOW OR AT SUCH OTHER ADDRESS OF WHICH EACH OTHER PARTY HERETO SHALL HAVE BEEN NOTIFIED;

(d) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION; AND

(e) WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER REPURCHASE DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 28. Confidentiality.

Custodian hereby acknowledges and agrees that (i) all written or computer-readable information provided by any Buyer or Seller regarding any Buyer or Seller and (ii) the terms of this Agreement and the Repurchase Agreement (the “Confidential Information”), shall be kept confidential and shall not be divulged to any Person other than the parties hereto without the related Buyer’s and Seller’s prior written consent except to the extent that (i) Custodian reasonably deems necessary to do so in working with legal counsel, auditors, taxing authorities or other governmental agencies or regulatory bodies or in order to comply with any applicable federal or state laws, (ii) any portion of the Confidential Information is in the public domain other than due to a breach of this covenant by Custodian, or (iii) to the extent that Custodian is required to disclose Confidential Information pursuant to the requirements of any legal proceeding, Custodian shall notify each Buyer and Seller within one (1) Business Day of its knowledge of such legally required disclosure so that each Buyer or Seller may seek an appropriate protective order and/or waive Custodian’s compliance with this Agreement. Notice shall be both by telephone and in writing. In the absence of a protective order or waiver, Custodian may disclose the relevant Confidential Information if, in the written opinion of its counsel, failure to disclose such Confidential Information would subject Custodian to liability for contempt, censure or other legal penalty or liability.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Custodial Agreement was duly executed by the parties hereto as of the day and year first above written.

NYMC MORTGAGE LOAN CORPORATION,
as Seller

By: /s/ Steven B. Schnall
Name: Steven B. Schnall
Title: Chief Executive Officer

Address for Notices for the Seller :

1301 Avenue of the Americas
7th Floor
New York, New York 10019
Attention: Chief Executive Officer
Telephone No.: (212) 634-9400
Facsimile No.: (212) 655-6269

With a copy to :
Attention: General Counsel
Contact information as above.

NEW YORK MORTGAGE TRUST, INC.,
as Guarantor

By: /s/ Steven B. Schnall
Name: Steven B. Schnall
Title: Chief Executive Officer

Address for Notices for the Guarantor :

1301 Avenue of the Americas
7th Floor
New York, New York 10019
Attention: Chief Executive Officer
Telephone No.: (212) 634-9400
Facsimile No.: (212) 655-6269

With a copy to :
Attention: General Counsel
Contact information as above

LASALLE BANK NATIONAL ASSOCIATION,
as Custodian

By: /s/ Mark J. Jerva
Name: Mark J. Jerva
Title: Vice President

Address for Notices for the Custodian :

LaSalle Bank NA
Collateral Services
Attn: Mark J. Jerva
2571 Busse Rd. Suite 200
Elk Grove Village, IL 60007
Telephone No.: 847-766-6421
Facsimile No.: 847-766-3456

DB STRUCTURED PRODUCTS, INC.,
as Buyer

By: /s/ Vincent D'Amore
Name: Vincent D'Amore
Title: Authorized Signature

Address for Notices for the Buyers :

60 Wall Street
New York, NY 10005
Attention: Vincent D'Amore
Telephone No.: (212) 250-7328
Facsimile No.: (212) 797-5160

By: /s/ Frank Byrne
Name: Frank Byrne
Title: Managing Director

ASPEN FUNDING CORP.,

as Buyer

By: _____

Name: _____

Title: _____

NEWPORT FUNDING CORP., as Buyer

By: _____

Name: _____

Title: _____



REQUIRED FIELDS FOR LOAN SCHEDULE

***Global Asset Securitization
Asset-Backed Securities
Field List***

*****All Contracts*****

Loan Id
Borrower Name
Property Street Address
Property City
Property State
Property Zip Code
Property County
Original Balance
Current Balance
Property Value
Sales Price / BPO
Original P&I
Current P&I
Payment Frequency
Original Coupon
Current Coupon
As-of / Cut-Off Date
Origination Date
First Payment Date
Maturity Date
Paid Thru Date or Next Payment Due Date
Original Term
Stated Remaining Term
Seasoning
Original Subject LTV
Current Subject LTV
Original Combined LTV (if any 2nd Liens)
Current Combined LTV (if any 2nd Liens)
Simultaneous Second (Y/N)
Senior Balance (if junior lien)
Junior Balance (if loan has simultaneous second)
Adjustment Type (Fixed or Adjustable)
Index Type (6 Month Libor, 1 Year CMT, etc.)
Product Type (6 month ARM, 2/28, 3/27, etc.)
Property Type
Number of Units
Occupancy Type
Purpose

*****Variable Rate Contracts*****

Gross Margin
Minimum Rate
Maximum Rate
Lifetime Rate Cap
Lifetime Rate Floor
Initial Periodic Rate Cap
Subsequent Periodic Rate Cap
Periodic Rate Floor
Periodic Payment Cap
Negative Amortization Flag
Negative Amortization Cap
Initial Rate Teaser Period
Initial Payment Teaser Period
Rate Adjustment Period
Payment Adjustment Period
First Rate Adjustment Date
First Payment Adjustment Date
Next Rate Adjustment Date
Next Payment Adjustment Date
Months to Next Rate Adjustment
Months to Next Payment Adjustment

Documentation Level
Lien Position
Balloon Flag
PMI Company
PMI Coverage Level
Lender Paid MI (Y/N)
PMI Fee
Prepayment Penalty Term
Prepayment Penalty Number of Months Interest
Prepayment Detail
High Cost (Section 32) Loan
Delinquency Status
FICO or Credit Score
Credit Grade
Days Delinquent
Times 30 Days Delinquent over Last 1 Year
Times 60 Days Delinquent over Last 1 Year
Times 90 Days Delinquent over Last 1 Year
12 Months Pay History
Front Debt to Income Ratio
Back Debt to Income Ratio
MERS Identification Number if applicable

REQUIRED FIELDS FOR LOAN SCHEDULE
WITH RESPECT TO WET-INK MORTGAGE LOANS

<u>Field Name</u>	<u>Description</u>
Loan Id	Client Loan Identification number right justified
Lname	Primary Borrower Name (Last, First)
LNAmount	Original Face Amount of Note
BankName	Name of Receiving Bank
Faddress	Funding Address
Fcity	Funding City
Fstate	Funding State
Filler1	1419663
AcctName	Account Name of Beneficiary
AcctPhone	Phone Number of Beneficiary
AcctAddress	Address of Beneficiary
ABANum	ABA Number
FundAmt	Wire Amount or Check Amount
Fundtext	Customer Account Number
FEFFDate	Funding Effective Date
FundRef	DB Disbursement A/C #
FNAME2	2nd fund wire Name
FCITY2	2nd fund wire City
MERS Number	Identification Number provided by MERS
Settlement Agent	Name of Settlement Agent

[WET-INK MORTGAGE LOAN][DRY MORTGAGE LOAN] TRUST RECEIPT

Overnight Courier Tracking No. _____
of Loans: _____
Original Quantity \$ _____
Product Type _____

DB Structured Products, Inc.
Aspen Funding Corp.
Newport Funding Corp.
60 Wall Street
New York, NY 10005
Attention: Vincent D'Amore

Re: Custodial Agreement, dated as of December 13, 2005 (the "Custodial Agreement"), among NYMC Loan Corporation, as Seller, New York Mortgage Trust, Inc., LaSalle Bank National Association, as Custodian, and DB Structured Products, Inc. ("DBSP"), Aspen Funding Corp. ("Aspen"), Newport Funding Corp. ("Newport" and collectively with DBSP and Aspen, the "Buyers" and individually a "Buyer").

Ladies and Gentlemen:

In accordance with the provisions of Section 3 of the above-referenced Custodial Agreement (capitalized terms not otherwise defined herein having the meanings ascribed to them in the Custodial Agreement, or if not defined in the Custodial Agreement, then in that certain Master Repurchase Agreement, dated as of December 13, 2005 among the Seller, the Guarantor and the Buyers (the "Repurchase Agreement")), the undersigned, as the Custodian, hereby certifies as to each Mortgage Loan described in the attached Loan Schedule and Exception Report all matters (subject to the Exceptions listed therein) set forth in Section 3 of the Custodial Agreement, subject to the limitation set forth in Section 3(b) of the Custodial Agreement.

The delivery of this Trust Receipt and attached Loan Schedule and Exception Report evidences that, other than the Exceptions listed as part of the Exception Report (i) the Custodian has reviewed all documents required to be delivered in respect of each Mortgage Loan listed herein pursuant to [FOR DRY LOANS: [Sections 2(a)(i) and (ii)]] [FOR WET-INK LOANS: [Sections 2(a)(iii) - (vi)]] of this Custodial Agreement [FOR DRY LOANS: [and the documents listed in Sections (i), (ii), (iii), (iv) and (v) of Annex 16 (and if actually delivered to the Custodian the documents listed in Sections (vi) - (xi) of Annex 16)] [FOR WET-INK LOANS; [and the document listed in Section (xii) of Annex 16 (and if actually delivered to the Custodian the documents listed in Section (i) - (xi) of Annex 16] and such documents other than the Exceptions listed herein are in the possession of the Custodian as part of the Mortgage File for such Mortgage Loan, (ii) the Custodian is holding each Mortgage Loan identified on the Loan Schedule and Exception Report attached hereto, pursuant to the Custodial Agreement, as the bailee of and custodian for the Buyer and (iii) such documents have been reviewed by the Custodian and appear on their face to be regular and to relate to such Mortgage Loan and satisfy the requirements set forth in Section 3(a) of the Custodial Agreement and the Review Procedures.

The Custodian makes no representations as to, and shall not be responsible to verify, (i) the validity, legality, enforceability, due authorization, recordability, sufficiency, or genuineness of any of the documents contained in each Mortgage File or (ii) the collectability, insurability, effectiveness or suitability of any such Mortgage Loan.

On each date the Custodian delivers to the Buyer a Trust Receipt, it shall supersede the Trust Receipt, previously delivered by the Custodian to the Buyer hereunder. The most recently delivered Trust Receipt, shall control and be binding upon the parties hereto.

THIS TRUST RECEIPT HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”). ANY RESALE OR TRANSFER OF THIS TRUST RECEIPT OR ANY INTEREST HEREIN WITHOUT REGISTRATION HEREOF UNDER THE ACT MAY ONLY BE MADE IN A TRANSACTION EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE ACT.

LASALLE BANK NATIONAL ASSOCIATION,
as Custodian

By:

Name:

Title:

FORM OF NOTICE OF SALE AND REQUEST FOR RELEASE

Date: _____, ____

The undersigned, NYMC Loan Corporation (the “Seller”), hereby provides notice of the proposed sale of the below referenced mortgage loans to _____ (the “Approved Purchaser”). Such Mortgage Loans have previously been delivered to LASALLE BANK NATIONAL ASSOCIATION acting as agent, bailee and custodian (in such capacity “Custodian”) for the exclusive benefit of [DB STRUCTURED PRODUCTS, INC.] [ASPEN FUNDING CORP.] [NEWPORT FUNDING CORP.] (the “Buyer”) pursuant to the Custodial Agreement dated as of December 13, 2005 made by and among the Seller, New York Mortgage Trust, Inc. (the “Guarantor”), the Custodian and DB Structured Products, Inc. (“DBSP”), Aspen Funding Corp. (“Aspen”), Newport Funding Corp. (“Newport” and collectively with DBSP and Aspen, the “Buyers” and individually a “Buyer”). The closing date for such sale is [_____, ____] and the anticipated purchase proceeds to be paid to the Buyer directly is \$[_____] (if amount is zero, remaining Purchased Loans are sufficient to not result in a Margin Deficit).

The Seller requests release from the Custodian of the following described documentation for the identified Mortgage Loans, possession of which shall be delivered to the Approved Purchaser in connection with the sale thereof.

<u>Mortgagor Name</u>	<u>Loan Number</u>	<u>Note Amount</u>	<u>Loan Document Delivered</u>
-----------------------	--------------------	--------------------	------------------------------------

Please send the referenced documentation to:

[NAME OF APPROVED PURCHASER]
[ADDRESS]
[TELEPHONE]
[ATTENTION:]

Please deliver documents to the Approved Purchaser via _____, accompanied by a transmittal letter in the form of Annex 12.

Capitalized terms not otherwise defined herein are defined in that certain Master Repurchase Agreement (the “Repurchase Agreement”), dated as of December 13, 2005, among the Sellers, the Guarantor and the Buyers.

[_____]

By:

Name:
Title:

Acknowledged and Consented to as of this ____ day of _____, 200 :

DB STRUCTURED PRODUCTS, INC.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

ASPEN FUNDING CORP.

By: _____

Name: _____

Title: _____

NEWPORT FUNDING CORP.

By: _____

Name: _____

Title: _____



REVIEW PROCEDURES

This Annex sets forth the Custodian's review procedures for each item listed below delivered by the Seller pursuant to the Custodial Agreement (the "Agreement") to which this Annex is attached. Capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Agreement.

1. The Mortgage Note and the Mortgage each appear to bear an original signature or signatures purporting to be the signature or signatures of the Person or Persons named as the maker and Mortgagor or grantor, or in the case of copies of the Mortgage permitted under Section 2(b) of the Agreement, that such copies bear a reproduction of such signature.
 2. The amount of the Mortgage Note is the same as the amount specified on the related Mortgage and Mortgage Loan Schedule.
 3. The original mortgagee is the same as the payee on the Mortgage Note.
 4. The Mortgage contains a legal description other than address, city and state on the first page and has evidence of recording thereon; provided that Custodian shall have no responsibility for the accuracy or completeness of such legal description.
 5. The notary section (acknowledgment) is present and attached to the related Mortgage and is signed.
 6. None of the original Mortgage Note, the copy of the Mortgage delivered pursuant to the Repurchase Agreement, or the original Assignment of Mortgage contain any notations on their face which appear in the good faith judgment of Custodian to evidence any claims, liens, security interests, encumbrances or restrictions on transfer or any other alterations which appear irregular on their face, or if altered, such alterations have the initials of the person(s) named as the Mortgagor.
 7. The Mortgage Note is endorsed in blank by the original payor or the last endorsee.
 8. Each original Assignment of Mortgage in blank and any intervening assignment of mortgage, if applicable, appears to bear the original signature of the named mortgagee or beneficiary including any subsequent assignors (and any other necessary party), as applicable, or in the case of copies permitted under Section 2(b) of the Agreement with respect to intervening Assignments of Mortgage, that such copies appear to bear a reproduction of such signature or signatures and such copies have been certified by an officer of the Seller, a title company or escrow closing company as true, complete and correct copies of any originals, and the intervening Assignments of Mortgage evidence a complete chain of assignment and transfer of the related Mortgage from the originating Person to the Seller or, in the case of a MERS Designated Mortgage Loan to MERS.
 9. The date of each intervening assignment is on or after the date of the related Mortgage and/or the immediately preceding assignment, as the case may be.
 10. The notary section (acknowledgment) is present and attached to each intervening assignment and is signed.
-

11. Based upon a review of the Mortgage Note, the Mortgage Loan number, the Mortgagor's name, the address of the Mortgaged Property, the original amount of the Mortgage Note, the original mortgage interest rate, the date of the Mortgage Note, the first payment date and the maturity date and any other fields as mutually agreed upon as set forth in the Loan Schedule delivered by the Seller to the Custodian are correct.

12. The Mortgage File contains the original policy of title insurance (or a commitment for title insurance, if the policy is being held by the title insurance company pending recordation of the Mortgage) or attorney's opinion of title.

13. In the event that any of the Loans are MERS Designated Mortgage Loans, with respect to each MERS Designated Mortgage Loan, Custodian shall verify the "MERS Identification Number" by comparing such MERS Identification Number to the information in the Mortgage/deed of trust. Custodian will rely solely on the information provided by the Electronic Agent which information will be provided to the Custodian in accordance with the Electronic Tracking Agreement.

In the case of Wet-Ink Mortgage Loans, with respect to which seven (7) or fewer Business Days have passed from the related Purchase Date, the review procedures shall be as follows:

1. To the extent any items listed in Annex 16 are available, the procedures set forth above.
 2. To the extent the items listed in Annex 16 are not available, the original Transaction Notice with a loan listing attached has been received and matches the facsimile copy previously delivered.
 3. The Escrow Letter is present.
 4. Based upon a review of the Escrow Letter, the loan amount, loan number (if available), property address and closing agent's name each match the information listed in the corresponding field in the Loan Schedule.
-

REQUEST FOR RELEASE AND RECEIPT

Date: _____, ____

The undersigned, NYMC Loan Corporation (the “Seller”), acknowledges receipt from LASALLE BANK NATIONAL ASSOCIATION acting as bailee of, and custodian for, (in such capacity, the “Custodian”) the exclusive benefit of [DB STRUCTURED PRODUCTS, INC.] [ASPEN FUNDING CORP.] [NEWPORT FUNDING CORP.] (the “Buyer”) (capitalized terms not otherwise defined herein are defined in that certain Custodial Agreement, dated as of December 13, 2005 (the “Custodial Agreement”) or if not defined in the Custodial Agreement, then in that certain Master Repurchase Agreement dated as of December 13, 2005 among the Seller, New York Mortgage Trust, Inc., as Guarantor and DB Structured Products, Inc. (“DBSP”), Aspen Funding Corp. (“Aspen”), Newport Funding Corp. (“Newport” and collectively with DBSP and Aspen, the “Buyers” and individually a “Buyer”) (the “Repurchase Agreement”), of the following described documentation for the identified Mortgage Loan, possession of which is entrusted to the Seller solely for the purpose referenced below:

<u>Mortgagor Name</u>	<u>Loan Number</u>	<u>Note Amount</u>	<u>Mtg. Loan Document</u>
-----------------------	--------------------	--------------------	---------------------------

Reason for Requesting File (check one)

- ____ 1. Mortgage Loan Paid in Full.
- ____ 2. Correction of Document Deficiencies.
- ____ 3. Mortgage Required for Servicing.
- ____ 4. Foreclosure.
- ____ 5. Other [Describe].

If item 2, 3, 4 or 5 is checked, it is hereby acknowledged that a security interest pursuant to the Uniform Commercial Code in the Purchased Loans hereinabove described and in the proceeds of said Purchased Loans has been granted to the Buyer pursuant to the Repurchase Agreement.

If item 2, 3, 4 or 5 is checked, in consideration of the aforesaid delivery by the Custodian, the Seller hereby agrees to hold said Purchased Loans in trust for the Buyer as provided under and in accordance with all provisions of the Custodial Agreement and to return said Purchased Loans to the Custodian no later than the close of business on the tenth calendar day following the date hereof or, if such day is not a Business Day, on the immediately succeeding Business Day.

This request also constitutes a trust receipt. Seller hereby promises and declares to the Custodian and the Buyers that Seller will safeguard and hold the Purchased Loans shipped to Seller pursuant to this request in trust, and as agent and bailee, for the Buyers and the Buyers shall continue to have and Seller will defend, a first and prior security interest in all such Purchased Loans pursuant to the Repurchase Agreement.



Please deliver the requested file to [ADDRESS], Attention: _____, via overnight courier.

[_____]

By:

Name:
Title:

[In the event that more than 5 Mortgage Files are being released.]

Acknowledged and Consented to as of this _____ day of _____, 200 :

DB STRUCTURED PRODUCTS, INC.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ASPEN FUNDING CORP.

By: _____
Name: _____
Title: _____

NEWPORT FUNDING CORP.

By: _____
Name: _____
Title: _____

Documents returned to Custodian :

By: _____
Name:
Title:

Date: _____

AUTHORIZED REPRESENTATIVES OF BUYERS

DB STRUCTURED PRODUCTS, INC. :

Name

Specimen Signature

ASPEN FUNDING CORP.:

Name

Specimen Signature

NEWPORT FUNDING CORP.:

Name

Specimen Signature



AUTHORIZED REPRESENTATIVES OF SELLER

Name

Specimen Signature

AUTHORIZED REPRESENTATIVES OF GUARANTOR

Name

Specimen Signature



AUTHORIZED REPRESENTATIVES OF CUSTODIAN

Name

Specimen Signature



FORM OF LOST NOTE AFFIDAVIT

I, as _____ (title) (hereinafter called “ Deponent ”) of LASALLE BANK NATIONAL ASSOCIATION (the “ Custodian ”), am authorized to make this Lost Note Affidavit (this “Affidavit”) on behalf of the Custodian. In connection with the administration of the Mortgage Loans held by the Custodian on behalf of [DB STRUCTURED PRODUCTS, INC.] [ASPEN FUNDING CORP.] [NEWPORT FUNDING CORP.] (the “ Buyer ”), Deponent being duly sworn, deposes and says that:

1. Custodian’s address is:

2. Custodian previously delivered to the Buyer a Loan Schedule and Exception Report and an Exception Report with respect to that certain Mortgage Note made by _____, in favor of _____ in an original principal balance of \$_____, secured by a Mortgage on a property located at _____, which did not indicate such Mortgage Note is missing;

3. Such Mortgage Note was assigned or sold to the Buyer by [_____] pursuant to the terms and provisions of a Master Repurchase Agreement dated and effective as of December 13, 2005;

4. Such Mortgage Note is not outstanding pursuant to a Request for Release of Documents;

5. Aforesaid Mortgage Note (hereinafter called the “ Original ”) has been lost;

6. Deponent has made or has caused to be made diligent search for the Original and has been unable to find or recover same;

7. The Custodian was the Custodian of the Original at the time of loss;

8. Deponent agrees that, if said Original should ever come into Custodian’s possession, custody or power, Custodian will immediately and without consideration surrender the Original to the Buyer;

9. Attached hereto is a true and correct copy of (i) the Mortgage Note, endorsed in blank by the Mortgagee, as provided by [_____] or its designee and (ii) the Mortgage which secures the Mortgage Note, which Mortgage Note is recorded at _____;

10. Deponent hereby agrees that the Custodian (a) shall indemnify and hold harmless the Buyer, its successors, and assigns, against any loss, liability or damage, including reasonable attorney’s fees, resulting from the unavailability of any Originals, including but not limited to any loss, liability or damage arising from (i) any false statement contained in this Affidavit, (ii) any claim of any party that it has already purchased a mortgage loan evidenced by the Originals or any interest in such mortgage loan, (iii) any claim of any Buyer with respect to the existence of terms of a Mortgage Loan evidenced by the Originals, (iv) the issuance of new instrument in lieu thereof and (v) any claim whether or not based upon or arising from honoring or refusing to honor the Original when presented by anyone (items (i) through (iv) above are hereinafter referred to as the “ Losses ”), and (b) if required by any rating agency in connection with placing such Originals into a structured and rated transaction, shall obtain a surety bond from an insurer acceptable to the applicable rating agency in an amount acceptable to such rating agency to cover any Losses with respect to such Originals

11. This Affidavit is intended to be relied on by the Buyer, its successors, and assigns and the Custodian represents and warrants that it has the authority to perform its obligations under this Affidavit.

EXECUTED THIS ____ day of _____, ____, on behalf of the Custodian by:

Signature

Typed Name

On this _____ day of _____, ____, before me appeared _____, to me personally known, who being duly sworn did say that she/he is the _____ of _____, and that said Lost Note Affidavit was signed and sealed on behalf of such corporation and said _____ acknowledged this instrument to be the free act and deed of said corporation.

Notary Public in and for the State of _____.

My Commission expires: _____.

NOTICE OF ASSIGNMENT

To: [_____]

From: _____

Date: _____

You are hereby notified that as of [date] the undersigned has assigned all of its right, title and interest in and to the Mortgage Loans identified in the schedule attached hereto to [Assignee's name and address]. You are hereby instructed to hold such Mortgage Loans pursuant to the terms of the Custodial Agreement, dated as of December 13, 2005 (the "Custodial Agreement"), among NYMC Loan Corporation (the "Seller"), New York Mortgage Trust, Inc. (the "Guarantor"), LaSalle Bank National Association (the "Custodian") and DB Structured Products, Inc. ("DBSP"), Aspen Funding Corp. ("Aspen"), Newport Funding Corp. ("Newport" and collectively with DBSP and Aspen, the "Buyers" and individually a "Buyer"), for the sole and exclusive benefit of [name of Assignee] subject to the terms of the Custodial Agreement by which [name of Assignee] hereby agrees to be bound.

When you have received written instructions from the Buyer with the Assignee's consent thereon that the Mortgage Loans are no longer assigned by the Buyer to the Assignee, you shall change your records to reflect the release of the pledge of the Mortgage Loans and that you are holding the Mortgage Loans as custodian for, and for the benefit of, the Buyer.

DB STRUCTURED PRODUCTS, INC., Buyer

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Date:

ASPEN FUNDING CORP., Buyer

By: _____

Name: _____

Title: _____

Date:



NEWPORT FUNDING CORP., Buyer

By: _____

Name: _____

Title: _____

Date:

[NAME OF ASSIGNEE]

By: _____

Name: _____

Title: _____

Date:



(THIRD PARTY) TRANSMITTAL LETTER

[Custodian Letterhead]

[Approved Purchaser]

Re: _____

Ladies and Gentlemen:

Attached please find those Mortgage Loans listed separately on the attached schedule, which Mortgage Loans are owned by _____ and are being delivered to you for purchase.

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in that certain Custodial Agreement dated as of December 13, 2005, by and among NYMC Loan Corporation (the “Seller”), New York Mortgage Trust, Inc. (the “Guarantor”), LaSalle Bank National Association (the “Custodian”) and DB Structured Products, Inc. (“DBSP”), Aspen Funding Corp. (“Aspen”), Newport Funding Corp. (“Newport” and collectively with DBSP and Aspen, the “Buyers” and individually a “Buyer”), and if not defined in the Custodial Agreement, then in that certain Master Repurchase Agreement (the “Repurchase Agreement”), dated as of December 13, 2005, among the Sellers, the Guarantor and the Buyers.

The Mortgage Loans comprise a portion of the “Purchased Loans.” Each of the Mortgage Loans is subject to an ownership and/or security interest in favor of the Buyer, which security interest shall be automatically released upon remittance of the purchase price for such Mortgage Loan (the “Payoff Amount”) by wire transfer to the following account:

WIRE INSTRUCTIONS:

[Bank Name:
City, State:

ABA #:
Account #:

Account Name:
Attention:]

Pending the purchase of each Mortgage Loan and until the Payoff Amount is received, the aforesaid ownership and/or security interest therein will remain in full force and effect, and you shall hold possession of such Purchased Loans and the documentation evidencing same as custodian, agent and bailee for and on behalf of the Buyer. In the event that any Mortgage Loan is unacceptable for purchase, return the rejected item directly to the Custodian at its address set forth below. In no event shall any Mortgage Loan be returned to, or sales proceeds remitted to, the Seller. The Mortgage Loan must be so returned or Payoff Amount remitted in full no later than ten (10) days from the date hereof. If you are unable to comply with the above instructions, please so advise the undersigned Custodian immediately.

NOTE: BY ACCEPTING THE MORTGAGE LOANS DELIVERED TO YOU WITH THIS LETTER, YOU CONSENT TO BE THE CUSTODIAN, AGENT AND BAILEE FOR THE BUYER ON THE TERMS DESCRIBED IN THIS LETTER. THE CUSTODIAN REQUESTS THAT YOU ACKNOWLEDGE RECEIPT OF THE ENCLOSED MORTGAGE LOANS AND THIS LETTER BY SIGNING AND RETURNING THE ENCLOSED COPY OF THIS LETTER TO THE CUSTODIAN; HOWEVER, YOUR FAILURE TO DO SO DOES NOT NULLIFY SUCH CONSENT.

Very truly yours,

as Custodian

By: _____

Name: _____

Title: _____

Address: _____

DB STRUCTURED PRODUCTS, INC.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

ASPEN FUNDING CORP.

By: _____

Name: _____

Title: _____

NEWPORT FUNDING CORP.

By: _____

Name: _____

Title: _____

RECEIPT ACKNOWLEDGED :

[APPROVED PURCHASER]

By _____

Name:

Title:

Date: _____



ATTORNEY'S BAILEE LETTER

[Letterhead of Seller]

_____ , _____

Name of Attorney
[Address]

Custodian : LaSalle Bank National Association
2571 Busse Rd, Suite 200
Elk Grove Village, IL 60007
Attention: Mark Jerva
Facsimile No.: (847) 766-3456
Telephone No.: (847) 766-6421

Buyer : DB Structured Products, Inc.
Aspen Funding Corp.
Newport Funding Corp.
60 Wall Street
New York, NY 10005
Attention: Vincent D'Amore
Facsimile No.: (212) 797-5160
Telephone No.: (212) 250-7328

Seller : NYMC Loan Corporation
1301 Avenue of the Americas
7th Floor
New York, NY 10019
Attn: Chief Executive Officer
Facsimile: (212)655-6269
Telephone: (212) 634-9400

Dear Sir or Madam:

From time to time, we, NYMC Loan Corporation (the "Seller"), will send to you (or have sent to you) mortgage loans for which you have agreed to commence and prosecute a foreclosure action. In connection with such foreclosure activities, [copies of] ¹ one or more of the documents evidencing or otherwise relating to such mortgage loans ("Documents") will be delivered to you.

[DB Structured Products, Inc.] [Aspen Funding Corp.] [Newport Funding Corp.] (the "Buyer"), has financed the sale to us or origination of such mortgage loans, and with such sale or origination we granted an ownership and/or security interest in the Documents referred to below and the mortgage loans to which such Documents relate to the Buyer. LaSalle Bank National Association (the "Custodian") is acting as custodian for the Buyer in connection with the Documents.

Whenever we send you Documents to be covered by this letter agreement, we will send such Documents to you under a transmittal letter identifying the specific documents delivered, and the mortgage loan(s) to which they relate, with a space at the end of the letter for you to sign and to acknowledge your receipt of such Documents. Upon your receipt of any such Documents, you hereby agree to fax to the Buyer and the Custodian, no later than three (3) Business Days after your receipt thereof, our transmittal letter, signed in the acknowledgment space by you, pursuant to which you (i) acknowledge receipt of the Documents listed in the transmittal letter, and (ii) acknowledge that with respect to such listed documents you are acting as bailee of the Buyer in accordance with the terms of this Attorney's Bailee Letter.

1 For Acceptable Attorneys to whom copies of the Documents are sent.

By signing this letter agreement below where indicated, (a) you agree that on and after the date hereof until you are otherwise notified by the Buyer or the Custodian, any Documents delivered to you as described above will be held by you as bailee for the Buyer, (b) you certify that, as of the date of your receipt of any Documents, you have not received notice of any interest of any other person or entity in such Documents or the related mortgage loans, (c) you agree that you will commence and diligently prosecute foreclosure proceedings with respect to the mortgage loan to which any such Documents relate and (d) you certify that if either you or your law firm has any security interest in the Documents or the mortgage loan to which those Documents relate you agree to waive any interest you or your firm may acquire therein at any time, whether arising pursuant to law or otherwise or to refuse delivery of such Documents and return them immediately to the Custodian.

The Seller and the Buyer hereby irrevocably instruct you that any Documents in your possession are to be held by you as bailee for the Buyer, as provided herein until they are returned to the Custodian at the address noted above together with a copy of this letter agreement; provided that if the Buyer or the Custodian notifies you that the Buyer's interest in any of above-referenced mortgage loans has been released or did not attach (the "Release Notice"), from the date of such Release Notice you will hold the Documents relating to such mortgage loan (and no others) as bailee for the Seller, in which case you will follow the Seller's instructions regarding such Documents, and such Documents shall be released to the Seller at the address noted above, or its designee, upon conclusion of the foreclosure action, instead of returning them to the Custodian; and provided further that prior to the date of any Release Notice, notwithstanding anything herein or elsewhere to the contrary, if you receive instructions from the Buyer or the Custodian which do not comport with instructions you may have received from the Seller, including, without limitation, instructions to deliver the Documents to the Custodian, the Buyer or any other person or entity, you shall abide by the instructions of the Custodian or Buyer.

You agree to immediately give telephonic notice (followed by written notice) to the Custodian if you receive notice or any inquiry from any other person or entity of or with respect to any interest in the Documents or the related mortgage loan and you agree that you shall immediately notify each such person in writing, with a copy to the Custodian, of the prior interest of the Buyer therein.

This letter agreement supersedes any letter agreement or other agreement or arrangement that may exist between you and the Seller. Notwithstanding any contrary understanding with you, the Seller or any other person or entity, or any instructions to you from the Seller, the Seller or any other person or entity, you shall abide by the terms of this letter. No deviation in performance of the terms of any previous letter agreement between you and any of the undersigned shall alter any of your duties or responsibilities as set forth herein.

Because time is of the essence, please promptly sign and date the enclosed copy of this letter agreement and return it via overnight delivery service to the Custodian at the above address and via telecopier, send a copy of this executed letter agreement to the Seller. It is important that the Custodian receive a copy of this letter agreement executed by you. Thank you for your cooperation in assisting us with this project.

NOTE: BY ACCEPTING THE MORTGAGE LOANS DELIVERED TO YOU WITH THIS LETTER, YOU CONSENT TO BE THE CUSTODIAN, AGENT AND BAILEE FOR THE BUYER ON THE TERMS DESCRIBED IN THIS LETTER. THE CUSTODIAN REQUESTS THAT YOU ACKNOWLEDGE RECEIPT OF THE ENCLOSED MORTGAGE LOANS AND THIS LETTER BY SIGNING AND RETURNING THE ENCLOSED COPY OF THIS LETTER TO THE CUSTODIAN; HOWEVER, YOUR FAILURE TO DO SO DOES NOT NULLIFY SUCH CONSENT.

Very truly yours,

NYMC LOAN CORPORATION, Seller

By: _____
Name: _____
Title: _____

DB STRUCTURED PRODUCTS, INC., Buyer

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ASPEN FUNDING CORP., Buyer

By: _____
Name: _____
Title: _____

NEWPORT FUNDING CORP., Buyer

By: _____
Name: _____
Title: _____

ACKNOWLEDGED AND AGREED:

By: _____

Print Name: _____

Date: _____



[Letterhead of _____]

Name of Attorney
[Address]

Re: Mortgagor:
 Address of Property:
 Loan Number:

Dear _____:

We refer to that certain letter (the “Attorney’s Bailee Letter”), dated _____, _____, from us to you and signed by us and by DB Structured Products, Inc. (“DBSP”), Aspen Funding Corp. (“Aspen”), Newport Funding Corp. (“Newport” and collectively with DBSP and Aspen, the “Buyers” and individually a “Buyer”), describing the terms under which you agreed to hold certain mortgage loan documents to be sent to you from time to time under the Attorney’s Bailee Letter.

The following documents evidencing or otherwise relating to the above-referenced mortgage loans (collectively, the “Documents”) are being sent to you under cover of this letter for the purpose of commencement and prosecution of a foreclosure action:

[LIST ONLY THOSE DOCUMENTS THAT ARE BEING SENT]

- (i) The [original] [copy of the] Mortgage Note.
 - (ii) The [original] [copy] of the guarantee executed in connection with the Mortgage Note.
 - (iii) The [original] [copy of the] Mortgage with evidence of recording thereon, or a certified copy thereof.
 - (iv) The [originals] [copies] of all assumption, modification, consolidation or extension agreements (if any) with evidence of recording thereon, or certified copies thereof.
 - (v) An [original] [copy of the] Assignment of Mortgage to “LaSalle Bank National Association, as Custodian”.
 - (vi) The [originals] [copies] of [identify any particular] intervening assignments of mortgage with evidence of recording thereon, or certified copies thereof.
 - (vii) The [original] [copy of the] [attorney’s opinion of title and abstract of title] or [the original mortgagee title insurance policy], [or if the original mortgagee title insurance policy has not been issued, the irrevocable commitment to issue the mortgagee title insurance policy [as marked by the title company or its authorized agent]], [or the preliminary title report for appropriate jurisdictions].
 - (viii) The [original] [copy] of any security agreement, chattel mortgage or equivalent document executed in connection with the Mortgage Loan.
-

(ix) The [original] [copy of the] power of attorney or other authorizing instrument [with evidence of recording thereon].

(x) [Identify any other documents which may be sent].

Please sign this letter in the space provided below to indicate your acknowledgment of receipt of the documents listed above with respect to the mortgage loan(s) identified above, and to confirm that you will hold such documents as bailee for the Buyer under and in accordance with the terms of the Attorney's Bailee Letter. As required by the Attorney's Bailee Letter, please fax to the Buyer and the Custodian (with a copy to us), a copy of this letter signed by you, not later than three (3) business days after your receipt of this letter. We appreciate your cooperation.

Sincerely yours,

By:

Name:

Title:

ACKNOWLEDGMENT:

I acknowledge receipt of the Documents as listed above in this letter and of notice of the ownership and/or security interests in such documents described in the Attorney's Bailee Letter referred to above. I confirm the certifications made by me in the Attorney's Bailee Letter with respect to such documents and agree to act as bailee for the Buyer with respect to such documents on the terms set forth in the Attorney's Bailee Letter and to comply in all other respects with the terms of the Attorney's Bailee Letter.

Print Name:

Date:

Exception Codes

0021 TYPED NAME AND/OR TITLE IS MISSING OR INCORRECT
0201 DATE IS MISSING OR INCORRECT
0202 FIRST ADJUST DATE IS MISSING OR INCORRECT
0203 AMOUNT IS INCORRECT
0204 MORTGAGE MARGIN IS MISSING OR INCORRECT
0205 ARM INDEX IS MISSING OR INCORRECT
0206 ARM ANNUAL CAP IS MISSING OR INCORRECT
0207 ARM LIFE CAP IS MISSING OR INCORRECT
0208 ARM FLOOR IS MISSING OR INCORRECT
0209 I/O PERIOD FROM I/O ADDENDUM IS MISSING OR INCORRECT
0210 I/O PYMT FROM I/O ADDENDUM IS MISSING OR INCORRECT
0211 PENALTY PD FROM PREPYMT ADDENDUM IS MISSING OR INCORRECT
0212 LATE CHARGE (DAY&%) AS "DAYS/%" IS MISSING OR INCORRECT
0213 ARMADJ DATE IS MISSING OR INCORRECT
0214 INITIAL CAP IS MISSING OR INCORRECT
0215 ARMLOOKBACK IS MISSING OR INCORRECT
0216 ARM ROUND PERCENTAGE IS MISSING OR INCORRECT
0217 PREPAYMENT NOTE ADDENDUM IS MISSING
0218 INTEREST ONLY ADDENDUM IS MISSING
0219 COMPLETE DATA NOT RECEIVED
0409 PROPERTY ADDRESS IS MISSING OR INCORRECT
0410 ZIP CODE IS INCORRECT
0411 MISC. INFORMATION
0700 SIGNATURE IS MISSING OR INCORRECT
0702 DOCUMENT IS MISSING
0703 BAILEE LETTER IS MISSING
0804 LENDER NAME IS MISSING OR INCORRECT
1000 STOCK POWER NOT EXECUTED IN BLANK
1604 ASSIGNEE IS MISSING OR DOES NOT AGREE WITH NOTE ENDORSEMENT
1605 ASSIGNOR IS MISSING OR DOES NOT AGREE WITH NOTE ENDORSEMENT
1608 REC. INFORMATION OR LEGAL DESC. IS MISSING OR DOES NOT AGREE
1613 ORIGINAL MORTGAGE AMOUNT IS MISSING OR INCORRECT
1614 MIN NUMBER IS MISSING ON MORTGAGE OR DEED OF TRUST
1615 MERS REGISTRATION NOT VERIFIED
1616 COPY OF RECORDED DOCUMENT IN FILE
1617 MIN NUMBER IS INCORRECT
1619 ORIGINAL IN FILE BUT NOT RECORDED
2309 NOTARY INFORMATION IS MISSING OR INCORRECT
2517 CORPORATE SEAL IS MISSING
2706 LOAN AMOUNT- ALPHA AND NUMERIC ARE MISSING OR DO NOT AGREE
2709 INTEREST RATE- ALPHA AND NUMERIC ARE MISSING OR DO NOT AGREE
3114 CASE NUMBER IS INCORRECT
3115 RIDER(S) REFERENCED HEREIN NOT ATTACHED
3303 INTEREST RATE IS MISSING OR INCORRECT

3307 MONTHLY P&I IS MISSING OR INCORRECT
3310 CANCELLED ENDORSEMENT NOT INITIALED
3311 ENDORSEMENT(S) IS NOT SIGNED
3312 ENDORSEMENT(S) IS MISSING OR INCORRECT
3313 ENDORSEMENT(S) IS INCOMPLETE
3314 ENDORSEMENT TO TRUSTEE IS MISSING
3316 ENDORSEMENT LENDER NAME IS MISSING OR INCORRECT
3317 TYPING CORRECTIONS NOT INITIALED BY BORROWERS
3319 EXTRA ENDORSEMENT SHOULD BE CANCELLED
3406 DATE OF FIRST PAYMENT IS INCORRECT
3407 MATURITY DATE IS INCORRECT
3510 COPY ONLY IN FILE
3511 IMAGE ONLY
4182 LEGAL DESCRIPTION IS MISSING
4301 ASSIGNMENT IS NOT IN RECORDABLE FORM
4901 TITLE COMMITMENT OR PRELIMINARY REPORT IN FILE
4906 SCHEDULE A MTG. DESCRIPTION HAS INCORRECT MORTGAGE AMOUNT
4907 SCHEDULE A MTG DESCRIPTION HAS INCORRECT DATE OF MORTGAGE
4911 SCHEDULE A MTG DESCRIPTION HAS INCORRECT RECORDING DATE
4920 INSURED AMOUNT DOES NOT MATCH ORIGINAL AMOUNT ON MORTGAGE
4921 AGENT SIGNATURE MISSING ON TPOL
5307 CERTIFIED COPY OF DOCUMENT IN FILE
5339 OPEN ENDORSEMENT IS MISSING
5344 ENDORSEMENT(S) IS A COPY
5345 ENDORSEMENT(S) IS ILLEGIBLE
5348 DOCUMENT INCOMPLETE OR PAGES MISSING
5352 2 ORIGINAL NOTES IN FILE
5359 INVALID ENDORSEMENT CHAIN
5367 BORROWER'S SIGNATURE ILLEGIBLE
5368 FHA/VA PROOF OF INSURANCE SCREEN PRINT IN FILE
5369 LNA NOT IN PROPER FORM
6000 DOCUMENT FIELD IS MISSING OR INCORRECT
FINL FINAL PACKAGE RECEIVED, REVIEWED AND REJECTED

LIST OF UNAPPROVED SETTLEMENT AGENTS

None.

MORTGAGE FILE SUBMISSION PACKAGE

With respect to each Mortgage Loan being offered by the Seller for sale to Buyers, pursuant to the Repurchase Agreement, such Seller shall deliver and release to Custodian the following documents:

(i) Either (A) the original Mortgage Note bearing all intervening endorsements from the originator to the Seller endorsed, “Pay to the order of _____, without recourse” and signed in the name of the last endorsee (the “Last Endorsee”) by an authorized Person (in the event that the Loan was acquired by the Last Endorsee in a merger, the signature must be in the following form: “[Last Endorsee], successor by merger to [name of predecessor]”; in the event that the Loan was acquired or originated by the Last Endorsee while doing business under another name, the signature must be in the following form: “[Last Endorsee], formerly known as [previous name]”) or (B) with respect to any lost Mortgage Note, a lost note affidavit (with indemnification) stating that the original Mortgage Note was lost or destroyed, together with a copy of such Mortgage Note ; (if applicable), the original assumption agreement, together with the original of any surety agreement or guaranty agreement relating to the Mortgage Note or any such assumption agreement, and if the Mortgage Note has been signed by a third party on behalf of the Mortgagor, the original power of attorney or other instrument that authorized and empowered such Entity to sign or a copy of such power of attorney together with an officer's certificate from the Seller (or a certificate from the county recorder's office or the Settlement Agent) certifying that such copy presents a true and correct reproduction of the original and that such original has been duly recorded or delivered for recordation in the appropriate records of the jurisdiction in which the related Mortgaged Property is located;

(ii) A Mortgage meeting one of the following requirements:

(A) The original Mortgage bearing evidence that the Mortgage has been duly recorded in the records of the jurisdiction in which the Mortgaged Property is located; or

(B) If the original Mortgage has been submitted for recordation, a copy of the Mortgage together with either (i) an officer's certificate of the Seller, Settlement Agent, title company or escrow closing company (which may be a blanket officer's certificate of the Seller covering all such Mortgage Loans), or (ii) a certificate from the county recorder's office, certifying that such copy represents a true and correct reproduction of the original, or (iii) a stamped certificate from the related title company or Settlement Agent certifying that such copy represents a true and correct reproduction of the original, in such case that such original has been duly recorded or delivered for recordation in the appropriate records of the jurisdiction in which the Mortgaged Property is located , and, with respect to MERS Designated Mortgage Loans, if any, the Mortgage names MERS as the “mortgagee” or “beneficiary” thereof and the Custodian has confirmed that each MERS Designated Mortgage Loan has been issued a MERS Identification Number. A conformed recorded copy will follow as soon as the same is received by the Seller;

(iii) All original intervening Assignments or Mortgage duly executed and acknowledged and in recordable form, evidencing the unbroken chain of mortgage assignments from the originator of the Mortgage Loan to the Last Endorsee, or in the case of a MERS Designated Mortgage Loan to MERS, and/or if any such intervening Assignment of Mortgage has been submitted for recordation, a copy of each such intervening Assignment of Mortgage, together with either (i) an officer’s certificate of the Seller, Settlement Agent, title company or escrow closing company (which may be a blanket officer’s certificate of the Seller covering all such Mortgage Loans), (ii) a certificate from the recorder’s office, certifying that such copy represents a true and correct reproduction of the original, or (iii) a stamped certificate from the related title company, Settlement Agent or escrow closing company certifying that such copy represents a true and correct reproduction of the original, in such case that such original has been duly recorded or delivered for recordation in the appropriate records of the jurisdiction in which the Mortgaged Property is located;

(iv) Except with respect to a MERS Designated Mortgage Loan, an original Assignment of Mortgage to “_____”, in form and substance acceptable for recording and signed in the name of the Last Endorsee (in the event that the Loan was acquired by the Last Endorsee in a merger, the signature must be in the following form: “[Last Endorsee], successor by merger to [name of predecessor]”; in the event that the Loan was acquired or originated while doing business under another name, the signature must be in the following form: “[Last Endorsee], formerly known as [previous name]”), in recordable form; provided, however that no such Assignment of Mortgage shall be required to be delivered or recorded if the related Mortgage names the Custodian, as mortgagee (or as beneficiary if the related Mortgage is a deed of Trust or similar instrument) and such Mortgage specifies that the Custodian assumes no duties, responsibilities or liabilities as an originator or Buyer in respect of such Mortgage;

(v) the original or certified copy of the policy of title insurance (or a commitment for title insurance, if the policy is being held by the title insurance company pending recordation of the Mortgage) or attorney’s opinion of title;

(vi) the blanket assignment of all other collateral securing the Loan, including all rights under applicable guarantees and insurance policies, if any;

(vii) the original of the guarantee executed in connection with the Mortgage Note, if any;

(viii) the original of any security agreement, chattel mortgage or equivalent document executed in connection with the Mortgage Loan, if any;

(ix) the certificate of the secured creditor impaired property insurance policy or the commercial real estate pollution liability insurance policy, if any, issued with respect to such Mortgage Loan;

(x) the original power of attorney, if any;

(xi) an original executed copy of the Uniform Commercial Code (UCC) financing statement (UCC-1), if any, and, an original, if any, UCC financing statement changes (UCC-3), bearing the file stamp of the relevant filing office(s) and a certified copy of the assignment of the UCC financing statement (UCC-3) from the Last Endorsee in blank; and

(xii) the Escrow Letter.

FORM OF ESCROW LETTER

[Date]

[Name of Settlement Agent]
[Street Address]
[City, State and Zip Code]
[Attn: _____]

Re: Master Repurchase Agreement, dated as of December 13, 2005 (the "Repurchase Agreement"), by and among NYMC Loan Corporation as Seller, New York Mortgage Trust, Inc., as Guarantor and DB Structured Products, Inc. ("DBSP"), Aspen Funding Corp. ("Aspen"), Newport Funding Corp. ("Newport" and collectively with DBSP and Aspen, the "Buyers" and individually a "Buyer").

The following loan is scheduled to fund today:

Loan Amount: [_____]

Loan Number (if applicable): [_____]

Property Address: [_____]

If the mortgage loan is not funded by 5:00 p.m. New York City time on the business day on which you receive the closing funds, you are to return the closing funds via federal funds wire transfer to the related Buyer, no later than 5:00 p.m. New York time on the following business day, as follows:

ABA: 026-003-780
Acct #: 10-642785-0008
Acct. Name: Newport Funding Corp.
Attn: Siegfried Rader Ph. 212-474-7737

ABA: 026-003-780
Acct #: 10-536680-0008
Acct. Name: Aspen Funding Corp.
Attn: Siegfried Rader Ph. 212-474-7737

ABA:
Acct #:
Acct Name: DPX
Attn: Roger Smith Ph: 212-474-8453

Very truly yours,

NYMC LOAN CORPORATION

By: _____
Name: _____
Title: _____

ACKNOWLEDGED AND AGREED:

[Settlement Agent]

By: _____

Name: _____

Title: _____



**[NOTICE BY ASSIGNEE TO CUSTODIAN OF
THE BUYER'S DEFAULT]**

[Date]

[Custodian]

[Address]

Re: Default by Buyer

Notice is hereby given that _____ (the "Buyer") has materially defaulted in its obligations under an agreement between Assignee and the Buyer relating to the financing by Assignee of the Buyer's advances with respect to the Mortgage Loans described on Schedule 1 hereto. Assignee hereby (i) directs that Custodian act with respect to the related mortgage files solely in the capacity of custodian for, and bailee of, Assignee, (ii) directs that Custodian hold such mortgage files solely for the exclusive use and benefit of Assignee and (iii) assumes the rights of the Buyer to furnish instructions to the Custodian as to the disposition of such mortgage files and such rights shall be exercisable solely by Assignee.

Please acknowledge the foregoing by signing below and returning a copy of this notice to us at [address].

Very truly yours,

NYMC LOAN CORPORATION

By: _____

Name: _____

Title: _____

[ASSIGNEE]

By: _____

Name: _____

Title: _____

RECEIPT ACKNOWLEDGED:

By: _____

Name: _____

Title: _____

cc: [Buyer]

EXHIBIT A

FORM OF TRANSACTION NOTICE

_____, 200_

DB Structured Products, Inc.
Aspen Funding Corp.
Newport Funding Corp.
60 Wall Street
New York, NY 10005
Attention: Vincent D'Amore

Deutsche Bank National Trust Company
1761 East St. Andrew Place
Santa Ana, California 92705
Attention: Trust Administration-NS03DA

LaSalle Bank National Association

Attention: _____

Transaction No. _____

Ladies and Gentlemen:

The undersigned executes and delivers this notice (the "Notice") pursuant to the requirements of the Master Repurchase Agreement, dated as of December 13, 2005 (the "Repurchase Agreement"), among DB Structured Products, Inc. ("DBSP"), Aspen Funding Corp. ("Aspen"), Newport Funding Corp. ("Newport" and collectively with DBSP and Aspen, the "Buyers" and individually a "Buyer"), NYMC Loan Corporation as Seller (the "Seller") and New York Mortgage Trust, Inc. as Guarantor, in connection with the submission for sale thereunder on _____, 200_ (the "Purchase Date") of the Purchased Loans identified on the Schedule attached hereto. All capitalized terms used in this Notice without definition shall have the same meanings herein as they have in the Repurchase Agreement.

The Seller hereby represents and certifies to [DB Structured Products, Inc.] [Aspen Funding Corp.] [Newport Funding Corp.] (the "Buyer") as follows:

1. As of this date, the Seller is in compliance with all of the terms and conditions of the Program Documents.
2. The Seller's representations and warranties set forth in the Program Documents are true and accurate as of the date of this Notice.
3. All of the conditions set forth in Section 10 of the Repurchase Agreement to the proposed Transaction to which this Notice relates have been satisfied.



4. Upon payment by Buyer of the Purchase Price in respect of the Transaction involving the Purchased Loans, all of the right (including the power to convey title thereto), title and interest in and to each Purchased Loan shall be transferred, assigned, set over and otherwise conveyed to the Buyer.

5. [There are no security interests relating to or affecting any or all of the Purchased Loans.][Prior to the sale of the Purchased Loans pursuant to the Repurchase Agreement, [_____] had a security interest in such Purchased Loans and has entered into a Security Release Certification, the original of which is attached hereto.]

6. The general terms of the sale are:

A. Aggregate outstanding principal balance of the Purchased Loans _____ as of the Purchase Date:

B. Purchase Date: _____

C. Pricing Rate: _____

D. Total outstanding Purchase Price of all Transactions under the Repurchase Agreement: _____

E. Aggregate original principal balance of Purchased Loans: _____

Wire Instructions For Seller:

[Bank Name:
City, State:

ABA #:
Account #:

Account Name:
Attention: _____]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Notice as of the date first above written.

NYMC LOAN CORPORATION, as Seller

By: _____
Name: _____
Title: _____

MASTER REPURCHASE AGREEMENT

Dated as of January 5, 2006

Among:

**NEW YORK MORTGAGE FUNDING, LLC,
as Seller,**

**THE NEW YORK MORTGAGE COMPANY, LLC,
as Seller,**

**NEW YORK MORTGAGE TRUST, INC.,
as Seller**

and

**GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.,
as Buyer**

TABLE OF CONTENTS

1.	APPLICABILITY	1
2.	DEFINITIONS AND ACCOUNTING MATTERS	1
3.	THE TRANSACTIONS	16
4.	PAYMENT AND TRANSFER	20
5.	TAXES; TAX TREATMENT	20
6.	MARGIN MAINTENANCE	21
7.	INCOME PAYMENTS	22
8.	SECURITY INTEREST; BUYER'S APPOINTMENT AS ATTORNEY-IN-FACT	22
9.	CONDITIONS PRECEDENT	25
10.	RELEASE OF PURCHASED LOANS	28
11.	RELIANCE	29
12.	REPRESENTATIONS AND WARRANTIES	29
13.	COVENANTS OF SELLER	33
14.	REPURCHASE DATE PAYMENTS	40
15.	REPURCHASE OF PURCHASED LOANS	40
16.	SUBSTITUTION	41
17.	ACCELERATION OF REPURCHASE DATE	41
18.	EVENTS OF DEFAULT	41
19.	REMEDIES	45
20.	DELAY NOT WAIVER; REMEDIES ARE CUMULATIVE	47
21.	NOTICES AND OTHER COMMUNICATIONS	47
22.	USE OF EMPLOYEE PLAN ASSETS	47
23.	INDEMNIFICATION AND EXPENSES.	47
24.	WAIVER OF REDEMPTION AND DEFICIENCY RIGHTS	49
25.	REIMBURSEMENT	49
26.	FURTHER ASSURANCES	49
27.	TERMINATION	49
28.	SEVERABILITY	49
29.	BINDING EFFECT; GOVERNING LAW	50
30.	AMENDMENTS	50
31.	SUCCESSORS AND ASSIGNS	50
32.	SURVIVAL	50
33.	CAPTIONS	50
34.	COUNTERPARTS	50
35.	SUBMISSION TO JURISDICTION; WAIVERS	50
36.	WAIVER OF JURY TRIAL	51
37.	ACKNOWLEDGEMENTS	51

38.	HYPOTHECATION OR PLEDGE OF PURCHASED ITEMS.	51
39.	ASSIGNMENTS; PARTICIPATIONS.	52
40.	SINGLE AGREEMENT	52
41.	INTENT	53
42.	CONFIDENTIALITY	53
43.	SERVICING	53
44.	PERIODIC DUE DILIGENCE REVIEW	54
45.	SET-OFF	55
46.	ENTIRE AGREEMENT	55

SCHEDULES

SCHEDULE 1-A	Representations and Warranties re: Residential Loans
SCHEDULE 1-B	Representations and Warranties re: Small Balance Commercial Loans
SCHEDULE 2	Filing Jurisdictions and Offices
SCHEDULE 3	Relevant States
SCHEDULE 4	Subsidiaries
SCHEDULE 5	Litigation

EXHIBITS

EXHIBIT A	Form of Quarterly Certification
EXHIBIT B	Form of Custodial Agreement
EXHIBIT C	Form of Opinion of Counsel to the Seller
EXHIBIT D	Form of Notice of Transaction Notice
EXHIBIT E	Underwriting Guidelines
EXHIBIT F	Required Fields for Servicing Transmission
EXHIBIT G	Required Fields for Loan Data Transmission
EXHIBIT H	Form of Market Value Certificate
EXHIBIT I	Form of Confidentiality Agreement
EXHIBIT J	Form of Instruction Letter
EXHIBIT K	Third Party Underwriting Guidelines

MASTER REPURCHASE AGREEMENT, dated as of January 5, 2006, among New York Mortgage Funding, LLC, a Delaware limited liability company, The New York Mortgage Company, LLC, a New York limited liability company and New York Mortgage Trust, Inc., a Maryland corporation (each, a “Seller”, and jointly and severally, the “Sellers”) and Greenwich Capital Financial Products, Inc., a Delaware corporation (“Buyer”, which term shall include any “Principal” as defined and provided for in Annex I), or as agent pursuant hereto (“Agent”),

1. APPLICABILITY

Buyer may, from time to time, upon the terms and conditions set forth herein, agree to enter into transactions in which a Seller transfers to Buyer Eligible Loans against the transfer of funds by Buyer, with a simultaneous agreement by Buyer to transfer to such Seller Purchased Loans at a date certain, against the transfer of funds by such Seller. Each such transaction shall be referred to herein as a “Transaction”, and, unless otherwise agreed in writing, shall be governed by this Agreement.

2. DEFINITIONS AND ACCOUNTING MATTERS

(a) Defined Terms. As used herein, the following terms have the following meanings (all terms defined in this Section 2 or in other provisions of this Agreement in the singular to have the same meanings when used in the plural and vice versa):

“Accepted Servicing Practices” shall mean with respect to any Loan, those accepted and prudent mortgage servicing practices (including collection procedures) of prudent mortgage lending institutions which service mortgage loans of the same type as the Loans in the jurisdiction where the related Mortgaged Property is located, and which are in accordance with Fannie Mae servicing practices and procedures for MBS pool mortgages, as defined in the Fannie Mae servicing guides including future updates, and in a manner at least equal in quality to the servicing the Subservicer or any Seller’s designee, as the case may be, provides to mortgage loans which they own in their own portfolio.

“Additional Purchased Loans” shall have the meaning specified in Section 6(a) hereof.

“Adjustable Rate Loan” shall mean a Loan which provides for the adjustment of the Mortgage Interest Rate payable in respect thereto.

“Adjustment Date” shall mean with respect to each Adjustable Rate Loan, the date set forth in the related Note on which the Mortgage Interest Rate on the Loan is adjusted in accordance with the terms of the Note.

“Affiliate” shall mean, with respect to any Person, any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” (together with the correlative meanings of “controlled by” and “under common control with”) means possession, directly or indirectly, of the power (a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the directors or managing general partners (or their equivalent) of such Person, or (b) to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract, or otherwise.

“Agent” shall mean Buyer or any successor.

“Agreement” shall mean this Master Repurchase Agreement (including all exhibits, schedules and other addenda hereto or thereto), as supplemented by the Pricing Side Letter, as it may be amended, further supplemented or otherwise modified from time to time.

“ ALTA ” shall mean the American Land Title Association.

“ AM Funded Wet Loan ” shall mean Wet Loans that will be funded before 12:00 p.m. (New York City time) on any Business Day.

“ Applicable Margin ” shall have the meaning set forth in the Pricing Side Letter.

“ Appraised Value ” shall mean the value set forth in an appraisal made in connection with the origination of the related Loan as the value of the Mortgaged Property (or the related Cooperative Unit in the case of a Cooperative Loan).

“ Assignment of Mortgage ” shall mean, with respect to any Mortgage, an assignment of the Mortgage, notice of transfer or equivalent instrument in recordable form, sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect the assignment of the Mortgage to Buyer.

“ Attorney Bailee Letter ” shall have the meaning assigned to such term in the Custodial Agreement.

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

“ Best’s ” shall mean Best’s Key Rating Guide, as the same shall be amended from time to time.

“ Breakage Costs ” shall have the meaning assigned thereto in Section 3(h) herein.

“ Business Day ” shall mean any day other than (i) a Saturday or Sunday, (ii) a day on which the New York Stock Exchange, the Federal Reserve Bank of New York, the Custodian or banking and savings and loan institutions in the State of New York, Connecticut or the City of New York or the city or state in which the Custodian’s offices are located are closed, or (iii) a day on which trading in securities on the New York Stock Exchange or any other major securities exchange in the United States is not conducted.

“ Capital Lease Obligations ” shall mean, for any Person, all obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) Property to the extent such obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP, and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

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

“Change of Control” shall mean with respect to any Seller, the acquisition by any Person, or two or more Persons acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended) of outstanding shares of voting stock of such Person at any time if after giving effect to such acquisition (i) such Person or Persons owns twenty percent (20%) or more of such outstanding voting stock or (ii) Steven B. Schnall does not own more than fifty percent (50%) of such outstanding voting stock.

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

“Collection Account” shall mean the following account established by the Sellers in accordance with Section 13(ii) for the benefit of Buyer, “Greenwich Capital Financial Products, Inc. - P&I account - Account # _____”.

“Combined Aggregate Purchase Price” shall mean \$249,000,000.

“Commonly Controlled Entity” shall mean an entity, whether or not incorporated, which is under common control with a Seller within the meaning of Section 4001 of ERISA or is part of a group which includes a Seller and which is treated as a single employer under Section 414 of the Code.

“Confirmation” shall have the meaning assigned thereto in Section 3(a) hereof.

“Contractual Obligation” shall mean as to any Person, any material provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound or any material provision of any security issued by such Person.

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

“Cooperative Loan” shall mean a Loan that is secured by a first lien on and perfected security interest in Cooperative Shares and the related Proprietary Lease granting exclusive rights to occupy the related Cooperative Unit in the building owned by the related Cooperative Corporation.

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

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

“Cooperative Unit” shall mean, with respect to a Cooperative Loan, a specific unit in a Cooperative Project.

“ Custodial Agreement ” shall mean the Amended and Restated Custodial Agreement, dated as of January 5, 2006, among Sellers, Buyer, Custodian, and LaSalle Bank, National Association as Disbursement Agent, as the same shall be modified and supplemented and in effect from time to time.

“ Custodian ” shall mean LaSalle Bank, National Association, or its successors and permitted assigns.

“ Custodian Loan Transmission ” shall have the meaning assigned thereto in the Custodial Agreement.

“ Default ” shall mean an Event of Default or any event, that, with the giving of notice or the passage of time or both, would become an Event of Default.

“ Disbursement Account ” shall mean the account established by Buyer pursuant to which funds shall be disbursed to fund any Wet Loan.

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

“ Dry Loan ” shall mean a first lien Loan which is underwritten in accordance with the Underwriting Guidelines and as to which the related Mortgage File contains all required Loan Documents.

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

“ Due Diligence Review ” shall mean the performance by Buyer of any or all of the reviews permitted under Section 44 hereof with respect to any or all of the Loans or the Sellers or related parties, as desired by Buyer from time to time.

“ Effective Date ” shall mean the date upon which the conditions precedent set forth in Section 9(a) have been satisfied.

“ Electronic Tracking Agreement ” shall mean the Second Amended and Restated Electronic Tracking Agreement, dated as of January 5, 2006 among Buyer, Sellers, MERSCORP, Inc. and MERS.

“ Electronic Transmission ” shall mean the delivery of information in an electronic format acceptable to the applicable recipient thereof. An Electronic Transmission shall be considered written notice for all purposes hereof (except when a request or notice by its terms requires execution).

“ Eligible Loan ” shall have the meaning assigned thereto in the Pricing Side Letter.

“ ERISA ” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ ERISA Affiliate ” shall mean any corporation or trade or business that is a member of any group of organizations (i) described in Section 414(b) or (c) of the Code of which a Seller is a member and (ii) solely for purposes of potential liability under Section 302(c)(11) of ERISA and Section 412(c)(11) of the Code and the lien created under Section 302(f) of ERISA and Section 412(n) of the Code, described in Section 414(m) or (o) of the Code of which a Seller is a member.

“ Escrow Letter ” shall mean, with respect to any Wet Loan that becomes subject to a Transaction before the end of the applicable rescission period, an escrow agreement or letter, which is fully assignable to the Buyer, stating that in the event of a Rescission or if for any other reason the Loan fails to fund on a given day, the party conducting the closing is holding all funds which would have been disbursed on behalf of the Mortgagor as agent for and for the benefit of the Buyer and such funds shall be returned to the related Seller not later than one Business Day after the date of Rescission or other failure of the Loan to fund on a given day.

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

“ Event of Default ” shall have the meaning provided in Section 18 hereof.

“ Exception ” shall have the meaning assigned thereto in the Custodial Agreement.

“ Exception Report ” shall mean the exception report prepared by the Custodian pursuant to the Custodial Agreement.

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

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

“ GAAP ” shall mean generally accepted accounting principles in effect from time to time in the United States of America.

“ Governmental Authority ” shall mean with respect to any Person, any nation or government, any state or other political subdivision, agency or instrumentality thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any court or arbitrator having jurisdiction over such Person, any of its Subsidiaries or any of its properties.

“ Gross Margin ” shall mean with respect to each Adjustable Rate Loan, the fixed percentage amount set forth in the related Note and the Loan Schedule that is added to the Index on each Adjustment Date in accordance with the terms of the related Note to determine the new Mortgage Interest Rate for such Loan.

“ Guarantee ” shall mean, as to any Person, any obligation of such Person directly or indirectly guaranteeing any Indebtedness of any other Person or in any manner providing for the payment of any Indebtedness of any other Person or otherwise protecting the holder of such Indebtedness against loss (whether by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, or to take-or-pay or otherwise), provided that the term “Guarantee” shall not include (i) endorsements for collection or deposit in the ordinary course of business, (ii) obligations to make servicing advances for delinquent taxes and insurance, or other obligations in respect of a Mortgaged Property, to the extent required by the Buyer, or (iii) liabilities held through joint and several liability among any of the Sellers. The amount of any Guarantee of a Person shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith. The terms “Guarantee” and “Guaranteed” used as verbs shall have correlative meanings.

“ Income ” shall mean, with respect to any Purchased Loan at any time, any principal and/or interest thereon and all dividends, sale proceeds (including, without limitation, any proceeds from the securitization of such Purchased Loan or other disposition thereof) and other collections and distributions thereon (including, without limitation, any proceeds received in respect of mortgage insurance), but not including any commitment fees, origination fees and/or servicing fees accrued in respect of periods on or after the initial Purchase Date with respect to such Purchased Loan.

“ Indebtedness ” shall mean, for any Person: (a) obligations created, issued or incurred by such Person for borrowed money (whether by loan, the issuance and sale of debt securities or the sale of Property to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such Property from such Person); (b) obligations of such Person to pay the deferred purchase or acquisition price of Property or services, other than trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business so long as such trade accounts payable are payable within 90 days of the date the respective goods are delivered or the respective services are rendered; (c) indebtedness of others secured by a Lien on the Property of such Person, whether or not the respective indebtedness so secured has been assumed by such Person; (d) obligations (contingent or otherwise) of such Person in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for account of such Person; (e) Capital Lease Obligations of such Person; (f) obligations of such Person under repurchase agreements or like arrangements; (g) indebtedness of others Guaranteed by such Person; (h) all obligations of such Person incurred in connection with the acquisition or carrying of fixed assets by such Person; (i) indebtedness of general partnerships of which such Person is a general partner; and (j) any other indebtedness of such Person by a note, bond, debenture or similar instrument.

“ Index ” shall mean with respect to each Adjustable Rate Loan, the index identified on the related Loan Schedule and set forth in the related Note for the purpose of calculating the interest rate thereon.

“ Instruction Letter ” shall mean a letter agreement between each related Seller and each Subservicer substantially in the form of Exhibit J attached hereto, in which such Persons acknowledge the Buyer’s ownership interest in the Loans, and agree to remit any collections with respect to the Loans as Buyer may so direct from time to time, which Instruction Letter may be delivered by Buyer to such Subservicer in its sole discretion.

“ Insurance Proceeds ” shall mean with respect to each Loan, proceeds of insurance policies insuring the Loan or the related Mortgaged Property.

“ Insured Closing Letter ” shall mean, with respect to any Wet Loan that becomes subject to a Transaction before the end of the applicable rescission period, a letter of indemnification from an Approved Title Insurance Company, in any jurisdiction where insured closing letters are permitted under applicable law and regulation, addressed to the related Seller, which is fully assignable to the Buyer, with coverage that is customarily acceptable to Persons engaged in the origination of mortgage loans, identifying the Settlement Agent covered thereby, which may be in the form of a blanket letter.

“ Interest Period ” shall mean, with respect to any Transaction, (i) initially, the period commencing on the related Purchase Date with respect to such Transaction and ending on the calendar day prior to the next succeeding Repurchase Date, and (ii) thereafter, each period commencing on the Repurchase Date of a month and ending on the calendar day prior to the Repurchase Date of the next succeeding month. Notwithstanding the foregoing, no Interest Period may end after the Termination Date.

“ Interest Rate Adjustment Date ” means with respect to each Adjustable Rate Loan, the date, specified in the related Note and the Loan Schedule, on which the Mortgage Interest Rate is adjusted.

“ Interest Rate Protection Agreement ” shall mean with respect to any or all of the Purchased Loans, any interest rate swap, cap or collar agreement or any other applicable hedging arrangements providing for protection against fluctuations in interest rates or the exchange of nominal interest obligations, either generally or under specific contingencies entered into by a Seller and reasonably acceptable to Buyer.

“ Investment Company Act ” shall mean the Investment Company Act of 1940, as amended, including all rules and regulations promulgated thereunder.

“ LIBO Base Rate ” shall mean with respect to each day on which a Transaction is outstanding (or if such day is not a Business Day, the next succeeding Business Day), the rate per annum equal to the rate published by Bloomberg or if such rate is not available, the rate appearing at page 3750 of the Telerate Screen, as one-month LIBOR on such date, and if such rate shall not be so quoted, the rate per annum at which the Buyer is offered Dollar deposits at or about 11:00 A.M., New York City time, on such date by prime banks in the interbank eurodollar market where the eurodollar and foreign currency and exchange operations in respect of its Transactions are then being conducted for delivery on such day for a period of one month and in an amount comparable to the amount of the Transactions to be outstanding on such day.

“ LIBO Rate ” shall mean with respect to each Interest Period pertaining to a Transaction, a rate (reset on a monthly basis) per annum determined by Buyer in its sole discretion in accordance with the following formula (rounded upwards to the nearest 1/100th of one percent), which rate as determined by Buyer shall be conclusive absent manifest error by Buyer:

LIBO Base Rate
1.00 - LIBO Reserve Requirements

The LIBO Rate shall be calculated on each Purchase Date and Repurchase Date commencing with the first Purchase Date.

“ LIBO Reserve Requirements ” shall mean for any Interest Period for any Transaction, the aggregate (without duplication) of the rates (expressed as a decimal fraction) of reserve requirements applicable to the Buyer in effect on such day (including, without limitation, basic, supplemental, marginal and emergency reserves under any regulations of the Board of Governors of the Federal Reserve System or other Governmental Authority having jurisdiction with respect thereto), dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of such Board) maintained by a member bank of such Governmental Authority. As of the Effective Date, the LIBO Reserve Requirements shall be deemed to be zero.

“ Lien ” shall mean any mortgage, lien, pledge, charge, security interest or similar encumbrance.

“ Loan ” shall mean a mortgage loan or a Cooperative Loan which the Custodian has been instructed to hold for the Buyer pursuant to the Custodial Agreement, and which loan includes, without limitation, (i) a Note, the related Mortgage and all other Loan Documents and (ii) all right, title and interest of the related Seller in and to the Mortgaged Property covered by such Mortgage.

“ Loan Data Transmission ” shall mean a computer tape or other electronic medium generated by or on behalf of the related Seller and delivered or transmitted to the Buyer and Custodian which provides information relating to the Purchased Loans, including the information set forth in the Loan Schedule, in a format acceptable to the Buyer.

“ Loan Documents ” shall have the meaning assigned thereto in the Custodial Agreement.

“ Loan List ” shall mean the hard copy report provided by the related Seller which shall include with respect to each Loan to be included in a Transaction: (i) the Loan number, (ii) the Mortgagor’s name, (iii) the original principal amount of the Loan, (iv) the current principal balance of the Loan and (v) whether the Loan is a MERS Loan.

“ Loan Schedule ” shall mean a hard copy or electronic format incorporating the fields identified on Exhibit G , any other information required by Buyer and any other additional information to be provided pursuant to the Custodial Agreement.

“ Loan-to-Value Ratio ” or “ LTV ” shall mean with respect to any Loan, the ratio of the outstanding principal amount of such Loan at the time of origination to the lesser of (a) the Appraised Value of the related Mortgaged Property at origination of such Loan and (b) if the related Mortgaged Property was purchased within twelve (12) months of the origination of such Loan, the purchase price of the related Mortgaged Property.

“ Margin Call ” shall have the meaning assigned thereto in Section 6(a) hereof.

“ Margin Deficit ” shall have the meaning assigned thereto in Section 6(a) hereof.

“ Margin Notice Deadline ” shall mean the deadline set forth in the applicable Pricing Side Letter for giving notice requiring same-day satisfaction of margin maintenance obligations as provided in Section 6 hereof.

“ Market Value ” shall mean the value, determined by the Buyer in its sole reasonable discretion, of the Loans if sold in their entirety to a single third-party purchaser. The Buyer’s determination of Market Value shall be conclusive upon the parties, absent manifest error on the part of the Buyer. The Buyer shall have the right to mark to market the Loans on a daily basis which Market Value with respect to one or more of the Loans may be determined to be zero. The Sellers acknowledge that the Buyer’s determination of Market Value is for the limited purpose of determining the value of Purchased Loans which are subject to Transactions hereunder without the ability to perform customary purchaser’s due diligence and is not necessarily equivalent to a determination of the fair market value of the Loans achieved by obtaining competing bids in an orderly market in which the originator/servicer is not in default under a revolving debt facility and the bidders have adequate opportunity to perform customary loan and servicing due diligence. The Market Value shall be deemed to be zero with respect to each Loan which is not an Eligible Loan.

“ Material Adverse Effect ” shall mean a material adverse effect on (a) the property, business, operations, financial condition or prospects of a Seller, (b) the ability of a Seller to perform its obligations under any of the Program Documents to which it is a party, (c) the validity or enforceability of any of the Program Documents, (d) the rights and remedies of the Buyer under any of the Program Documents, (e) the timely repurchase of the Purchased Loans or payment of other amounts payable in connection therewith or (f) the Purchased Items.

“ Maximum Aggregate Purchase Price ” shall mean the sum of the Combined Aggregate Purchase Price and the NYMC Exclusive Aggregate Purchase Price, which shall be \$250,000,000.

“ Maximum Mortgage Interest Rate ” shall mean with respect to each Adjustable Rate Loan, a rate that is set forth on the related Loan Schedule and in the related Note and is the maximum interest rate to which the Mortgage Interest Rate on such Loan may be increased on any Adjustment Date.

“MERS” shall mean Mortgage Electronic Registration Systems, Inc., a Delaware corporation, or any successor in interest thereto.

“MERS Identification Number” shall mean the eighteen digit number permanently assigned to each MERS Loan.

“MERS Loan” shall mean any Loan as to which the related Mortgage or Assignment of Mortgage has been recorded in the name of MERS, as agent for the holder from time to time of the Note, and which is identified as a MERS Loan on the related Loan List.

“Mixed-Use Loan” shall mean any first lien Loan secured by a mixed use property to a Mortgagor of “A” or “Alt-A” credit quality.

“Monthly Payment” shall mean the scheduled monthly payment of principal and interest on a Loan as adjusted in accordance with changes in the Mortgage Interest Rate pursuant to the provisions of the Note for an Adjustable Rate Loan.

“Mortgage” shall mean with respect to a Loan, the mortgage, deed of trust or other instrument, which creates a first lien on either (i) with respect to a Loan other than a Cooperative Loan, the fee simple or leasehold estate in such real property or (ii) with respect to a Cooperative Loan, the Proprietary Lease and related Cooperative Shares, which in either case secures the Note.

“Mortgage File” shall have the meaning assigned thereto in the Custodial Agreement.

“Mortgage Interest Rate” means the annual rate of interest borne on a Note, which shall be adjusted from time to time with respect to Adjustable Rate Loans.

“Mortgaged Property” shall mean the real property (including all improvements, buildings, fixtures, building equipment and personal property thereon and all additions, alterations and replacements made at any time with respect to the foregoing) and all other collateral securing repayment of the debt evidenced by a Note.

“Mortgagee” shall mean the record holder of a Note secured by a Mortgage.

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

“Multiemployer Plan” shall mean a multiemployer plan defined as such in Section 3(37) of ERISA to which contributions have been or are required to be made by a Seller or any ERISA Affiliate and that is covered by Title IV of ERISA.

“Multi-Family Loan” shall mean any first lien Loan secured by a five-to-eight family residential property to a Mortgagor of “A” or “Alt-A” credit quality.

“MV Margin Amount” means, with respect to any Transaction, as of any date of determination, the amount obtained by application of the MV Margin Percentage to the Repurchase Price (reduced by the amount of any accrued and unpaid Price Differential) for such Transaction as of such date.

“MV Margin Percentage” shall have the meaning assigned thereto in the Pricing Side Letter.

“ Negative Amortization ” shall mean with respect to each Negative Amortization Loan, that portion of interest accrued at the Mortgage Interest Rate in any month which exceeds the Monthly Payment on the related Loan for such month and which, pursuant to the terms of the Note, is added to the principal balance of the Loan.

“ Negative Amortization Loan ” shall mean each Loan that may be subject to Negative Amortization.

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

“ Net Worth ” shall mean, with respect to any Person, the excess of total assets of such Person, over total liabilities of such Person, determined in accordance with GAAP.

“ Note ” shall mean, with respect to any Loan, the related promissory note together with all riders thereto and amendments thereof or other evidence of indebtedness of the related Mortgagor.

“ NYMC ” shall mean The New York Mortgage Company, LLC or any successor thereto.

“ NYMF ” shall mean New York Mortgage Funding, LLC or any successor thereto.

“ NYMT ” shall mean New York Mortgage Trust, Inc.

“ NYMC Exclusive Aggregate Purchase Price ” shall mean \$1,000,000.

“ Obligations ” shall mean (a) all of Sellers’ obligation to pay the Repurchase Price on the Repurchase Date and other obligations and liabilities of Sellers to Buyer, its Affiliates, the Custodian or any other Person arising under, or in connection with, the Program Documents or directly related to the Purchased Loans, whether now existing or hereafter arising; (b) any and all sums paid by Buyer or on behalf of Buyer pursuant to the Program Documents in order to preserve any Purchased Loan or its interest therein; (c) in the event of any proceeding for the collection or enforcement of any of Sellers’ indebtedness, obligations or liabilities referred to in clause (a), the reasonable expenses of retaking, holding, collecting, preparing for sale, selling or otherwise disposing of or realizing on any Purchased Loan, or of any exercise by Buyer or any Affiliate of Buyer of its rights under the Program Documents, including without limitation, reasonable attorneys’ fees and disbursements and court costs; and (d) all of Sellers’ indemnity obligations to Buyer pursuant to the Program Documents.

“ Par Margin Amount ” means, with respect to any Transaction, as of any date of determination, the amount obtained by application of the Par Margin Percentage to the Repurchase Price (reduced by the amount of any accrued and unpaid Price Differential) for such Transaction as of such date.

“ Par Margin Percentage ” shall have the meaning assigned thereto in the Pricing Side Letter.

“ Participants ” shall have the meaning assigned thereto in Section 39 hereof.

“ Payment Adjustment Date ” With respect to each Negative Amortization Loan, the date on which Monthly Payments shall be adjusted. A Payment Adjustment Date with respect to a Negative Amortization Loan shall occur on the dates specified on the Loan Data Transmission.

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

“ Permitted Exceptions ” shall mean the following exceptions to lien priority: (i) the lien of current real property taxes and assessments not yet due and payable; (ii) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording acceptable to mortgage lending institutions generally and specifically referred to in the lender’s title insurance policy delivered to the originator of the Loan and (A) referred to or otherwise considered in the appraisal (if any) made for the originator of the Loan or (B) which do not adversely affect the appraised value of the Mortgaged Property set forth in such appraisal; and (iii) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related Mortgaged Property.

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

“ Plan ” shall mean an employee benefit or other plan established or maintained by either any Seller or any ERISA Affiliate and that is covered by Title IV of ERISA, other than a Multiemployer Plan.

“ PMI Policy ” or “ Primary Insurance Policy ” shall mean a policy of primary mortgage guaranty insurance issued by a Qualified Insurer.

“ PM Funded Wet Loans ” shall mean Wet Loans that will be funded after 12:00 p.m. (New York City time) but on or prior to 4:30 p.m. (New York City time) on any Business Day.

“ Post-Default Rate ” shall mean, in respect of the Repurchase Price for any Transaction or any other amount under this Agreement, or any other Program Document that is not paid when due to the Buyer (whether at stated maturity, by acceleration or mandatory prepayment or otherwise), a rate per annum during the period from and including the due date to but excluding the date on which such amount is paid in full equal to 2% per annum, plus (a)(i) the Pricing Rate otherwise applicable to such Loan or other amount, or (ii) if no Pricing Rate is otherwise applicable, the LIBO Rate plus (b) the Applicable Margin.

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

“ Pricing Rate ” shall mean the per annum percentage rate for determination of the Price Differential as set forth in the Pricing Side Letter.

“ Pricing Side Letter ” shall mean that certain Pricing Side Letter, dated as of January 5, 2006, among Sellers and Buyer, as the same may be amended, supplemented or modified from time to time.

“ Principal ” shall have the meaning assigned thereto in Annex I.

“ Program Documents ” shall mean this Agreement, the Custodial Agreement, any Servicing Agreement, the Pricing Side Letter, the Servicing Side Letter, any assignment of an Interest Rate Protection Agreement, the Electronic Tracking Agreement, any Instruction Letters and any other agreement entered into by a Seller, on the one hand, and the Buyer and/or any of its Affiliates or Subsidiaries (or Custodian on its behalf) on the other, in connection herewith or therewith.

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

“ Proprietary Lease ” shall mean the lease on a Cooperative Unit evidencing the possessory interest of the owner of the Cooperative Shares in such Cooperative Unit.

“ Purchase Date ” shall mean, with respect to each Transaction, the date on which Purchased Loans are sold by the related Seller to the Buyer hereunder.

“ Purchase Price ” shall have the meaning assigned thereto in the Pricing Side Letter.

“ Purchased Items ” shall have the meaning assigned thereto in Section 8 hereof.

“ Purchased Loans ” shall mean any of the following assets sold by a Seller to Buyer in a Transaction: the Loans, together with the related Records, Servicing Rights, such Seller’s rights under any related Interest Rate Protection Agreement, such Seller’s rights under any Escrow Letters and Insured Closing Letters with respect to the Loans. Such Seller’s rights under any takeout commitment related to the Loans and other Purchased Items, such other property, rights, titles or interest as are specified on a related Transaction Notice, and all instruments, chattel paper, and general intangibles comprising or relating to all of the foregoing. The term “Purchased Loans” with respect to any Transaction at any time shall also include Additional Purchased Loans delivered pursuant to Section 6(a) hereof and Substitute Loans delivered pursuant to Section 16 hereof.

“ Qualified Insurer ” shall mean an insurance company duly qualified as such under the laws of each state in which any Mortgaged Property is located, duly authorized and licensed in each such state to transact the applicable insurance business and to write the insurance provided, and approved as an insurer by Fannie Mae and Freddie Mac and whose claims paying ability is rated in the two highest rating categories by any of the rating agencies with respect to primary mortgage insurance and in the two highest rating categories by Best’s with respect to hazard and flood insurance.

“ Qualified Originator ” shall mean (a) NYMC and (b) any other originator of Loans previously approved by Buyer; provided, that Buyer shall have the right to reject an originator (in its sole discretion) by delivering written notice to Sellers fifteen (15) days prior to ceasing to accept Loans originated by such person.

“ Reacquired Loans ” shall have the meaning assigned thereto in Section 16.

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

“ REIT ” shall mean a real estate investment trust, as defined in Section 856 of the Code.

“ Reportable Event ” shall mean any of the events set forth in Section 4043(b) of ERISA, other than those events as to which the thirty day notice period is waived under subsections .13, .14, .16, .18, .19 or .20 of PBGC Reg. § 2615.

“Repurchase Date” shall mean the date occurring on (i) the seventh (7th) day of each month following the related Purchase Date (or if such date is not a Business Day, the following Business Day), (ii) any other Business Day set forth in the related Transaction Notice and/or the related Confirmation, or (iii) the date determined by application of Section 19, as applicable.

“Repurchase Price” shall mean the price at which Purchased Loans are to be transferred from Buyer to the related Seller upon termination of a Transaction, which will be determined in each case (including Transactions terminable upon demand) as the sum of the outstanding Purchase Price for such Purchased Loans and the Price Differential as of the date of such determination.

“Required Documents” shall have the meaning set forth in the Custodial Agreement.

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

“Rescission” shall mean the right of a Mortgagor to rescind the related Note and related documents pursuant to applicable law.

“Responsible Officer” shall mean, as to any Person, the chief executive officer or, with respect to financial matters, the chief financial officer of such Person; provided, that in the event any such officer is unavailable at any time he or she is required to take any action hereunder, Responsible Officer shall mean any officer authorized to act on such officer’s behalf as demonstrated by a certificate of corporate resolution.

“Restricted Payments” shall mean with respect to any Person, collectively, all dividends or other distributions of any nature (cash, securities, assets or otherwise), and all payments, by virtue of redemption or otherwise, on any class of equity securities (including, without limitation, warrants, options or rights therefor) issued by such Person, whether such securities are now or may hereafter be authorized or outstanding and any distribution in respect of any of the foregoing, whether directly or indirectly.

“Servicer” shall mean each related Seller, as applicable, in its capacity as servicer or master servicer of the Loans.

“Servicing Agreement” shall have the meaning provided in Section 43(c) hereof.

“Servicing File” shall mean with respect to each Loan, the file retained by the related Seller (in its capacity as Servicer) or the Subservicer consisting of all documents that a prudent originator and servicer would have, including copies of the Loan Documents, all documents necessary to document and service the Loans and any and all documents required to be delivered pursuant to any of the Program Documents.

“Servicing Records” shall have the meaning assigned thereto in Section 43(b) hereof.

“Servicing Rights” shall mean contractual, possessory or other rights of the related Seller or any other Person, whether arising under the Servicing Agreement, the Custodial Agreement or otherwise, to administer or service a Purchased Loan or to possess related Servicing Records.

“Servicing Side Letter” shall mean that certain Servicing Side Letter, dated as of January 5, 2006, among Sellers, Servicer and Buyer, as the same may be amended, supplemented or modified from time to time.

“ Servicing Transmission ” shall mean a computer-readable magnetic or other electronic format acceptable to the parties containing the information identified on Exhibit F.

“ Settlement Agent ” shall have the meaning assigned thereto in the Custodial Agreement.

“ Single Employer Plan ” shall mean any Plan which is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

“ Small Balance Commercial Loan ” means any Loan that is a Multi-Family Loan, a Mixed-Use Loan or is otherwise secured by a small commercial property.

“ Subservicer ” shall have the meaning provided in Section 43(c) hereof.

“ Subsidiary ” shall mean, with respect to any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

“ Substitute Loans ” has the meaning assigned thereto in Section 16.

“ Takeout Commitment ” shall mean, with respect to any Loan, an irrevocable commitment issued by a Takeout Investor in favor of the related Seller pursuant to which such Takeout Investor agrees to purchase such Loan at a specific price on a forward delivery basis acceptable to the Buyer in its sole discretion.

“ Takeout Investor ” shall mean a third party, acceptable to Buyer, which has agreed to purchase Loans pursuant to a Takeout Commitment.

“ Tangible Net Worth ” shall mean, with respect to any Person, as of any date of determination, the consolidated Net Worth of such Person and its Subsidiaries, less the consolidated net book value of all assets of such Person and its Subsidiaries (to the extent reflected as an asset in the balance sheet of such Person or any Subsidiary at such date) which will be treated as intangibles under GAAP, including, without limitation, such items as deferred financing expenses, deferred taxes, net leasehold improvements, good will, trademarks, trade names, service marks, copyrights, patents, licenses and unamortized debt discount and expense; provided, that residual securities issued by such Person or its Subsidiaries shall not be treated as intangibles for purposes of this definition.

“ Termination Date ” shall mean December 4, 2006, or such earlier date on which this Agreement shall terminate in accordance with the provisions hereof or by operation of law.

“ Total Indebtedness ” shall mean with respect to any Person, for any period, the aggregate Indebtedness of such Person and its Subsidiaries during such period, less the amount of any nonspecific consolidated balance sheet reserves maintained in accordance with GAAP.

“ Transaction ” has the meaning assigned thereto in Section 1.

“Transaction Notice” shall mean a written request by a Seller in the form of Exhibit D hereto, to enter into a Transaction, in a form to be mutually agreed upon among Sellers and Buyer, which is delivered to Buyer.

“Trust Preferred Obligations” shall mean (i) the \$25 million NYM Preferred Trust I securities with maturity on March 15, 2035, and (ii) the \$20 million NYM Preferred Trust II securities with maturity on October 30, 2035.

“Trust Receipt” shall have the meaning provided in the Custodial Agreement.

“Underwriting Guidelines” shall mean (i) the underwriting guidelines of the related Seller attached as Exhibit E hereto in effect as of the date of this Agreement, and (ii) certain acquisition guidelines of the third parties listed in Exhibit K hereof in accordance with which NYMC acquires Loans, as the same may be amended, supplemented or otherwise modified from time to time in accordance with terms of this Agreement, and which have been approved in writing by Buyer.

“Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect on the date hereof in the State of New York; provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interest in any Purchased Items is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection.

“USC” shall mean the United States Code, as amended.

“Wet Loan” shall mean a wet-funded first lien Loan which is underwritten in accordance with the Underwriting Guidelines and does not contain all the required Loan Documents in the Mortgage File, which in order to be deemed an Eligible Loan shall have the following additional characteristics:

(a) the proceeds thereof have been funded (or, on the Purchase Date supported by a Transaction Notice are being funded) by wire transfer or cashier’s check, cleared check or draft or other form of immediately available funds to the Settlement Agent for such Wet Loan;

(b) the related Seller expects such Wet Loan to close and become a valid lien securing actual indebtedness by funding to the order of the Mortgagor thereunder;

(c) the proceeds thereof have not been returned to the Buyer from the Settlement Agent for such Wet Loan;

(d) the related Seller has not learned that such Wet Loan will not be closed and funded to the order of the Mortgagor;

(e) upon recordation such Loan will constitute a first lien Loan on the premises described therein; and

(f) the related Seller has obtained an Escrow Letter and an Insured Closing Letter with respect to such Wet Loan.

(b) Accounting Terms and Determinations. Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Buyer hereunder shall be prepared, in accordance with GAAP.

(c) Interpretation. The following rules of this subsection (c) apply unless the context requires otherwise. A gender includes all genders. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning. A reference to a subsection, Section, Annex or Exhibit is, unless otherwise specified, a reference to a Section of, or annex or exhibit to, this Agreement. A reference to a party to this Agreement or another agreement or document includes the party's successors and permitted substitutes or assigns. A reference to an agreement or document (including any Program Document) is to the agreement or document as amended, modified, novated, supplemented or replaced, except to the extent prohibited thereby or any Program Document and in effect from time to time in accordance with the terms thereof. A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it. A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form. A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing. The words "hereof", "herein", "hereunder" and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. The term "including" is not limiting and means "including without limitation". In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including", the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including".

Except where otherwise provided in this Agreement, any determination, consent, approval, statement or certificate made or confirmed in writing with notice to the related Seller by Buyer or an authorized officer of Buyer provided for in this Agreement is conclusive and binds the parties in the absence of manifest error. A reference to an agreement includes a security interest, guarantee, agreement or legally enforceable arrangement whether or not in writing related to such agreement.

A reference to a document includes an agreement (as so defined) in writing or a certificate, notice, instrument or document, or any information recorded in computer disk form. Where a Seller is required to provide any document to Buyer under the terms of this Agreement, the relevant document shall be provided in writing or printed form unless Buyer requests otherwise. At the request of Buyer, the document shall be provided in computer disk form or both printed and computer disk form.

This Agreement is the result of negotiations among, and has been reviewed by counsel to, Buyer and Sellers, and is the product of all parties. In the interpretation of this Agreement, no rule of construction shall apply to disadvantage one party on the ground that such party proposed or was involved in the preparation of any particular provision of this Agreement or this Agreement itself. Except where otherwise expressly stated, Buyer may give or withhold, or give conditionally, approvals and consents and may form opinions and make determinations at its absolute discretion. Any requirement of good faith, discretion or judgment by Buyer shall not be construed to require Buyer to request or await receipt of information or documentation not immediately available from or with respect to Sellers, a servicer of the Purchased Loans, any other Person or the Purchased Loans themselves.

3. THE TRANSACTIONS

(a) Subject to the terms and conditions of the Program Documents, Buyer may, from time to time in its sole discretion, enter into Transactions with an aggregate Purchase Price for all Purchased Loans acquired by Buyer not to exceed the Maximum Aggregate Purchase Price. Unless otherwise agreed, a Seller shall request that Buyer enter into a Transaction by delivering (i) a Transaction Notice substantially in the form of Exhibit D hereto (a "Transaction Notice"), appropriately completed, and a Loan Data Transmission to Buyer and Custodian, and (ii) the Mortgage File to Custodian for each Loan proposed to be included in such Transaction. In the case of Dry Loans, the Transaction Notice and the Mortgage File must be received no later than 5:00 p.m. (New York City time) two (2) Business Days prior to the requested Purchase Date, and the Loan Data Transmission must be received no later than 11:00 a.m. (New York City time) on the requested Purchase Date. In the case of Wet Loans, the Transaction Notice and the Loan Data Transmission must be received no later than 5:00 p.m. (New York City time) one (1) Business Day prior to the requested Purchase Date, in the case of AM Funded Wet Loans, and no later than 3:00 p.m. (New York City time) on the requested Purchase Date, in the case of PM Funded Wet Loans. Each such Transaction Notice shall clearly indicate those Loans that are intended to be Wet Loans and Dry Loans and include a Loan List in respect of the Eligible Loans that the related Seller proposes to include in the related Transaction, and shall specify the proposed Purchase Date, Purchase Price, Pricing Rate and Repurchase Date. The related Seller agrees to immediately report to Custodian and the Buyer by electronic transmission within one (1) Business Day of discovery that any Wet Loans that were previously subject to a Transaction do not close for any reason including, but not limited to, a Rescission. In the event that the parties hereto desire to enter into a Transaction, the Buyer shall deliver to the related Seller, in electronic or other format, a "Confirmation" specifying such terms prior to entering into such Transaction, including, without limitation, the Purchase Date, the Purchase Price, the Pricing Rate therefor and the Repurchase Date. Any such Confirmation and the related Transaction Notice, together with this Agreement, shall constitute conclusive evidence of the terms agreed to between Buyer and the related Seller with respect to the Transaction to which the Confirmation relates. By entering in to a Transaction with the Buyer, the related Seller consents to the terms set forth in the related Confirmation. In the event of any conflict between this Agreement and a Confirmation, the terms of the Confirmation shall control with respect to the related Transaction. It is acknowledged and agreed that, notwithstanding any other provision of this Agreement to the contrary, the facility provided under this Agreement is an uncommitted facility and the Buyer shall have no obligation to enter into any Transactions hereunder. Buyer or any Seller may, at any time, terminate this Agreement by providing written notice to all other parties hereto. Within thirty (30) Business Days of receipt of such notice, Sellers agree to repurchase any Loans subject to Transactions hereunder and to pay

all other Obligations then owing to Buyer pursuant to this Agreement and any other Program Documents. Buyer shall have a right of first refusal, with a last look, prior to the sale of any Purchased Loan following receipt of such notice. Notwithstanding the foregoing, no Seller other than NYMC shall be entitled to enter into any Transactions in respect of the NYMC Exclusive Aggregate Purchase Price, and in no event shall the aggregate purchase price of Transactions outstanding with respect to NYMF and NYMT exceed the Combined Aggregate Purchase Price.

(b) Pursuant to the Custodial Agreement, the Custodian shall review any Required Documents delivered prior to 12:00 p.m. (New York City time) on any Business Day on the same day. Not later than 3:00 p.m. (New York City time) on each Business Day, the Custodian shall deliver to the Buyer, via Electronic Transmission acceptable to the Buyer, the Custodian Loan Transmission and an Exception Report showing the status of all Loans then held by the Custodian, including but not limited to the Wet Loans and Dry Loans which are subject to Exceptions, and the time the related Loan Documents have been released pursuant to Sections 5(a) or 5(b) of the Custodial Agreement. In addition, the Custodian shall deliver to the Buyer no later than 4:00 p.m. (New York City time) by facsimile transmission on each Purchase Date, one or more Trust Receipts (as defined in the Custodial Agreement) relating to either Wet Loans or Dry Loans. The original copies of such Trust Receipts shall be delivered to JPMorgan Chase Bank at Four New York Plaza, Ground Floor, Outsourcing Department, New York, New York 10004, Attention: Jennifer John for the account of Greenwich Capital Markets, telephone number (212) 623-5953), as agent for the Buyer by overnight delivery using a nationally recognized insured overnight delivery service.

(c) Upon a Seller's request to enter into a Transaction pursuant to Section 3(a), Buyer shall, in its sole discretion, assuming all conditions precedent set forth in this Section 3 and in Sections 9(a) and (b) have been met, and provided no Default shall have occurred and be continuing, not later than 5:00 p.m. (New York City time) on the requested Purchase Date purchase the Eligible Loans included in the related Transaction Notice by transferring, via wire transfer (pursuant to wire transfer instructions provided by the related Seller on or prior to such Purchase Date), the Purchase Price.

(d) Anything herein to the contrary notwithstanding, if, on or prior to the determination of any LIBO Base Rate:

(i) the Buyer determines, which determination shall be conclusive, that quotations of interest rates for the relevant deposits referred to in the definition of "LIBO Base Rate" in Section 2 are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for Transactions as provided herein; or

(ii) the Buyer determines, which determination shall be conclusive, that the Applicable Margin plus the relevant rate of interest referred to in the definition of "LIBO Base Rate" in Section 2 upon the basis of which the rate of interest for Transactions is to be determined is not likely adequately to cover the cost to the Buyer of purchasing and holding Loans hereunder; or

(iii) it becomes unlawful for Buyer to enter into Transactions with a Pricing Rate based on the LIBO Base Rate;

then the Buyer shall give the related Seller prompt notice thereof and, so long as such condition remains in effect, the Buyer shall be under no obligation to purchase Loans hereunder, and such Seller shall, at its option, either repurchase such Loans or pay a Pricing Rate at a rate per annum as determined by the Buyer taking into account the increased cost to the Buyer of purchasing and holding the Loans.

(e) The related Seller shall repurchase Purchased Loans from Buyer on each related Repurchase Date. Each obligation to repurchase exists without regard to any prior or intervening liquidation or foreclosure with respect to any Purchased Loan. The related Seller is obligated to obtain the Purchased Loans from Buyer or its designee (including the Custodian) at Sellers' expense on (or after) the related Repurchase Date.

(f) Provided that the applicable conditions in Sections 9(a) and (b) have been satisfied, a Seller may request that a Purchased Loan that is repurchased by such Seller on the Repurchase Date become subject to a new Transaction by delivering notice of such request to Buyer with a copy to Custodian not later than 11:00 a.m. New York City time at least two (2) Business Day prior to any such Repurchase Date. Upon Buyer agreeing in its sole discretion to enter into such proposed Transaction, Buyer shall purchase the related Eligible Loans pursuant to the procedures set forth in Section 3(c). For each new Transaction, unless otherwise agreed, (y) the accrued and unpaid Price Differential shall be settled in cash on each related Repurchase Date, and (z) the Pricing Rate shall be as set forth in the Pricing Side Letter.

(g) If a Seller intends to repurchase any Loans on any day which is not a Repurchase Date, such Seller shall give two (2) Business Days' prior written notice thereof to the Buyer. If such notice is given, the Repurchase Price specified in such notice shall be due and payable on the date specified therein, together with the Price Differential to such date on the amount prepaid. Such early repurchases shall be in an aggregate principal amount of at least \$100,000.

(h) If a Seller repurchases Purchased Loans on any day which is not a Repurchase Date for such Purchased Loans, such Seller shall indemnify Buyer and hold Buyer harmless from any losses, costs and/or expenses which Buyer may sustain or incur arising from (a) the re-employment of funds obtained by Buyer to perform hereunder or from (b) fees payable to terminate the deposits from which such funds were obtained (“Breakage Costs”), in each case for the remainder of the applicable thirty (30) day period. Buyer shall deliver to such Seller a statement setting forth the amount and basis of determination of any Breakage Costs in such detail as determined in good faith by Buyer to be adequate, it being agreed that such statement and the method of its calculation shall be adequate and shall be conclusive and binding upon such Seller, absent manifest error. The provisions of this Section 3(h) shall survive termination of this Agreement and the repurchase of all Purchased Loans subject to Transactions hereunder.

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

(i) shall subject the Buyer to any tax of any kind whatsoever with respect to this Agreement or any Loans purchased pursuant to it (excluding net income taxes) or change the basis of taxation of payments to the Buyer in respect thereof;

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

(iii) shall impose on the Buyer any other condition;

and the result of any of the foregoing is to increase the cost to the Buyer, by an amount which the Buyer deems to be material, of effecting or maintaining purchases hereunder, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, such Seller shall promptly pay the Buyer such additional amount or amounts as will compensate the Buyer for such increased cost or reduced amount receivable thereafter incurred.

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

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

4. PAYMENT AND TRANSFER

(a) Payments. Except to the extent otherwise provided herein, all payments to be made by Sellers under this Agreement shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to the Buyer at the following account maintained by the Buyer at JPMorgan Chase Bank Account Number 140095961, For the A/C of Greenwich Capital Financial Products, Inc., ABA# 021000021, Attn: Brett Kibbe, not later than 1:00 p.m., New York City time, on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day). The Sellers acknowledge that they have no rights of withdrawal from the foregoing account.

(b) Computations. The Pricing Differential shall be computed on the basis of a 360-day year for the actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

5. TAXES; TAX TREATMENT

(a) All payments made by any Seller under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities (including penalties, interest and additions to tax) with respect thereto imposed by any Governmental Authority, excluding income taxes, branch profits taxes, franchise taxes or any other tax imposed on the net income by the United States, a state or a foreign jurisdiction under the laws of which the Buyer is organized or of its applicable lending office, or any political subdivision thereof (collectively, "Taxes"), all of which shall be paid by such Seller for its own account not later than the date when due. If any Seller is required by law or regulation to deduct or withhold any Taxes from or in respect of any amount payable hereunder, it shall: (a) make such deduction or withholding; (b) pay the amount so deducted or withheld to the appropriate Governmental Authority not later than the date when due; (c) deliver to Buyer, promptly, original tax receipts and other evidence satisfactory to Buyer of the payment when due of the full amount of such Taxes; and (d) pay to the Buyer such additional amounts as may be necessary so that such Buyer receives, free and clear of all Taxes, a net amount equal to the amount it would have received under this Agreement, as if no such deduction or withholding had been made.

(b) In addition, the Sellers agree to pay to the relevant Governmental Authority in accordance with applicable law any current or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (including, without limitation, mortgage recording taxes, transfer taxes and similar fees) imposed by the United States or any taxing authority thereof or therein that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement ("Other Taxes").

(c) The Sellers agree to indemnify the Buyer for the full amount of Taxes (including additional amounts with respect thereto) and Other Taxes, and the full amount of Taxes of any kind imposed by any jurisdiction on amounts payable under this Section 5, and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, provided that the Buyer shall have provided the Sellers with evidence, reasonably satisfactory to the Sellers, of payment of Taxes or Other Taxes, as the case may be.

(d) Any Buyer that is not incorporated under the laws of the United States, any State thereof, or the District of Columbia (a "Foreign Buyer") shall provide the Sellers with properly completed United States Internal Revenue Service ("IRS") Form W-8BEN or W-8ECI or any successor form prescribed by the IRS, certifying that such Foreign Buyer is entitled to benefits under an income tax treaty to which the United States is a party which reduces the rate of withholding tax on payments of interest or certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States on or prior to the date upon which each such Foreign Buyer becomes a Buyer. Each Foreign Buyer will resubmit the appropriate form on the earliest of (A) the third anniversary of the prior submission or (B) on or before the expiration of thirty (30) days after there is a "change in circumstances" with respect to such Foreign Buyer as defined in Treas. Reg. Section 1.1441(e)(4)(ii)(D). For any period with respect to which a Foreign Buyer has failed to provide the Sellers with the appropriate form or other relevant document pursuant to this Section 5(d) (unless such failure is due to a change in treaty, law, or regulation occurring subsequent to the date on which a form originally was required to be provided), such Foreign Buyer shall not be entitled to any "gross-up" of Taxes or indemnification under Section 5(c) with respect to Taxes imposed by the United States; provided, however, that should a Foreign Buyer, which is otherwise exempt from a withholding tax, become subject to Taxes because of its failure to deliver a form required hereunder, the Sellers shall take such steps as such Foreign Buyer shall reasonably request to assist such Foreign Buyer to recover such Taxes.

(e) Without prejudice to the survival or any other agreement of Sellers hereunder, the agreements and obligations of Sellers contained in this Section 5 shall survive the termination of this Agreement. Nothing contained in this Section 5 shall require Buyer to make available any of its tax returns or other information that it deems to be confidential or proprietary.

(f) Each party to this Agreement acknowledges that it is its intent for purposes of U.S. federal, state and local income and franchise taxes to treat each Transaction as indebtedness of the related Seller that is secured by the Purchased Loans and that the Purchased Loans are owned by the related Seller in the absence of an Event of Default by such Seller. All parties to this Agreement agree to such treatment and agree to take no action inconsistent with this treatment, unless required by law.

6. MARGIN MAINTENANCE

(a) If at any time either (i) the aggregate Market Value of all Purchased Loans subject to all Transactions is less than the aggregate MV Margin Amount for all such Transactions, or (ii) the aggregate unpaid principal balance of the Purchased Loans for all Transactions is less than the aggregate Par Margin Amount for all such Transactions (either such event, a “Margin Deficit”), then the Buyer may, by notice to the related Seller, require such Seller in such Transactions to transfer to the Buyer cash or, at the Buyer’s option (and provided such Seller has additional Eligible Loans), additional Eligible Loans (“Additional Purchased Loans”) within one (1) Business Day of such notice by Buyer, so that both (x) the cash and aggregate Market Value of the Purchased Loans, including any such Additional Purchased Loans, will thereupon equal or exceed such aggregate MV Margin Amount, and (y) the cash and unpaid principal balance of such Purchased Loans, including any such Additional Purchased Loans and Purchased Loans, will therefore equal or exceed such aggregate Par Margin Amount (either requirement, a “Margin Call”); provided that if such Seller transfers cash, Buyer shall deposit such cash into a non-interest bearing account until the next succeeding Repurchase Date.

(b) Notice required pursuant to Section 6(a) may be given by any means provided in Section 21 hereof. Any notice given on a Business Day preceding the Margin Notice Deadline shall be met, and the related Margin Call satisfied, no later than 5:00 p.m. New York City time on the same Business Day. Any notice given on a Business Day following the Margin Notice Deadline shall be met, and the related Margin Call satisfied, no later than 5:00 p.m. New York City time on the following Business Day. The failure of Buyer, on any one or more occasions, to exercise its rights under this Section 6, shall not change or alter the terms and conditions to which this Agreement is subject or limit the right of Buyer to do so at a later date. Sellers and Buyer each agree that a failure or delay by Buyer to exercise its rights hereunder shall not limit or waive Buyer’s rights under this Agreement or otherwise existing by law or in any way create additional rights for any Seller.

7. INCOME PAYMENTS

Where a particular term of a Transaction extends over the date on which Income is paid in respect of any Purchased Loan subject to that Transaction, such Income shall be the property of Buyer. Notwithstanding the foregoing, and provided no Default has occurred and is continuing, Buyer agrees that the related Seller shall be entitled to receive an amount equal to all Income received in respect of the Purchased Loans, whether by Buyer, Custodian or any servicer or any other Person, which is not otherwise received by such Seller, to the full extent it would be so entitled if the Purchased Loans had not been sold to Buyer; provided that any Income received by Such Seller while the related Transaction is outstanding shall be deemed to be held by such Seller solely in trust for Buyer pending the repurchase on the related Repurchase Date; provided further that such Seller shall hold all such Income in the Collection Account. Provided no Default has occurred, Buyer shall, as the parties may agree with respect to any Transaction (or, in the absence of any such agreement, as Buyer shall reasonably determine in its sole discretion), on the Repurchase Date following the date any Income is received by Buyer (or a servicer on its behalf) either (i) transfer (or permit the servicer to transfer) to the related Seller such Income with respect to any Purchased Loans subject to such Transaction, or (ii) if a Margin Deficit then exists, apply the Income payment to reduce the amount, if any, to be transferred to Buyer by such Seller upon termination of such Transaction. Buyer shall not be obligated to take any action pursuant to the preceding sentences (A) to the extent that such action would result in the creation of a Margin Deficit, unless prior thereto or simultaneously therewith the related Seller transfers to Buyer cash or Additional Purchased Loans sufficient to eliminate such Margin Deficit, or (B) if an Event of Default with respect to such Seller has occurred and is then continuing at the time such Income is paid.

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

(a) Sellers and Buyer intend that the Transactions hereunder be sales to Buyer of the Purchased Loans and not loans from Buyer to Sellers secured by the Purchased Loans. However, in order to preserve Buyer's rights under this Agreement in the event that a court or other forum recharacterizes the Transactions hereunder as other than sales, and as security for Sellers' performance of all of the Obligations, each Seller hereby grants Buyer a fully perfected first priority security interest in the following property, whether now existing or hereafter acquired: (i) all Loans identified on a Transaction Notice delivered by such Seller to the Buyer and the Custodian from time to time, (ii) all related Loan Documents, including without limitation all promissory notes, and all Records, and any other collateral pledged or otherwise relating to any such Loans, together with all files, material documents, instruments, surveys (if available), certificates, correspondence, appraisals, computer records, computer storage media, Loan accounting records and other books and records relating thereto, (iii) all mortgage guaranties and insurance (issued by governmental agencies or otherwise) and any mortgage insurance certificate or other document evidencing such mortgage guaranties or insurance relating to any Loans and all claims and payments thereunder, (iv) all other insurance policies and insurance proceeds relating to any Loans or the related Mortgaged Property, (v) all Interest Rate Protection Agreements relating to any or all of the foregoing, (vi) any purchase agreements or other agreements or contracts relating to or constituting any or all of the foregoing, (vii) all purchase commitments or Take-Out Commitments relating to or constituting any or all of the foregoing, (viii) all "accounts", "chattel paper", "commercial tort claims", "deposit accounts", "documents," "equivalent", "general intangibles", "goods", "instruments", "inventory", "investment property", "letter of credit rights", and "securities' accounts" as each of those terms is defined in the Uniform Commercial Code and all cash and Cash Equivalents and all products and proceeds relating to or constituting any or all of the foregoing, (ix) such Seller's interests under any Escrow Letters and Insured Closing Letters with respect to any Purchased Loans, (x) all interests in real property owned by each Seller or collateralizing any such Loans, and (xi) any and all replacements, substitutions, distributions on or proceeds of any or all of the foregoing (collectively the "Purchased Items"). Each Seller acknowledges and agrees that its rights with respect to the Purchased Items (including without limitation, any security interest such Seller may have in the Purchased Loans and any other collateral granted to such Seller pursuant to any other agreement) are and shall continue to be at all times junior and subordinate to the rights of Buyer hereunder.

(b) At any time and from time to time, upon the written request of the Buyer, and at the sole expense of the Sellers, the Sellers will promptly and duly execute and deliver, or will promptly cause to be executed and delivered, such further instruments and documents and take such further action as the Buyer may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the Uniform Commercial Code in effect in any jurisdiction with respect to the Purchased Items and the liens created hereby. The Sellers also hereby authorize the Buyer to file any such financing or continuation statement without the signature of the Sellers to the extent permitted by applicable law. A carbon, photographic or other reproduction of this Agreement shall be sufficient as a financing statement for filing in any jurisdiction. This Agreement shall constitute a security agreement under applicable law.

(c) No Seller shall (i) change the location of its chief executive office/chief place of business from that specified in Section 12 (m) hereof, (ii) change its name, identity or corporate structure (or the equivalent) or change the location where it maintains its records with respect to the Purchased Items, or (iii) reincorporate or reorganize under the laws of another jurisdiction unless it shall have given the Buyer at least 30 days prior written notice thereof and shall have delivered to the Buyer all Uniform Commercial Code financing statements and amendments thereto as the Buyer shall request and taken all other actions deemed reasonably necessary by the Buyer to continue its perfected status in the Purchased Items with the same or better priority.

(d) Sellers hereby irrevocably constitute and appoint Buyer and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of each Seller and in the name of each Seller or in its own name, from time to time in Buyer's discretion, for the purpose of carrying out the terms of this Agreement, including without limitation, protecting, preserving and realizing upon the Purchased Items, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, including without limitation, to protect, preserve and realize upon the Purchased Items, to file such financing statement or statements relating to the Purchased Loans and the Purchased Items without such Seller's signature thereon as Buyer at its option may deem appropriate, and, without limiting the generality of the foregoing, such Seller hereby gives Buyer the power and right, on behalf of such Seller, without assent by, but with notice to, such Seller, if an Event of Default shall have occurred and be continuing, to do the following:

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

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

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

Each Seller hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

Each Seller also authorizes Buyer, if an Event of Default shall have occurred, from time to time, to execute, in connection with any sale provided for in Section 19 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Purchased Loans.

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

(f) If any Seller fails to perform or comply with any of its agreements contained in the Program Documents and the Buyer may itself perform or comply, or otherwise cause performance or compliance, with such agreement, the reasonable out-of-pocket expenses of the Buyer incurred in connection with such performance or compliance, together with interest thereon at a rate per annum equal to the Post-Default Rate, shall be payable by the Sellers to the Buyer on demand and shall constitute Obligations.

(g) The Buyer's duty with respect to the custody, safekeeping and physical preservation of the Purchased Items in its possession, under Section 9-207 of the Uniform Commercial Code or otherwise, shall be to deal with it in the same manner as the Buyer deals with similar property for its own account. Neither the Buyer nor any of its directors, officers or employees shall be liable for failure to demand, collect or realize upon all or any part of the Purchased Items or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Purchased Items upon the request of the related Seller or otherwise.

(h) All authorizations and agencies herein contained with respect to the Purchased Items are irrevocable and powers coupled with an interest.

9. CONDITIONS PRECEDENT

(a) As conditions precedent to the initial Transaction, Buyer shall have received on or before the date on which such initial Transaction is consummated the following, in form and substance satisfactory to Buyer and duly executed by each party thereto (as applicable):

(i) Program Documents . The Program Documents duly executed and delivered by each party thereto and being in full force and effect, free of any modification, breach or waiver.

(ii) Organizational Documents . A good standing certificate and certified copies of the charter and by-laws (or equivalent documents) of each Seller, in each case dated as of a recent date, but in no event more than ten (10) days prior to the date of such initial Transaction and of all corporate or other authority for each Seller with respect to the execution, delivery and performance of the Program Documents and each other document to be delivered by such Seller from time to time in connection herewith (and the Buyer may conclusively rely on such certificate until it receives notice in writing from such Seller to the contrary).

(iii) Incumbency Certificate . An incumbency certificate of the secretary of each Seller certifying the names, true signatures and titles of such Seller's representatives duly authorized to request Transactions hereunder and to execute the Program Documents and the other documents to be delivered thereunder.

(iv) Legal Opinion . A legal opinion of counsel to the Sellers, substantially in the form attached hereto as Exhibit C.

(v) Filings, Registrations, Recordings . (i) Any documents (including, without limitation, financing statements) required to be filed, registered or recorded in order to create, in favor of the Buyer, a perfected, first-priority security interest in the Purchased Items, subject to no Liens other than those created hereunder, shall have been properly prepared and executed for filing (including the applicable county(ies) if the Buyer determines such filings are necessary in its reasonable discretion), registration or recording in each office in each jurisdiction in which such filings, registrations and recordings are required to perfect such first-priority security interest; and (ii) UCC lien searches, dated as of a recent date, in no event more than fourteen (14) days prior to the date of such initial Transaction, in such jurisdictions as shall be applicable to the Sellers and the Purchased Items, the results of which shall be satisfactory to the Buyer.

(vi) Fees and Expenses . The Buyer shall have received all fees and expenses required to be paid by the Sellers on or prior to the initial Purchase Date, which fees and expenses may be netted out of any purchase proceeds paid by the Buyer hereunder.

(vii) Financial Statements . The Buyer shall have received the financial statements referenced in Section 12(b).

(viii) Underwriting Guidelines . The Buyer and the Sellers shall have agreed upon the Sellers' current Underwriting Guidelines for Loans and the Buyer shall have received a copy thereof certified by a Responsible Officer of each Seller.

(ix) Consents, Licenses, Approvals, etc . The Buyer shall have received copies certified by the Sellers of all consents, licenses and approvals, if any, required in connection with the execution, delivery and performance by each Seller of, and the validity and enforceability of, the Loan Documents, which consents, licenses and approvals shall be in full force and effect.

(x) Insurance. The Buyer shall have received evidence in form and substance satisfactory to the Buyer showing compliance by the Sellers as of such initial Purchase Date with Section 13(v) hereof.

(xi) Collection Account. Evidence of the establishment of the Collection Account.

(xii) Other Documents. The Buyer shall have received such other documents as the Buyer or its counsel may reasonably request.

(b) Each Transaction pursuant to this Agreement (including the initial Transaction) is subject to the following further conditions precedent, both immediately prior to any Transaction and also after giving effect thereto and to the intended use thereof:

(i) No Default or Event of Default shall have occurred and be continuing.

(ii) Both immediately prior to entering into such Transaction and also after giving effect thereto and to the intended use of the proceeds thereof, the representations and warranties made by the Sellers in Section 12 and in Schedule 1-A or Schedule 1-B hereof, as applicable, and in each of the other Program Documents, shall be true and complete on and as of the Purchase Date in all material respects (in the case of the representations and warranties in Section 12(w), 12(x) and Schedule 1-A or Schedule 1-B, as applicable, solely with respect to Loans which have not been repurchased by Sellers) with the same force and effect as if made on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date). At the request of the Buyer, the Buyer shall have received an officer's certificate signed by a Responsible Officer of the Seller certifying as to the truth and accuracy of the above, which certificate shall specifically include a statement that such Seller is in compliance with all governmental licenses and authorizations and is qualified to do business and in good standing in all required jurisdictions.

(iii) The then aggregate outstanding Purchase Price for all Purchased Loans, when added to the Purchase Price for the requested Transaction, shall not exceed the Maximum Aggregate Purchase Price.

(iv) Subject to the Buyer's right to perform one or more Due Diligence Reviews pursuant to Section 44 hereof, the Buyer shall have completed its Due Diligence Review of the Loan Documents for each Purchase and such other documents, records, agreements, instruments, Mortgaged Properties or information relating to such Purchases as the Buyer in its reasonable discretion deems appropriate to review and such review shall be satisfactory to the Buyer in its reasonable discretion.

(v) Buyer or its designee shall have received on or before the day of a Transaction with respect to any Purchased Loans (unless otherwise specified in this Agreement) the following, in form and substance satisfactory to Buyer and (if applicable) duly executed:

(A) The Transaction Notice and Loan Data Transmission with respect to such Purchased Loans, delivered pursuant to Section 3(a);

(B) The Trust Receipt with respect to such Purchased Loans, with the Loan Data Transmission attached; and

(C) Such certificates, customary opinions of counsel or other documents as Buyer may reasonably request, provided that such opinions of counsel shall not be required routinely in connection with each Transaction but shall only be required from time to time as deemed necessary by Buyer in its commercially reasonable judgment.

(vi) In the event that the Loans to be purchased would cause the aggregate outstanding principal balance of Purchased Loans secured by Mortgaged Property from any state to exceed 10% of the aggregate outstanding principal balance of Loans pledged hereunder, then the Sellers shall, upon request by the Buyer, deliver an opinion of counsel acceptable to the Buyer in such state, substantially in the form of items number 11 and 12 of Exhibit C; provided that no such opinion shall be required if the Loans in such state are originated on forms that are acceptable to Fannie Mae and Freddie Mac.

(vii) With respect to any Loan that was funded in the name of or acquired by a Qualified Originator which is an Affiliate of the Sellers, the Buyer may, in its sole discretion, require the Sellers to provide evidence sufficient to satisfy the Buyer that such Loan was acquired in a legal sale, including without limitation, an opinion, in form and substance and from an attorney, in both cases, acceptable to the Buyer in its sole discretion, that such Loan was acquired in a legal sale.

(viii) None of the following shall have occurred and/or be continuing:

(i) an event or events resulting in the inability of the Buyer to finance its purchases of assets with traditional counterparties at rates which would have been reasonable prior to the occurrence of such event or events or a material adverse change in the financial condition of the Buyer which affects (or can reasonably be expected to affect) materially and adversely the ability of the Buyer to fund its obligations under or otherwise comply with the terms of this Agreement; or

(ii) any other event beyond the control of the Buyer which the Buyer reasonably determines may result in the Buyer's inability to perform its obligations under this Agreement including, without limitation, acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, nationalization, expropriation, currency restrictions, fire, communication line failures, computer viruses, power failures, earthquakes, or other disasters of a similar nature to the foregoing.

(ix) If any Loans to be purchased hereunder were acquired by a Seller, such Loans shall conform to such Seller's Underwriting Guidelines or the Buyer shall have received Underwriting Guidelines for such Loans acceptable to the Buyer in its discretion.

(x) The Buyer shall have received all information requested from the Sellers relating to Interest Rate Protection Agreements pursuant to Section 13(y), and the Buyer shall have determined that such Interest Rate Protection Agreements adequately protect the Sellers from interest rate fluctuations.

(xi) If the Subservicer is other than Cenlar FSB, the Buyer shall have received, (1) in the case of Dry Loans, no later than 10:00 a.m. three (3) Business Days prior to the requested Purchase Date, (2) in the case of AM Funded Wet Loans, no later than 5:00 p.m. one (1) Business Day prior to the requested Purchase Date, or (3) in the case of PM Funded Wet Loans, no later than 3 p.m. on the requested Purchase Date, an Instruction Letter, executed by the Sellers, with the related Servicing Agreement attached thereto, which such Servicing Agreement shall be in form and substance acceptable to Buyer.

(xii) In no event shall Buyer be required to enter into (A) more than one (1) Transaction with respect to Dry Loans, or two (2) Transactions with respect to Wet Loans in any one (1) Business Day, nor (B) any Transaction for which the Purchase Price would be less than \$1,000,000, or such lesser amount otherwise approved by Buyer on a case-by-case basis.

(xiii) Buyer shall have determined that all actions necessary or, in the opinion of Buyer, desirable to maintain the Buyer's perfected interest in the Purchased Loans and other Purchased Items have been taken, including, without limitation, duly executed and filed Uniform Commercial Code financing statements on Form UCC-1.

(xiv) Sellers shall have paid to Buyer all fees and expenses owed to Buyer in accordance with this Agreement and any other Program Document.

(xv) Buyer or its designee shall have received any other documents reasonably requested by Buyer.

(xvi) There is no Margin Deficit at the time immediately prior to entering into a new Transaction.

(xvii) Each secured party (including any party that has a precautionary security interest in a Loan) has released all of its right, title and interest in, to and under such Loan (including, without limitation, any security interest that such secured party or secured party's agent may have by virtue of its possession, custody or control thereof) and has filed Uniform Commercial Code termination statements in respect of any Uniform Commercial Code filings made in respect of such Loan, and each such release and Uniform Commercial Code termination statement has been delivered to the Buyer prior to each Transaction and to the Custodian as part of the Mortgage File.

10. RELEASE OF PURCHASED LOANS

Upon timely payment in full of the Repurchase Price and all other Obligations (if any) then owing with respect to a Purchased Loan, unless a Default or Event of Default shall have occurred and be continuing, then (a) Buyer shall be deemed to have terminated any security interest that Buyer may have in such Purchased Loan and any Purchased Items solely related to such Purchased Loan and (b) with respect to such Purchased Loan, Buyer shall direct Custodian to release such Purchased Loan and any Purchased Items solely related to such Purchased Loan to the applicable Seller unless such release and termination would give rise to or perpetuate a Margin Deficit. Except as set forth in Section 16, a Seller shall give at least two (2) Business Days prior written notice to Buyer if such repurchase shall occur on any date other than the Repurchase Date in Section 3(h).

If such release and termination gives rise to or perpetuates a Margin Deficit, Buyer shall notify Sellers of the amount thereof and Sellers shall thereupon satisfy the Margin Call in the manner specified in Section 6.

11. RELIANCE

With respect to any Transaction, Buyer may conclusively rely upon, and shall incur no liability to Sellers in acting upon, any request or other communication that Buyer reasonably believes to have been given or made by a person authorized to enter into a Transaction on Sellers' behalf.

12. REPRESENTATIONS AND WARRANTIES

Each Seller represents and warrants to the Buyer that throughout the term of this Agreement:

(a) Existence. Each Seller, (a) is a corporation or limited liability company, as applicable, duly organized, validly existing and in good standing under the laws of the state of its organization (b) has all requisite corporate or other power, and has all governmental licenses, authorizations, consents and approvals, necessary to own its assets and carry on its business as now being or as proposed to be conducted, except where the lack of such licenses, authorizations, consents and approvals would not be reasonably likely to have a Material Adverse Effect, (c) is qualified to do business and is in good standing in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary, except where failure so to qualify would not be reasonably likely (either individually or in the aggregate) to have a Material Adverse Effect, and (d) is in compliance in all material respects with all Requirements of Law.

(b) Financial Condition. The Seller has heretofore furnished to the Buyer a copy of its audited consolidated balance sheets and the audited consolidated balance sheets of its consolidated Subsidiaries, each as at December 31, 2004 with the opinion thereon of Deloitte & Touche LLP, a copy of which has been provided to Buyer. The Seller has also heretofore furnished to the Buyer the related consolidated statements of income and retained earnings and of cash flows for the Seller and its consolidated Subsidiaries for the one year period ending December 31, 2004, setting forth comparative form the figures for the previous year. All such financial statements are complete and correct in all material respects and fairly present the consolidated financial condition of the Seller and its Subsidiaries and the consolidated results of their operations for the fiscal year ended on said date, all in accordance with GAAP applied on a consistent basis. Since December 31, 2004 there has been no development or event nor any prospective development or event which has had or should reasonably be expected to have a Material Adverse Effect.

(c) Litigation. Except as set forth on Schedule 5 attached hereto, there are no actions, suits, arbitrations, investigations or proceedings pending or, to its knowledge, threatened against the Seller or any of its Subsidiaries or Affiliates or affecting any of the property thereof before any Governmental Authority, (i) as to which individually or in the aggregate there is a reasonable likelihood of an adverse decision which would be reasonably likely to have a Material Adverse Effect or (ii) which questions the validity or enforceability of any of the Program Documents or any action to be taken in connection with the transactions contemplated thereby and there is a reasonable likelihood of a Material Adverse Effect or adverse decision.

(d) No Breach. Neither (a) the execution and delivery of the Program Documents, or (b) the consummation of the transactions therein contemplated in compliance with the terms and provisions thereof will conflict with or result in a breach of the charter or by-laws of the Seller, or any applicable law, rule or regulation, or any order, writ, injunction or decree of any Governmental Authority, or other material agreement or instrument to which the Seller, or any of its Subsidiaries, is a party or by which any of them or any of their property is bound or to which any of them or their property is subject, or constitute a default under any such material agreement or instrument, or (except for the Liens created pursuant to this Agreement) result in the creation or imposition of any Lien upon any property of the Seller or any of its Subsidiaries, pursuant to the terms of any such agreement or instrument.

(e) Action. The Seller has all necessary corporate or other power, authority and legal right to execute, deliver and perform its obligations under each of the Program Documents to which it is a party; the execution, delivery and performance by the Seller of each of the Program Documents to which it is a party has been duly authorized by all necessary corporate or other action on its part; and each Program Document has been duly and validly executed and delivered by the Seller and constitutes a legal, valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms.

(f) Approvals. No authorizations, approvals or consents of, and no filings or registrations with, any Governmental Authority, or any other Person, are necessary for the execution, delivery or performance by the Seller of the Program Documents to which it is a party or for the legality, validity or enforceability thereof, except for filings and recordings in respect of the Liens created pursuant to this Agreement.

(g) Margin Regulations. Neither the Sale of any Loan pursuant to a Transaction hereunder, nor the use of the proceeds thereof, will violate or be inconsistent with the provisions of Regulation T, U or X.

(h) Taxes. The Seller and its Subsidiaries have filed all Federal income tax returns and all other material tax returns that are required to be filed by them and have paid all taxes due pursuant to such returns or pursuant to any assessment received by any of them, except for any such taxes, if any, that are being appropriately contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been provided. The charges, accruals and reserves on the books of the Seller and its Subsidiaries in respect of taxes and other governmental charges are, in the opinion of the Seller, adequate. Any taxes, fees and other governmental charges payable by Seller in connection with a Transaction and the execution and delivery of the Program Documents have been paid.

(i) Investment Company Act. Neither the Seller nor any of its Subsidiaries is an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended. The Seller is not subject to any Federal or state statute or regulation which limits its ability to incur indebtedness.

(j) No Legal Bar. The execution, delivery and performance of this Agreement, the other Program Documents, the sales hereunder and the use of the proceeds thereof will not violate any Requirement of Law or Contractual Obligation of the Seller or of any of its Subsidiaries and will not result in, or require, the creation or imposition of any Lien (other than the Liens created hereunder) on any of its or their respective properties or revenues pursuant to any such Requirement of Law or Contractual Obligation.

(k) Compliance with Law. No practice, procedure or policy employed or proposed to be employed by Seller in the conduct of its business violates any law, regulation, judgment, agreement, regulatory consent, order or decree applicable to it which, if enforced, would result in either a Material Adverse Effect with respect to Seller.

(l) No Default. Neither the Seller nor any of its Subsidiaries is in default under or with respect to any of its Contractual Obligations in any respect which should reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

(m) Chief Executive Office; Chief Operating Office. The Seller's chief executive office and chief operating office on the Effective Date is located at 1301 Avenue of the Americas, 7th Floor, New York, New York 10019.

(n) Location of Books and Records. The location where the Seller keeps its books and records including all computer tapes and records relating to the Purchased Items is its chief executive office or chief operating office or the offices of the Custodian.

(o) True and Complete Disclosure. The information, reports, financial statements, exhibits and schedules furnished in writing by or on behalf of the Seller or any of its Subsidiaries to the Buyer in connection with the negotiation, preparation or delivery of this Agreement and the other Program Documents or included herein or therein or delivered pursuant hereto or thereto, when taken as a whole, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading. All written information furnished after the date hereof by or on behalf of the Seller or any of its Subsidiaries to the Buyer in connection with this Agreement and the other Program Documents and the transactions contemplated hereby and thereby will be true, complete and accurate in every material respect, or (in the case of projections) based on reasonable estimates, on the date as of which such information is stated or certified. There is no fact known to a Responsible Officer that, after due inquiry, could reasonably be expected to have a Material Adverse Effect that has not been disclosed herein, in the other Program Documents or in a report, financial statement, exhibit, schedule, disclosure letter or other writing furnished to the Buyer for use in connection with the transactions contemplated hereby or thereby.

(p) Tangible Net Worth; Liquidity. NYMT's Tangible Net Worth (increased for purposes of determining such amount by the outstanding principal amount of the Trust Preferred Obligations) is not less than \$100,000,000, or such higher amount provided under any other repurchase, financing, credit or other similar facility entered into by the Sellers. NYMT has at all times Cash Equivalents in an amount not less than \$5,000,000. The ratio of NYMT's Total Indebtedness to Tangible Net Worth is not greater than 20:1. The Sellers shall at all times have cash, Cash Equivalents and unused borrowing capacity on unencumbered assets that could be drawn against (taking into account required haircuts) under committed warehouse and repurchase facilities in an amount equal to not less than \$10,000,000. NYMT shall have after-tax Net Income of at least \$1.00 for each fiscal quarter.

(q) ERISA. Each Plan to which the Seller or its Subsidiaries make direct contributions, and, to the knowledge of the Seller, each other Plan and each Multiemployer Plan, is in compliance in all material respects with, and has been administered in all material respects in compliance with, the applicable provisions of ERISA, the Code and any other Federal or State law. No event or condition has occurred and is continuing as to which the Seller would be under an obligation to furnish a report to the Buyer under Section 13(a)(v) hereof.

(r) Licenses. The Buyer will not be required as a result of purchasing the Loans to be licensed, registered or approved or to obtain permits or otherwise qualify (i) to do business in any state in which it currently so required or (ii) under any state or other jurisdiction's consumer lending, fair debt collection or other applicable state or other jurisdiction's statute or regulation.

(s) Relevant States. Schedule 3 sets forth all of the states or other jurisdictions (the "Relevant States") in which the Seller originates Loans in its own name or through brokers on the date of this Agreement.

(t) True Sales. Any and all interest of a Qualified Originator in, to and under any Mortgage funded in the name of or acquired by such Qualified Originator or seller which is an Affiliate of the Seller has been sold, transferred, conveyed and assigned to the Seller pursuant to a legal sale and such Qualified Originator retains no interest in such Loan, and if so requested by the Buyer, such sale is covered by an opinion of counsel to that effect in form and substance acceptable to the Buyer.

(u) No Burdensome Restrictions. No Requirement of Law or Contractual Obligation of the Seller or any of its Subsidiaries has a Material Adverse Effect.

(v) Subsidiaries. All of the Subsidiaries of the Seller at the date hereof are listed on Schedule 4 to this Agreement.

(w) Origination and Acquisition of Loans. The Loans were originated or acquired by the Seller, and the origination and collection practices used by the Seller or Qualified Originator, as applicable, with respect to the Loans have been, in all material respects legal, proper, prudent and customary in the residential mortgage loan origination and servicing business, and in accordance with the Underwriting Guidelines. With respect to Loans acquired by the Seller, all such Loans are in conformity with the Underwriting Guidelines. Each of the Loans complies with the representations and warranties listed in Schedule 1-A or Schedule 1-B hereto, as applicable.

(x) No Adverse Selection. The Seller used no selection procedures that identified the Loans as being less desirable or valuable than other comparable Loans owned by the Seller.

(y) Seller Solvent; Fraudulent Conveyance. As of the date hereof and immediately after giving effect to each Transaction, the fair value of the assets of the Seller is greater than the fair value of the liabilities (including, without limitation, contingent liabilities if and to the extent required to be recorded as a liability on the financial statements of the Seller in accordance with GAAP) of the Seller and the Seller is and will be solvent, is and will be able to pay its debts as they mature and does not and will not have an unreasonably small capital to engage in the business in which it is engaged and proposes to engage. Seller does not intend to incur, or believe that it has incurred, debts beyond its ability to pay such debts as they mature. Seller is not contemplating the commencement of insolvency, bankruptcy, liquidation or consolidation proceedings or the appointment of a receiver, liquidator, conservator, trustee or similar official in respect of Seller or any of its assets. Seller is not transferring any Loans with any intent to hinder, delay or defraud any of its creditors.

(z) No Broker. Seller has not dealt with any broker, investment banker, agent, or other person, except for Buyer, who may be entitled to any commission or compensation in connection with the sale of Purchased Loans pursuant to this Agreement; provided, that if Seller has dealt with any broker, investment banker, agent, or other person, except for Buyer, who may be entitled to any commission or compensation in connection with the sale of Purchased Loans pursuant to this Agreement, such commission or compensation shall have been paid in full by Seller.

(aa) MERS. The Seller is a member of MERS in good standing.

(bb) Insured Closing Letter. As of the date hereof and as of the date of each delivery of a Wet Loan, the Settlement Agent has obtained an Insured Closing Letter, closing protection letter or similar authorization letter from a nationally recognized title insurance company approved by the Buyer, copies of which shall be delivered by the Seller to the Custodian prior to the Purchase Date.

(cc) Escrow Agreement. As of the date hereof and as of the date of each delivery of a Wet Loan, the Settlement Agent has executed an escrow agreement or letter stating that in the event of a Rescission of or if for any reason the Loan fails to fund on a given day, the party conducting the closing is holding all funds which would have been disbursed on behalf of the Mortgagor as agent for the benefit of the Buyer and such funds shall be redeposited in the Disbursement Account for benefit of the Buyer not later than one Business Day after the date of Rescission or other failure of the Loan to fund on a given day.

13. COVENANTS OF SELLER

Each Seller covenants and agrees with Buyer that during the term of this Agreement:

(a) Financial Statements and Other Information: Financial Covenants .

Seller shall deliver to the Buyer:

(i) As soon as available and in any event within forty-five (45) days after the end of each of the first three quarterly fiscal periods of each fiscal year of NYMT, a certification in the form of Exhibit A, duly executed by NYMT, together with the consolidated balance sheets of NYMT as at the end of such period, setting forth in comparative form the figures for the previous year, accompanied by a certificate of a Responsible Officer of NYMT, which certificate shall state that said consolidated financial statements fairly present the consolidated financial condition and results of operations of NYMT in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to normal year-end audit adjustments);

(ii) From time to time such other information regarding the financial condition, operations, or business of the Seller as the Buyer may reasonably request; and

(iii) As soon as reasonably possible, and in any event within thirty (30) days after a Responsible Officer knows, or with respect to any Plan or Multiemployer Plan to which the Seller, or any Subsidiaries of the Seller makes direct contributions, has reason to believe, that any of the events or conditions specified below with respect to any Plan or Multiemployer Plan has occurred or exists, a statement signed by a senior financial officer of the Seller setting forth details respecting such event or condition and the action, if any, that the Seller or its ERISA Affiliate proposes to take with respect thereto (and a copy of any report or notice required to be filed with or given to PBGC by the Seller or an ERISA Affiliate with respect to such event or condition):

- a. any reportable event, as defined in Section 4043(b) of ERISA and the regulations issued thereunder, with respect to a Plan, as to which PBGC has not by regulation or otherwise waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event (provided that a failure to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA, including, without limitation, the failure to make on or before its due date a required installment under Section 412(m) of the Code or Section 302 (e) of ERISA, shall be a reportable event regardless of the issuance of any waivers in accordance with Section 412 (d) of the Code); and any request for a waiver under Section 412(d) of the Code for any Plan;

- b. the distribution under Section 4041(c) of ERISA of a notice of intent to terminate any Plan or any action taken by the Seller or an ERISA Affiliate to terminate any Plan;
- c. the institution by PBGC of proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Seller or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by PBGC with respect to such Multiemployer Plan;
- d. the complete or partial withdrawal from a Multiemployer Plan by the Seller or any ERISA Affiliate that results in liability under Section 4201 or 4204 of ERISA (including the obligation to satisfy secondary liability as a result of a purchaser default) or the receipt by the Seller or any ERISA Affiliate of notice from a Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A of ERISA;
- e. the institution of a proceeding by a fiduciary of any Multiemployer Plan against the Seller or any ERISA Affiliate to enforce Section 515 of ERISA, which proceeding is not dismissed within 30 days; and
- f. the adoption of an amendment to any Plan that, pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA, would result in the loss of tax-exempt status of the trust of which such Plan is a part if the Seller or an ERISA Affiliate fails to timely provide security to such Plan in accordance with the provisions of said Sections.

The Seller will furnish to the Buyer, at the time it furnishes each set of financial statements pursuant to paragraphs (a) and (b) above, a certificate of a Responsible Officer of the Seller to the effect that, to the best of such Responsible Officer's knowledge, the Seller during such fiscal period or year has observed or performed all of its covenants and other agreements, and satisfied every material condition, contained in this Agreement and the other Program Documents to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate (and, if any Default or Event of Default has occurred and is continuing, describing the same in reasonable detail and describing the action the Seller has taken or proposes to take with respect thereto).

(b) Litigation . The Seller will promptly, and in any event within seven (7) calendar days after service process on any of the following, give to the Buyer notice of all legal or arbitrable proceedings affecting the Seller or any of its Subsidiaries that questions or challenges the validity or enforceability of any of the Program Documents or as to which there is a reasonable likelihood of an adverse determination would result in a Material Adverse Effect.

(c) Existence, Etc. . Each of the Seller and its Subsidiaries will:

- (i) preserve and maintain its legal existence and all of its material rights, privileges, licenses and franchises;
- (ii) comply with the requirements of all applicable laws, rules, regulations and orders of Governmental Authorities (including, without limitation, truth in lending, real estate settlement procedures and all environmental laws) if failure to comply with such requirements would be reasonably likely (either individually or in the aggregate) to have a Material Adverse Effect;

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

(iv) not move its chief executive office or chief operating office from the addresses referred to in Section 12(m) unless it shall have provided the Buyer 30 days prior written notice of such change;

(v) pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its Property prior to the date on which penalties attach thereto, except for any such tax, assessment, charge or levy the payment of which is being contested in good faith and by proper proceedings and against which adequate reserves are being maintained; and

(vi) permit representatives of the Buyer, during normal business hours upon three (3) Business Days' prior written notice at a mutually desirable time or at any time during the continuance of an Event of Default, to examine, copy and make extracts from its books and records, to inspect any of its Properties, and to discuss its business and affairs with its officers, all to the extent reasonably requested by the Buyer.

(d) Prohibition of Fundamental Changes. Seller shall not at any time, directly or indirectly, (i) enter into any transaction of merger or consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation, winding up or dissolution) or sell all or substantially all of its assets, provided, that Borrower may merge or consolidate with (a) any wholly owned subsidiary of the Borrower, or (b) any other Person if the Borrower is the surviving corporation; and provided further, that if after giving effect thereto, no default would exist hereunder without Buyer's prior consent; or (ii) form or enter into any partnership, joint venture, syndicate or other combination which would have a Material Adverse Effect with respect to Seller; provided, that the Seller may merge or consolidate with (a) any wholly owned subsidiary of the Seller, or (b) any other person if the Seller is the surviving corporation; and provided further, that if after giving effect to such merger or consolidation, no default would exist hereunder;

(e) Margin Deficit. If at any time there exists a Margin Deficit, the Seller shall cure the same in accordance with Section 6 hereof.

(f) Notices. Seller shall give notice to Buyer promptly in writing of any of the following:

(i) Upon the Seller becoming aware of, and in any event within one (1) Business Day after the occurrence of any Default, Event of Default or any event of default or default under any Program Document or other material agreement of the Seller;

(ii) upon, and in any event within three (3) Business Days after, service of process on the Seller or any of its Subsidiaries, or any agent thereof for service of process, in respect of any legal or arbitrable proceedings affecting the Seller or any of its Subsidiaries (i) that questions or challenges the validity or enforceability of any of the Program Documents or (ii) in which the amount in controversy exceeds \$1,000,000;

- (iii) upon the Seller becoming aware of any default related to any Purchased Items, any Material Adverse Effect and any event or change in circumstances which should reasonably be expected to have a Material Adverse Effect;
- (iv) upon the Seller becoming aware during the normal course of its business that the Mortgaged Property in respect of any Loan or Loans with an aggregate unpaid principal balance of at least \$1,000,000 has been damaged by waste, fire, earthquake or earth movement, windstorm, flood, tornado or other casualty, or otherwise damaged so as to materially and adversely affect the value of such Loan;
- (v) upon the entry of a judgment or decree against the Seller or any of its Subsidiaries in an amount in excess of \$1,000,000;
- (vi) any material change in the insurance coverage required of Seller or any other Person pursuant to any Program Document, with copy of evidence of same attached;
- (vii) any material dispute, licensing issue, litigation, investigation, proceeding or suspension between Seller or its Subsidiaries, on the one hand, and any Governmental Authority or any other Person; and
- (viii) any material change in accounting policies or financial reporting practices of Seller or its Subsidiaries.

Each notice pursuant to this Section 13(f) (other than (vi) above) shall be accompanied by a statement of a Responsible Officer of the Seller, setting forth details of the occurrence referred to therein and stating what action the Seller has taken or proposes to take with respect thereto.

(g) Servicing. Except as provided in Section 43, the Seller shall not permit any Person other than the Seller to service Loans without the prior written consent of the Buyer, which consent shall not be unreasonably withheld.

(h) Underwriting Guidelines. Seller shall not permit any material modifications to be made to the Underwriting Guidelines that will impact either the Buyer or the Purchased Loans without the prior consent of Buyer (such consent not to be unreasonably withheld). Seller agrees to deliver to Buyer copies of the Underwriting Guidelines in the event that any changes are made to the Underwriting Guidelines following the Closing Date; provided that Seller may deliver such copies by Electronic Transmission.

(i) Lines of Business. Seller shall not engage to any substantial extent in any line or lines of business activity other than the businesses generally carried on by it as of the Effective Date.

(j) Transactions with Affiliates. The Seller will not (i) enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of property or the rendering of any service, with any Affiliate unless such transaction is (a) otherwise permitted under this Agreement, (b) in the ordinary course of the Seller's business and (c) upon fair and reasonable terms no less favorable to the Seller than it would obtain in a comparable arm's length transaction with a Person which is not an Affiliate, or (ii) make a payment that is not otherwise permitted by this Section 13(j) to any Affiliate.

(k) Defense of Title. Seller warrants and will defend the right, title and interest of Buyer in and to all Purchased Items against all adverse claims and demands of all Persons whomsoever.

(l) Preservation of Purchased Items . Seller shall do all things necessary to preserve the Purchased Items so that such Purchased Items remain subject to a first priority perfected security interest hereunder. Without limiting the foregoing, Seller will comply with all applicable laws, rules and regulations of any Governmental Authority applicable to Seller or relating to the Purchased Items and cause the Purchased Items to comply with all applicable laws, rules, regulations of any such Governmental Authority. Seller will not allow any default to occur for which Seller is responsible under any Purchased Items or any Program Documents and Seller shall fully perform or cause to be performed when due all of its obligations under any Purchased Items or the Program Documents.

(m) No Assignment . Except as permitted herein, Seller shall not sell, assign, transfer or otherwise dispose of, or grant any option with respect to, or pledge, hypothecate or grant a security interest in or lien on or otherwise encumber (except pursuant to the Program Documents), any of the Purchased Loans or any interest therein, provided that this Section 13(m) shall not prevent any contribution, assignment, transfer or conveyance of Purchased Loans in accordance with the Program Documents.

(n) Limitation on Sale of Assets . Seller shall not convey, sell, lease, assign, transfer or otherwise dispose of (collectively, “Transfer”), all or substantially all of its Property, business or assets (including, without limitation, receivables and leasehold interests) whether now owned or hereafter acquired or allow any Subsidiary to Transfer substantially all of its assets to any Person; provided, that the Seller may after prior written notice to the Buyer allow such action with respect to any Subsidiary which is not a material part of the Seller’s overall business operations.

(o) Limitation on Distributions . Without the Buyer’s consent, the Seller shall not make any payment on account of, or set apart assets for a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of, any stock or senior or subordinate debt of the Seller, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of the Seller; provided that, prior to the occurrence of a Default or Event of Default, NYMT shall be permitted to (i) make distributions that are required to be made pursuant to the Code in order to maintain its status as a REIT, and (ii) make distributions in connection with Trust Preferred Obligations.

(p) Maintenance of Liquidity . The Seller shall insure that, at all times, NYMT has Cash Equivalents in an amount of not less than \$5,000,000. The Seller shall insure that it has Cash Equivalents and unused borrowing capacity on unencumbered assets that could be drawn against (taking into account required haircuts) under committed warehouse and repurchase facilities in an amount equal to not less than \$10,000,000.

(q) Maintenance of Tangible Net Worth . The Seller shall not permit NYMT’s Tangible Net Worth (increased for purposes of determining such amount by the outstanding principal amount of the Trust Preferred Obligations) at any time to be less than \$100,000,000, or such higher amount provided under any other repurchase, financing, credit or other similar facility entered into by Seller.

(r) Maintenance of Ratio of Total Indebtedness to Tangible Net Worth . The Seller shall not permit the ratio of NYMT’s Total Indebtedness to Tangible Net Worth at any time to be greater than 20:1; and NYMT shall have after-tax Net Income of at least \$1.00 for each fiscal quarter.

(s) Restricted Payments . The Seller shall not make any Restricted Payments following an Event of Default.

(t) Servicing Transmission. The Seller shall provide to the Buyer on a monthly basis no later than 11:00 a.m. New York City time two (2) Business Days prior to each Repurchase Date (or such other day requested by Buyer) (i) the Servicing Transmission, on a loan-by-loan basis and in the aggregate, with respect to the Loans serviced hereunder by the Seller which were funded prior to the first day of the current month, summarizing the Seller's delinquency and loss experience with respect to Loans serviced by the Seller (including, in the case of the Loans, the following categories: current, 30-59, 60-89, 90-119, 120-149 and 150+) and (ii) any other information reasonably requested by the Buyer with respect to the Loans.

(u) No Amendment or Compromise. Without Buyer's prior written consent, none of Seller or those acting on Seller's behalf shall amend or modify, or waive any term or condition of, or settle or compromise any claim in respect of, any item of the Purchased Loans, any related rights or any of the Program Documents, provided that Seller may amend or modify a Loan if such amendment or modification does not affect the amount or timing of any payment of principal or interest, extend its scheduled maturity date, modify its interest rate, or constitute a cancellation or discharge of its outstanding principal balance and does not materially and adversely affect the security afforded by the real property, furnishings, fixtures, or equipment securing the Loan.

(v) Maintenance of Property; Insurance. The Seller shall keep all property useful and necessary in its business in good working order and condition. The Seller shall maintain errors and omissions insurance and/or mortgage impairment insurance and blanket bond coverage in such amounts as are in effect on the Effective Date (as disclosed to Buyer in writing) and shall not reduce such coverage without the written consent of the Buyer, and shall also maintain such other insurance with financially sound and reputable insurance companies, and with respect to property and risks of a character usually maintained by entities engaged in the same or similar business similarly situated, against loss, damage and liability of the kinds and in the amounts customarily maintained by such entities.

(w) Further Identification of Purchased Items. The Seller will furnish to the Buyer from time to time statements and schedules further identifying and describing the Purchased Items and such other reports in connection with the Purchased Items as the Buyer may reasonably request, all in reasonable detail.

(x) Loan Determined to be Defective. Upon discovery by Seller or the Buyer of any breach of any representation or warranty listed on Schedule 1-A or Schedule 1-B hereto applicable to any Loan, the party discovering such breach shall promptly give notice of such discovery to the other.

(y) Interest Rate Protection Agreements. Upon the Buyer's request, the Seller shall deliver to the Buyer any and all information relating to Interest Rate Protection Agreements.

(z) Certificate of a Responsible Officer of the Seller. At the time that the Seller delivers financial statements to the Buyer in accordance with Section 13(a) hereof, the Seller shall forward to the Buyer a certificate of a Responsible Officer of the Seller which demonstrates that the Seller is in compliance with the covenants set forth in Sections 13(p), (q), (r) and (aa).

(aa) Alternative Purchase or Collateral. The Seller shall not cause any Eligible Loan which is at any time purchased hereunder to be subsequently purchased or used as collateral pursuant to any other financing, note purchase, loan warehouse, repurchase or similar facility maintained by the Seller with any third party without the express written consent of the Buyer, unless such Loan is no longer an Eligible Loan.

(bb) Maintenance of Papers, Records and Files . Seller shall acquire, and Seller shall build, maintain and have available, a complete file in accordance with lending industry custom and practice for each Purchased Loan. Seller will maintain all such Records not in the possession of Custodian in good and complete condition in accordance with industry practices and preserve them against loss or destruction.

(i) Seller shall collect and maintain or cause to be collected and maintained all Records relating to the Purchased Loans in accordance with industry custom and practice, including those maintained pursuant to the preceding subsection, and all such Records shall be in Custodian's possession unless Buyer otherwise approves. Seller will not cause or authorize any such papers, records or files that are an original or an only copy to leave Custodian's possession, except for individual items removed in connection with servicing a specific Loan, in which event Seller will obtain or cause to be obtained a receipt from the Custodian for any such paper, record or file.

(ii) For so long as Buyer has an interest in or lien on any Purchased Loan, Seller will hold or cause to be held all related Records in trust for Buyer. Seller shall notify, or cause to be notified, every other party holding any such Records of the interests and liens granted hereby.

(iii) Upon reasonable advance notice from Custodian or Buyer, Seller shall (x) make any and all such Records available to Custodian or Buyer to examine any such Records, either by its own officers or employees, or by agents or contractors, or both, and make copies of all or any portion thereof, (y) permit Buyer or its authorized agents to discuss the affairs, finances and accounts of Seller with its respective chief operating officer and chief financial officer and to discuss the affairs, finances and accounts of Seller with its independent certified public accountants.

(cc) Maintenance of Licenses . Seller shall (i) maintain all licenses, permits or other approvals necessary for Seller to conduct its business and to perform its obligations under the Program Documents, (ii) remain in good standing under the laws of each state in which it conducts business or any Mortgage Property is located, and (iii) shall conduct its business strictly in accordance with applicable law.

(dd) Taxes, Etc. The Seller shall pay and discharge or cause to be paid and discharged, when due, all taxes, assessments and governmental charges or levies imposed upon the Seller or upon its income and profits or upon any of its property, real, personal or mixed (including without limitation, the Purchased Loans) or upon any part thereof, as well as any other lawful claims which, if unpaid, might become a Lien upon such properties or any part thereof, except for any such taxes, assessments and governmental charges, levies or claims as are appropriately contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves are provided. The Seller shall file on a timely basis all federal, and material state and local tax and information returns, reports and any other information statements or schedules required to be filed by or in respect of it.

(ee) Use of Custodian . Without the prior written consent of Buyer, Seller shall use no third party custodian as document custodian other than the Custodian with respect to third party purchasers, prospective third party purchasers, lenders and prospective third party lenders with respect to loans of the same type as the Purchased Loans.

(ff) Change of Fiscal Year . Seller will not at any time, directly or indirectly, except upon ninety (90) days' prior written notice to Buyer, change the date on which Seller's fiscal year begins from Seller's current fiscal year beginning date.

(gg) Delivery of Servicing Rights. With respect to the Servicing Rights of each related Loan, Seller shall deliver such Servicing Rights to Buyer on the related Purchase Date. With respect to the Servicing Records and the physical servicing of the Purchased Loans, the Seller shall deliver such items to the designee of Buyer, within (75) days of a Purchase Date, unless otherwise stated in writing by Buyer; provided that on each Repurchase Date that is subject to a new Transaction, such delivery requirement is deemed restated for such new Transaction (and the immediately preceding delivery requirement is deemed to be rescinded) in the absence of directions to the contrary from Buyer, and a new 75-day period is deemed to commence as of such Repurchase Date. Seller's transfer of the Servicing Rights and Servicing Records under this Section shall be in accordance with customary standards in the industry.

(hh) Establishment of Collection Account. Prior to the initial Purchase Date, Seller shall establish the Collection Account for the sole and exclusive benefit of the Buyer. The Seller shall segregate all amounts collected on account of the Purchased Loans, to be held in trust for the benefit of the Buyer, and shall remit such collections in accordance with the Buyer's written instructions. No amounts deposited into such account shall be removed without the Buyer's prior written consent. The Seller shall follow the instructions of Buyer with respect to the Purchased Loans and deliver to Buyer any information with respect to the Purchased Loans reasonably requested by Buyer. Seller shall deposit or credit to the Collection Account all items to be deposited or credited thereto irrespective of any right of setoff or counterclaim arising in favor of it (or any third party claiming through it) under any other agreement or arrangement.

(ii) MERS. Seller will comply in all material respects with the rules and procedures of MERS in connection with the servicing of the MERS Loans for as long as such Purchased Loans are registered with MERS.

14. REPURCHASE DATE PAYMENTS

On each Repurchase Date, Sellers shall remit or shall cause to be remitted to Buyer the Repurchase Price together with any other Obligations then due and payable.

15. REPURCHASE OF PURCHASED LOANS

Upon discovery by a Seller of a breach of any of the representations and warranties set forth on Schedule 1-A or Schedule 1-B to this Agreement, as applicable, Sellers shall give prompt written notice thereof to Buyer. Upon any such discovery by Buyer, Buyer will notify Sellers. It is understood and agreed that the representations and warranties set forth in Schedule 1-A and Schedule 1-B with respect to the Purchased Loans shall survive delivery of the respective Mortgage Files to the Custodian and shall inure to the benefit of Buyer. The fact that Buyer has conducted or has failed to conduct any partial or complete due diligence investigation in connection with its purchase of any Purchased Loan shall not affect Buyer's right to demand repurchase as provided under this Agreement. Sellers shall, within two (2) Business Days of the earlier of a Seller's discovery or a Seller receiving notice with respect to any Purchased Loan of (i) any breach of a representation or warranty contained in Schedule 1-A or Schedule 1-B, as applicable, or (ii) any failure to deliver any of the items required to be delivered as part of the Mortgage File within the time period required for delivery pursuant to the Custodial Agreement, promptly cure such breach or delivery failure in all material respects. If within two (2) Business Days after the earlier of a Seller's discovery of such breach or delivery failure or a Seller receiving notice thereof that such breach or delivery failure has not been remedied by Sellers, Sellers shall promptly upon receipt of written instructions from Buyer, at Buyer's option, either (i) repurchase such Purchased Loan at a purchase price equal to the Repurchase Price with respect to such Purchased Loan by wire transfer to the account designated by Buyer, or (ii) transfer comparable Substitute Loans to Buyer, as provided in Section 16 hereof.

16. SUBSTITUTION

Sellers may, subject to agreement with and acceptance by Buyer upon one (1) Business Day's notice, substitute other assets which are substantially the same as the Purchased Loans (the "Substitute Loans") for any Purchased Loans. Such substitution shall be made by transfer to Buyer of such Substitute Loans and transfer to Sellers of such Purchased Loans (the "Reacquired Loans") along with the other information to be provided with respect to the applicable Substitute Loan as described in the form of Transaction Notice. Upon substitution, the Substitute Loans shall be deemed to be Purchased Loans, the Reacquired Loans shall no longer be deemed Purchased Loans, Buyer shall be deemed to have terminated any security interest that Buyer may have had in the Reacquired Loans and any Purchased Items solely related to such Reacquired Loans to Sellers unless such termination and release would give rise to or perpetuate a Margin Deficit. Concurrently with any termination and release described in this Section 16, Buyer shall execute and deliver to Sellers upon request and Buyer hereby authorizes Sellers to file and record such documents as Sellers may reasonably deem necessary or advisable in order to evidence such termination and release.

17. ACCELERATION OF REPURCHASE DATE

The Buyer may, at any time, terminate this Agreement by providing written notice to the Sellers. Within thirty (30) calendar days of receipt of such notice, the Sellers agree to repurchase all Purchased Loans at the Repurchase Price and to satisfy all of its Obligations hereunder.

18. EVENTS OF DEFAULT

Each of the following events shall constitute an Event of Default (an "Event of Default") hereunder:

(a) Sellers fail to transfer the Purchased Loans to Buyer on the applicable Purchase Date (provided Buyer has tendered the related Purchase Price);

(b) Sellers either fail to repurchase the Purchased Loans on the applicable Repurchase Date or fail to perform its obligations under Section 6;

(c) Sellers shall default in the payment of any other amount payable by it hereunder or under any other Program Document after notification by the Buyer of such default, and such default shall have continued unremedied for three Business Days.

(d) any representation, warranty or certification made or deemed made herein or in any other Program Document by a Seller or any certificate furnished to the Buyer pursuant to the provisions thereof, shall prove to have been false or misleading in any material respect as of the time made or furnished (other than the representations and warranties set forth in Schedule 1-A or Schedule 1-B, which shall be considered solely for the purpose of determining the Market Value of the Loans; unless (i) such Seller shall have made any such representations and warranties with knowledge that they were materially false or misleading at the time made or (ii) any such representations and warranties have been determined by the Buyer in its sole discretion to be materially false or misleading on a regular basis).

(e) the Sellers shall fail to comply with the requirements of Section 13(c)(i), Section 13(d), Section 13(f)(i) or (iii), Sections 13(k) through 13(r) or Section 13(v) hereof; or the Sellers shall default in the performance of its obligations under Section 13(e) hereof, and such default shall continue unremedied for a period of one (1) Business Day; or the Sellers shall otherwise fail to observe or perform any other agreement contained in this Agreement or any other Program Document and such failure to observe or perform shall continue unremedied for a period of five (5) Business Days.

(f) any final, judgment or judgments or order or orders for the payment of money in excess of \$2,000,000 in the aggregate (to the extent that it is, in the reasonable determination of Buyer, uninsured and provided that any insurance or other credit posted in connection with an appeal shall not be deemed insurance for these purposes) shall be rendered against any Seller or any of Seller's Subsidiaries by one or more courts, administrative tribunals or other bodies having jurisdiction over them and the same shall not be discharged (or provisions shall not be made for such discharge), satisfied, or bonded, or a stay of execution thereof shall not be procured, within sixty (60) days from the date of entry thereof and neither Seller nor any of Sellers' Subsidiaries, as applicable, shall not, within said period of sixty (60) days, appeal therefrom and cause the execution thereof to be stayed during such appeal;

(g) any Seller shall admit in writing its inability to, or intention not to, perform any of such Seller's Obligations, or Buyer shall have determined in good faith that a Seller is unable to meet its commitments;

(h) any Seller or any of Sellers' Subsidiaries files a voluntary petition in bankruptcy, seeks relief under any provision of any bankruptcy, reorganization, moratorium, delinquency, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, conservator, trustee, liquidator, sequestrator or similar official for any Seller or any of Sellers' Subsidiaries, or of all or any part of any Seller's or such Sellers' Subsidiaries' Property; or makes an assignment for the benefit of any Seller or Sellers' Subsidiaries' creditors;

(i) A custodian, receiver, conservator, liquidator, trustee, sequestrator or similar official for any Seller, or any of Sellers' Subsidiaries, or of any of Sellers' or any of Sellers' Subsidiaries' respective Property (as a debtor or creditor protection procedure), is appointed or takes possession of such Property; or a Seller or any of Sellers' Subsidiaries generally fails to pay Sellers' or Sellers' Subsidiaries' debts as they become due; or any Seller or any of Sellers' Subsidiaries is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code, or any successor or similar applicable statute, or any administrative insolvency scheme, against any Seller or any of Sellers' Subsidiaries; or any of Sellers' or Sellers' Subsidiaries' Property is sequestered by court or administrative order; or a petition is filed against any Seller or any of Sellers' Subsidiaries under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, moratorium, delinquency or liquidation law of any jurisdiction, whether now or subsequently in effect;

(j) Any Governmental Authority or any person, agency or entity acting or purporting to act under governmental authority shall have taken any action to condemn, seize or appropriate, or to assume custody or control of, all or any substantial part of the Property of any Seller or any of Sellers' Subsidiaries or shall have taken any action to displace the management of any Seller or any of Sellers' Subsidiaries or to curtail its authority in the conduct of the business of any Seller or any of Sellers' Subsidiaries, or takes any action in the nature of enforcement to remove, limit or restrict the approval of any Seller or any of Sellers' Subsidiaries as an issuer, buyer or a seller/servicer of Loans or securities backed thereby, and such action provided for in this subsection (j) shall not have been discontinued or stayed within thirty (30) days;

(k) Any Program Document shall for whatever reason (including an event of default thereunder) be terminated, this Agreement shall for any reason cease to create a valid, first priority security interest or ownership interest upon transfer in any of the Purchased Loans or Purchased Items purported to be covered hereby or any of any Seller's material obligations (including Sellers' Obligations hereunder shall cease to be in full force and effect, or the enforceability thereof shall be contested by the Sellers;

(l) Any Material Adverse Effect shall have occurred, in each case as determined by Buyer in its sole discretion, or the existence of any other condition which, in Buyer's sole discretion, constitutes a material impairment of any Seller's ability to perform its obligations under this Agreement or any other Program Document;

(m) (i) any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any material "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of the Buyer or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Buyer, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA, (v) the Seller or any Commonly Controlled Entity shall, or in the reasonable opinion of the Buyer is likely to, incur any liability in connection with a withdrawal from, or the insolvency or reorganization of, a Multiemployer Plan or (vi) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect;

(n) A Change of Control of any Seller shall have occurred without the prior consent of the Buyer or a material change in the management of any Seller shall have occurred which has not been approved by Buyer;

(o) Any Seller shall grant, or suffer to exist, any Lien on any Purchased Items except the Liens contemplated hereby; or the Liens contemplated hereby shall cease to be first priority perfected Liens on the Purchased Items in favor of the Buyer or shall be Liens in favor of any Person other than Buyer;

(p) Buyer shall reasonably request, specifying the reasons for such request, reasonable information, and/or written responses to such requests, regarding the financial well-being of Seller and such reasonable information and/or responses shall not have been provided within three (3) Business Days of such request;

(q) Any Seller or any Subsidiary or Affiliate of a Seller shall default under, or fail to perform as required under, or shall otherwise breach the terms of any instrument, agreement or contract between a Seller or such other entity, on the one hand, and the Buyer or any of the Buyer's Affiliates on the other; or any Seller or any Subsidiary or Affiliate of any Seller shall default under, or fail to perform as requested under, the terms of any repurchase agreement, loan and security agreement or similar credit facility or agreement for borrowed funds entered into by the Seller or such other entity and any third party, which default or failure entitles any party to require acceleration or prepayment of any indebtedness thereunder;

(r) NYMC's membership in MERS is terminated for any reason;

(s) The Subservicer shall default under the related Servicing Agreement and such default shall have a Material Adverse Effect on the collectability, enforceability or payment performance on any of the Loans and the Sellers shall have failed to transfer servicing of the affected Loans to another servicer within thirty (30) days of the date of such default;

(t) The failure of NYMT to continue to be (i) qualified as a REIT as defined in Section 856 of the Code and (ii) entitled to a dividend paid deduction under Section 857 of the Code with respect to dividends paid by it with respect to each taxable year for which it claims a deduction on its Form 1120 - REIT filed with the United States Internal Revenue Service for such year, or the entering into by NYMT of any material “prohibited transactions” as defined in Sections 857(b) and 856(c) of the Code; or

(u) The failure of NYMT to satisfy any of the following asset or income tests and the Buyer has delivered notice of an Event of Default to the Seller with respect thereto:

(i) At the close of each taxable year, at least 75 percent of gross income consists of (A) “rents from real property” within the meaning of Section 856(c)(3)(A) of the Code, (B) interest on obligations secured by mortgages on real property or on interests in real property, within the meaning of Section 856(c)(3)(B) of the Code, (C) gain from the sale or other disposition of real property (including interests in real property and interests in mortgages on real property) which is not property described in Section 1221(a)(1) of the Code, within the meaning of Section 856(c)(3)(C) of the Code, (D) dividends or other distributions on, and gain (other than gain from “prohibited transactions” within the meaning of Section 857(b)(6)(B)(iii) of the Code) from the sale or other disposition of, transferable shares (or transferable certificates of beneficial interest) in other qualifying REITs within the meaning of Section 856(d)(3)(D) of the Code, and (E) amounts described in Sections 856(c)(3)(E) through 856(c)(3)(I) of the Code;

(ii) At the close of each taxable year, at least 95 percent of NYMT’s gross income consists of (A) the items of income described in paragraph 1 hereof (other than those described in Section 856(c)(3)(I) of the Code), (B) gain realized from the sale or other disposition of stock or securities which are not property described in Section 1221(a)(1) of the Code, (C) interest, (D) dividends, in each case within the meaning of Section 856(c)(2) of the Code;

(iii) At the close of each quarter of NYMT’s taxable year, at least 75 percent of the value of NYMT’s total assets (as determined in accordance with Treasury Regulations Section 1.856-2(d)) has consisted of and will consist of real estate assets within the meaning of Sections 856(c)(4) and 856(c)(5)(B) of the Code, cash and cash items (including receivables which arise in the ordinary course of NYMT’s operations, but not including receivables purchased from another person), and Government Securities; or

(iv) At the close of each quarter of each of NYMT’s taxable years, (A) not more than 25 percent of NYMT’s total asset value will be represented by securities (other than those described in paragraph 3), (B) not more than 20 percent of NYMT’s total asset value will be represented by securities of one or more taxable REIT subsidiaries, and (C) (1) not more than 5 percent of the value of NYMT’s total assets will be represented by securities of any one issuer (other than Government Securities and securities of taxable REIT subsidiaries), and (2) NYMT will not hold securities possessing more than 10 percent of the total voting power or value of the outstanding securities of any one issuer (other than Government Securities, securities of taxable REIT subsidiaries, and securities of a qualified REIT subsidiary within the meaning of Section 856(i) of the Code).

19. REMEDIES

Upon the occurrence of an Event of Default, Buyer, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Event of Default pursuant to Section 18(g), (h), (i) or (j) hereof), shall have the right to exercise any or all of the following rights and remedies:

(a) a) The Repurchase Date for each Transaction hereunder shall, if it has not already occurred, be deemed immediately to occur (provided that, in the event that the Purchase Date for any Transaction has not yet occurred as of the date of such exercise or deemed exercise, such Transaction shall be deemed immediately canceled). Sellers' obligations hereunder to repurchase all Purchased Loans at the Repurchase Price therefor on the Repurchase Date in such Transactions shall thereupon become immediately due and payable; all Income then on deposit in the Collection Account and all Income paid after such exercise or deemed exercise shall be remitted to and retained by Buyer and applied to the aggregate Repurchase Price and any other amounts owing by Sellers hereunder; Sellers shall immediately deliver to Buyer or its designee any and all original papers, Servicing Records and files relating to the Purchased Loans subject to such Transaction then in Sellers' possession and/or control; and all right, title and interest in and entitlement to such Purchased Loans and Servicing Rights thereon shall be deemed transferred to Buyer or its designee.

(ii) Buyer shall have the right to (A) sell, on or following the Business Day following the date on which the Repurchase Price became due and payable pursuant to Section 19(a)(i) without notice or demand of any kind, at a public or private sale and at such price or prices as Buyer may reasonably deem satisfactory any or all Purchased Loans and/or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Loans, to give Sellers credit for such Purchased Loans in an amount equal to the Market Value of the Purchased Loans against the aggregate unpaid Repurchase Price and any other amounts owing by Sellers hereunder. Sellers shall remain liable to Buyer for any amounts that remain owing to Buyer following a sale and/or credit under the preceding sentence. The proceeds of any disposition of Purchased Loans shall be applied first to the reasonable costs and expenses incurred by Buyer in connection with or as a result of an Event of Default; second to Breakage Costs, costs of cover and/or related hedging transactions; third to the aggregate Repurchase Prices; and fourth to all other Obligations.

(iii) Buyer shall have the right to terminate this Agreement and declare all obligations of Sellers to be immediately due and payable, by a notice in accordance with Section 21 hereof.

(iv) The parties recognize that it may not be possible to purchase or sell all of the Purchased Loans on a particular Business Day, or in a transaction with the same purchaser, or in the same manner because the market for such Purchased Loans may not be liquid. In view of the nature of the Purchased Loans, the parties agree that liquidation of a Transaction or the underlying Purchased Loans does not require a public purchase or sale and that a good faith private purchase or sale shall be deemed to have been made in a commercially reasonable manner. Accordingly, Buyer may elect the time and manner of liquidating any Purchased Loan and nothing contained herein shall obligate Buyer to liquidate any Purchased Loan on the occurrence of an Event of Default or to liquidate all Purchased Loans in the same manner or on the same Business Day or constitute a waiver of any right or remedy of Buyer. Notwithstanding the foregoing, the parties to this Agreement agree that the Transactions have been entered into in consideration of and in reliance upon the fact that all Transactions hereunder constitute a single business and contractual obligation and that each Transaction has been entered into in consideration of the other Transactions.

(v) To the extent permitted by applicable law, the Sellers waive all claims, damages and demands they may acquire against the Buyer arising out of the exercise by the Buyer of any of its rights hereunder, other than those claims, damages and demands arising from the gross negligence or willful misconduct of the Buyer. If any notice of a proposed sale or other disposition of Purchased Items shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

(b) Sellers hereby acknowledge, admit and agree that Sellers' obligations under this Agreement are recourse obligations of Sellers to which Sellers pledge their full faith and credit. In addition to its rights hereunder, Buyer shall have the right to proceed against any of Seller's assets which may be in the possession of Buyer, any of Buyer's Affiliates or their respective designees (including the Custodian), including the right to liquidate such assets and to set-off the proceeds against monies owed by Sellers to Buyer pursuant to this Agreement. Buyer may set off cash, the proceeds of the liquidation of the Purchased Loans and Additional Purchased Loans, any other Purchased Items and their proceeds and all other sums or obligations owed by Buyer to Sellers against all of Sellers' obligations to Buyer, whether under this Agreement, under a Transaction, or under any other agreement between the parties, or otherwise, whether or not such obligations are then due, without prejudice to Buyer's right to recover any deficiency.

(c) Buyer shall have the right to obtain physical possession of the Servicing Records and all other files of Sellers relating to the Purchased Loans and all documents relating to the Purchased Loans which are then or may thereafter come into the possession of Sellers or any third party acting for Sellers and Sellers shall deliver to Buyer such assignments as Buyer shall request.

(d) Buyer shall have the right to direct all Persons servicing the Purchased Loans to take such action with respect to the Purchased Loans as Buyer determines appropriate.

(e) Buyer shall, without regard to the adequacy of the security for the Obligations, be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of and protect, collect, manage, liquidate, and sell the Purchased Loans and any other Purchased Items or any portion thereof, collect the payments due with respect to the Purchased Loans and any other Purchased Items or any portion thereof, and do anything that Buyer is authorized hereunder or by law to do. Sellers shall pay all costs and expenses incurred by Buyer in connection with the appointment and activities of such receiver.

(f) Buyer may, at its option, enter into one or more Interest Rate Protection Agreements covering all or a portion of the Purchased Loans, and the Sellers shall be responsible for all damages, judgments, costs and expenses of any kind which may be imposed on, incurred by or asserted against the Buyer relating to or arising out of such Interest Rate Protection Agreements; including without limitation any losses resulting from such Interest Rate Protection Agreements.

(g) In addition to all the rights and remedies specifically provided herein, Buyer shall have all other rights and remedies provided by applicable federal, state, foreign, and local laws, whether existing at law, in equity or by statute, including, without limitation, all rights and remedies available to a purchaser or a secured party, as applicable, under the Uniform Commercial Code.

Except as otherwise expressly provided in this Agreement, Buyer shall have the right to exercise any of its rights and/or remedies without presentment, demand, protest or further notice of any kind other than as expressly set forth herein, all of which are hereby expressly waived by Sellers.

Buyer may enforce its rights and remedies hereunder without prior judicial process or hearing, and Sellers hereby expressly waive, to the extent permitted by law, any right Sellers might otherwise have to require Buyer to enforce its rights by judicial process. Sellers also waive, to the extent permitted by law, any defense Sellers might otherwise have to the Obligations, arising from use of nonjudicial process, enforcement and sale of all or any portion of the Purchased Loans and any other Purchased Items or from any other election of remedies. Sellers recognize that nonjudicial remedies are consistent with the usages of the trade, are responsive to commercial necessity and are the result of a bargain at arm's length.

Sellers shall cause all sums received by it with respect to the Purchased Loans to be deposited with such Person as Buyer may direct after receipt thereof. Sellers shall be liable to Buyer for the amount of all expenses (plus interest thereon at a rate equal to the Post-Default Rate), and Breakage Costs including, without limitation, all costs and expenses incurred within thirty (30) days of the Event of Default in connection with hedging or covering transactions related to the Purchased Loans, conduit advances and payments for mortgage insurance.

20. DELAY NOT WAIVER; REMEDIES ARE CUMULATIVE

No failure on the part of Buyer to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All rights and remedies of Buyer provided for herein are cumulative and in addition to any and all other rights and remedies provided by law, the Program Documents and the other instruments and agreements contemplated hereby and thereby, and are not conditional or contingent on any attempt by Buyer to exercise any of its rights under any other related document. Buyer may exercise at any time after the occurrence of an Event of Default one or more remedies, as they so desire, and may thereafter at any time and from time to time exercise any other remedy or remedies.

21. NOTICES AND OTHER COMMUNICATIONS

Except as otherwise expressly permitted by this Agreement, all notices, requests and other communications provided for herein and under the Custodial Agreement (including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement) shall be given or made in writing (including, without limitation, by telex or telecopy) delivered to the intended recipient at the "Address for Notices" specified below its name on the signature pages hereof); or, as to any party, at such other address as shall be designated by such party in a written notice to each other party. Except as otherwise provided in this Agreement and except for notices given by the Sellers under Section 3 (a) (which shall be effective only on receipt), all such communications shall be deemed to have been duly given when transmitted by telex or telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

22. USE OF EMPLOYEE PLAN ASSETS

No assets of an employee benefit plan subject to any provision of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") shall be used by either party hereto in a Transaction.

23. INDEMNIFICATION AND EXPENSES.

(a) The Sellers agree to, on a joint and several basis, hold the Buyer, and its Affiliates and their officers, directors, employees, agents and advisors (each an "Indemnified Party") harmless from and indemnify any Indemnified Party against all liabilities, losses, damages, judgments, costs and expenses of any kind which may be imposed on, incurred by or asserted against such Indemnified Party (collectively, the "Costs") relating to or arising out of this Agreement, any other Program Document or any transaction contemplated hereby or thereby, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, any other Program Document or any transaction contemplated hereby or thereby, that, in each case, results from anything other than any Indemnified Party's gross negligence or willful misconduct. Without limiting the generality of the foregoing, the Sellers agree to hold any Indemnified Party harmless from and indemnify such Indemnified Party against all Costs with respect to all Loans relating to or arising out of any violation or alleged violation of any environmental law, rule or regulation or any consumer credit laws, including without limitation laws with respect to unfair or deceptive lending practices and predatory lending practices, the Truth in Lending Act and/or the Real Estate Settlement Procedures Act, that, in each case, results from anything other than such Indemnified Party's gross negligence or willful misconduct. In any suit, proceeding or action brought by an Indemnified Party in connection with any Loan for any sum owing thereunder, or to enforce any provisions of any Loan, the Sellers will save, indemnify and hold such Indemnified Party harmless from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim, recoupment or reduction of liability whatsoever of the account debtor or obligor thereunder, arising out of a breach by any Seller of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such account debtor or obligor or its successors from the Sellers. The Sellers also agree to reimburse an Indemnified Party as and when billed by such Indemnified Party for all such Indemnified Party's costs and expenses incurred in connection with the enforcement or the preservation of such Indemnified Party's rights under this Agreement, any other Program Document or any transaction contemplated hereby or thereby, including without limitation the reasonable fees and disbursements of its counsel. The Sellers hereby acknowledge that, the obligations

of the Sellers under this Agreement are joint and several recourse obligations of the Sellers.

(b) The Sellers agree, on a joint and several basis, to pay as and when billed by the Buyer all of the out-of-pocket costs and expenses incurred by the Buyer in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement, any other Program Document or any other documents prepared in connection herewith or therewith, including, without limitation, the fees and expenses of Buyer's counsel which will be independent from and not included in the aggregate limitation specified in subclause (i) of this subsection. The Sellers agree to pay as and when billed by the Buyer all of the out-of-pocket costs and expenses incurred in connection with the consummation and administration of the transactions contemplated hereby and thereby including, without limitation, (i) all the reasonable fees, disbursements and expenses of counsel to the Buyer, but limited to no greater than \$10,000 in the aggregate during the term of this Agreement and (ii) all the due diligence, inspection, testing and review costs and expenses incurred by the Buyer with respect to Purchased Items under this Agreement, including, but not limited to, those costs and expenses incurred by the Buyer pursuant to Sections 23, 39 and 44 hereof. Sellers also agree not to assert any claim against Buyer or any of its Affiliates, or any of their respective officers, directors, employees, attorneys and agents, on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to the Program Documents, the actual or proposed use of the proceeds of the Transactions, this Agreement or any of the transactions contemplated hereby or thereby. **THE FOREGOING INDEMNITY AND AGREEMENT NOT TO ASSERT CLAIMS EXPRESSLY APPLIES, WITHOUT LIMITATION, TO THE NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF THE INDEMNIFIED PARTIES.**

(c) If Sellers fail to pay when due any costs, expenses or other amounts payable under this Agreement, including, without limitation, reasonable fees and expenses of counsel and indemnities, such amount may be paid on behalf of Sellers by Buyer, in its sole discretion and Sellers shall remain liable for any such payments by Buyer. No such payment by Buyer shall be deemed a waiver of any of Buyer's rights under the Program Documents.

(d) Without prejudice to the survival of any other agreement of Sellers hereunder, the covenants and obligations of Sellers contained in this Section 23 shall survive the payment in full of the Repurchase Price and all other amounts payable hereunder and delivery of the Purchased Loans by Buyer against full payment therefor.

24. WAIVER OF REDEMPTION AND DEFICIENCY RIGHTS

Sellers hereby expressly waive, to the fullest extent permitted by law, every statute of limitation on a deficiency judgment, any reduction in the proceeds of any Purchased Items as a result of restrictions upon Buyer or Custodian contained in the Program Documents or any other instrument delivered in connection therewith, and any right that it may have to direct the order in which any of the Purchased Items shall be disposed of in the event of any disposition pursuant hereto.

25. REIMBURSEMENT

All sums reasonably expended by Buyer in connection with the exercise of any right or remedy provided for herein shall be and remain Sellers' obligation (unless and to the extent that any Seller is the prevailing party in any dispute, claim or action relating thereto). Sellers agree to pay, with interest at the Post-Default Rate to the extent that an Event of Default has occurred, the reasonable out-of-pocket expenses and reasonable attorneys' fees incurred by Buyer and/or Custodian in connection with the preparation, negotiation, enforcement (including any waivers), administration and amendment of the Program Documents (regardless of whether a Transaction is entered into hereunder), the taking of any action, including legal action, required or permitted to be taken by Buyer (without duplication to Buyer) and/or Custodian pursuant thereto, any "due diligence" or loan agent reviews conducted by Buyer or on its behalf or by refinancing or restructuring in the nature of a "workout."

26. FURTHER ASSURANCES

Sellers agree to do such further acts and things and to execute and deliver to Buyer such additional assignments, acknowledgments, agreements, powers and instruments as are reasonably required by Buyer to carry into effect the intent and purposes of this Agreement and the other Program Documents, to perfect the interests of Buyer in the Purchased Items or to better assure and confirm unto Buyer its rights, powers and remedies hereunder and thereunder.

27. TERMINATION

This Agreement shall remain in effect until the Termination Date. However, no such termination shall affect Sellers' outstanding obligations to Buyer at the time of such termination. Sellers' obligations under Section 3(h), 3(i) Section 5, Section 12 and Section 23 and any other reimbursement or indemnity obligation of Sellers to Buyer pursuant to this Agreement or any other Program Documents shall survive the termination hereof.

28. SEVERABILITY

If any provision of any Program Document is declared invalid by any court of competent jurisdiction, such invalidity shall not affect any other provision of the Program Documents, and each Program Document shall be enforced to the fullest extent permitted by law.

29. BINDING EFFECT; GOVERNING LAW

This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns, except that Sellers may not assign or transfer any of its respective rights or obligations under this Agreement or any other Program Document without the prior written consent of Buyer. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF (EXCEPT FOR SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

30. AMENDMENTS

Except as otherwise expressly provided in this Agreement, any provision of this Agreement may be modified or supplemented only by an instrument in writing signed by the Sellers and the Buyer and any provision of this Agreement may be waived by the Buyer.

31. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

32. SURVIVAL

The obligations of the Sellers under Sections 3(h), 3(i), 5, 23 and 25 hereof and any other reimbursement or indemnity obligation of Sellers to Buyer pursuant to this Agreement or any other Program Document shall survive the repurchase of the Loans hereunder and the termination of this Agreement. In addition, each representation and warranty made, or deemed to be made by a request for a purchase, herein or pursuant hereto shall survive the making of such representation and warranty, and the Buyer shall not be deemed to have waived, by reason of purchasing any Loan, any Default that may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that the Buyer may have had notice or knowledge or reason to believe that such representation or warranty was false or misleading at the time such purchase was made.

33. CAPTIONS

The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

34. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart.

35. SUBMISSION TO JURISDICTION; WAIVERS

EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY:

(A) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND/OR ANY OTHER PROGRAM DOCUMENT, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND APPELLATE COURTS FROM ANY THEREOF;

(B) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND, TO THE EXTENT PERMITTED BY LAW, WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

(C) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO ITS ADDRESS SET FORTH UNDER ITS SIGNATURE BELOW OR AT SUCH OTHER ADDRESS OF WHICH THE BUYER SHALL HAVE BEEN NOTIFIED; AND

(D) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION.

36. WAIVER OF JURY TRIAL

EACH OF THE SELLERS AND THE BUYER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

37. ACKNOWLEDGEMENTS

The Sellers hereby acknowledges that:

- (a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Program Documents to which it is a party;
- (b) the Buyer has no fiduciary relationship to the Sellers; and
- (c) no joint venture exists among or between the Buyer and the Sellers.

38. HYPOTHECATION OR PLEDGE OF PURCHASED ITEMS.

The Buyer shall have free and unrestricted use of all Loans and Purchased Items and nothing in this Agreement shall preclude the Buyer from engaging in repurchase transactions with the Loans and Purchased Items or otherwise pledging, repledging, transferring, hypothecating, or rehypothecating the Loans and Purchased Items. Nothing contained in this Agreement shall obligate the Buyer to segregate any Loans or Purchased Items delivered to the Buyer by the Sellers.

39. ASSIGNMENTS; PARTICIPATIONS.

(a) The Sellers may assign any of its rights or obligations hereunder only with the prior written consent of the Buyer. The Buyer may assign or transfer to any bank or other financial institution that makes or invests in repurchase agreements or loans or any Affiliate of the Buyer all or any of its rights under this Agreement and the other Program Documents.

(b) The Buyer may, in accordance with applicable law, at any time sell to one or more Buyers or other entities (“Participants”) participating interests in this Agreement, its agreement to purchase Loans, or any other interest of the Buyer hereunder and under the other Program Documents. In the event of any such sale by the Buyer of participating interests to a Participant, the Buyer’s obligations under this Agreement to the Sellers shall remain unchanged, the Buyer shall remain solely responsible for the performance thereof and the Sellers shall continue to deal solely and directly with the Buyer in connection with the Buyer’s rights and obligations under this Agreement and the other Program Documents. The Sellers agree that if amounts outstanding under this Agreement are due or unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Buyer under this Agreement; provided, that such Participant shall only be entitled to such right of set-off if it shall have agreed in the agreement pursuant to which it shall have acquired its participating interest to share with the Buyer the proceeds thereof. The Buyer also agrees that each Participant shall be entitled to the benefits of Sections 3(h), 3(i) and 23 with respect to its participation in the Loans and Purchased Items outstanding from time to time; provided, that the Buyer and all Participants shall be entitled to receive no greater amount in the aggregate pursuant to such Sections than the Buyer would have been entitled to receive had no such transfer occurred.

(c) The Buyer may furnish any information concerning the Sellers or any of its Subsidiaries in the possession of Buyer from time to time to assignees and Participants (including prospective assignees and Participants) only after notifying the Sellers in writing and securing signed confidentiality statements (a form of which is attached hereto as Exhibit I) and only for the sole purpose of evaluating assignments or participations and for no other purpose.

(d) The Sellers agree to cooperate with the Buyer in connection with any such assignment and/or participation, to execute and deliver replacement notes, and to enter into such restatements of, and amendments, supplements and other modifications to, this Agreement and the other Program Documents in order to give effect to such assignment and/or participation. The Sellers further agrees to furnish to any Participant identified by the Buyer to the Sellers copies of all reports and certificates to be delivered by the Sellers to the Buyer hereunder, as and when delivered to the Buyer.

40. SINGLE AGREEMENT

Sellers and Buyer acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, each Seller and Buyer each agree (i) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, and (ii) that payments, deliveries and other transfers made by any of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transaction hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

41. INTENT

Each Seller and Buyer recognize that each Transaction is a “repurchase agreement” as that term is defined in Section 101 of Title 11 of the USC, and a “securities contract” as that term is defined in Section 741 of Title 11 of the USC.

It is understood that Buyer’s right to liquidate the Purchased Loans delivered to it in connection with the Transactions hereunder or to accelerate or terminate this Agreement or otherwise exercise any other remedies pursuant to Section 19 hereof is a contractual right to liquidate, accelerate or terminate such Transaction as described in Sections 555 and 559 of Title 11 of the USC.

42. CONFIDENTIALITY

The Program Documents and their respective terms, provisions, supplements and amendments, and transactions and notices thereunder, are proprietary to Buyer and shall be held by Sellers in strict confidence and shall not be disclosed to any third party without the consent of Buyer except for (i) disclosure to a Seller’s direct and indirect parent companies, directors, attorneys, agents or accountants, provided that such attorneys or accountants likewise agree to be bound by this covenant of confidentiality, or are otherwise subject to confidentiality restrictions or (ii) upon prior written notice to Buyer, disclosure required by law, rule, regulation or order of a court or other regulatory body or (iii) upon prior written notice to Buyer, disclosure to any approved hedge counterparty to the extent necessary to obtain any Interest Rate Protection Agreement hereunder or (iv) any disclosures or filing required under Securities and Exchange Commission (“SEC”) or state securities’ laws; provided that in the case of (ii), (iii) and (iv), Sellers shall take reasonable actions to provide Buyer with prior written notice; provided further that in the case of (iv), the Sellers shall not file any of the Program Documents other than the Agreement with the SEC or state securities office unless Sellers shall have provided at least thirty (30) days (or such lesser time as may be demanded by the SEC or state securities office) prior written notice of such filing to Buyer; provided further that notwithstanding anything to the contrary herein, no party shall file or otherwise disclose the Pricing Side Letter. Notwithstanding anything herein to the contrary, each party (and each employee, representative, or other agent of each party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. For this purpose, tax treatment and tax structure shall not include (i) the identity of any existing or future party (or any Affiliate of such party) to this Agreement or (ii) any specific pricing information or other commercial terms, including the amount of any fees, expenses, rates or payments arising in connection with the transactions contemplated by this Agreement.

43. SERVICING

(a) The Sellers covenant to maintain or cause the servicing of the Loans to be maintained in conformity with Accepted Servicing Practices. In the event that the preceding language is interpreted as constituting one or more servicing contracts, each such servicing contract shall terminate automatically upon the earliest of (i) an Event of Default, or (ii) the date on which all the Obligations have been paid in full, or (iii) the transfer of servicing to any entity approved by the Buyer and the assumption thereof by such entity.

(b) During the period any Seller is servicing the Loans, (i) such Seller agrees that Buyer is the owner of all servicing records, including but not limited to any and all servicing agreements, files, documents, records, data bases, computer tapes, copies of computer tapes, proof of insurance coverage, insurance policies, appraisals, other closing documentation, payment history records, and any other records relating to or evidencing the servicing of such Loans (the “Servicing Records”), and (ii) such Seller grants the Buyer a security interest in all servicing fees and rights relating to the Loans and all Servicing Records to secure the obligation of such Seller or its designee to service in conformity with this Section 43 and any other obligation of such Seller to the Buyer. Each Seller covenants to and shall cause any Subservicer to safeguard such Servicing Records and to deliver them promptly to the Buyer or its designee (including the Custodian) at the Buyer’s request. It is understood and agreed by the parties that prior to an Event of Default, the related Seller or any Subservicer, as applicable, shall retain the servicing fees with respect to the Loans.

(c) If the Loans are serviced by any third party servicer (such third party servicer, the “Subservicer”) other than Cenlar FSB, the Sellers shall provide a copy of the related servicing agreement with a properly executed Instruction Letter to the Buyer at least three (3) Business Days prior to the applicable Purchase Date or the date on which the Subservicer shall begin subservicing the Loans, which shall be in the form and substance acceptable to Buyer (the “Servicing Agreement”) and shall have obtained the written consent of the Buyer for such Subservicer to subservice the Loans. Initially, the Subservicer shall be Cenlar FSB.

(d) The Sellers agrees that, in the event any Seller is servicing the Loans, upon the occurrence of an Event of Default, the Buyer may terminate such Seller in its capacity as servicer and terminate any Servicing Agreement and transfer such servicing to the Buyer or its designee, at no cost or expense to the Buyer. In addition, the Sellers shall provide to the Buyer an Instruction Letter from the Seller to the effect that upon the occurrence of an Event of Default, the Buyer may cause the Seller to terminate any Subservicer or Servicing Agreement and direct that collections with respect to the Loans be remitted in accordance with the Buyer’s instructions. The Sellers agrees to cooperate with the Buyer in connection with the transfer of servicing.

(e) After the Purchase Date, until the Repurchase Date, the Sellers will have no right to modify or alter the terms of the Loan or consent to the modification or alteration of the terms of any Loan, and the Seller will have no obligation or right to repossess any Loan or substitute another Loan, except as provided in any Custodial Agreement.

(f) The Sellers shall permit the Buyer to inspect upon reasonable prior written notice at a mutually convenient time, the Sellers’ or their Affiliate’s servicing facilities, as the case may be, for the purpose of satisfying the Buyer that the Sellers or their Affiliate, as the case may be, has the ability to service the Loans as provided in this Agreement. In addition, with respect to any Subservicer which is not an Affiliate of the Seller, the Seller shall use its best efforts to enable the Buyer to inspect the servicing facilities of such Subservicer.

44. PERIODIC DUE DILIGENCE REVIEW

The Sellers acknowledge that the Buyer has the right to perform continuing due diligence reviews with respect to the Loans, for purposes of verifying compliance with the representations, warranties, covenants and specifications made hereunder or under any other Program Document, or otherwise, and the Seller agrees that upon reasonable (but no less than one (1) Business Day’s) prior notice to the Seller, the Buyer or its authorized representatives will be permitted during normal business hours to examine, inspect, make copies of, and make extracts of, the Mortgage Files, the Servicing Records and any and all documents, records, agreements, instruments or information relating to such Loans in the possession, or under the control, of the Seller and/or the Custodian. The Sellers also shall make available to the Buyer a knowledgeable financial or accounting officer for the purpose of answering questions respecting the Mortgage Files and the Loans. Without limiting the generality of the foregoing, the Sellers acknowledge that the Buyer shall purchase Loans from the Sellers based solely upon the information provided by the Sellers to the Buyer in the Loan Data Transmission and the representations, warranties and covenants contained herein, and that the Buyer, at its option, has the right, at any time to conduct a partial or complete due diligence review on some or all of the Purchased Loans, including, without limitation, ordering new credit reports, new appraisals on the related Mortgaged Properties and otherwise re-generating the information used to originate such Loan. The Buyer may underwrite such Loans itself or engage a third party underwriter to perform such underwriting. The Sellers agree to cooperate with the Buyer and any third party underwriter in connection with such underwriting, including, but not limited to, providing the Buyer and any third party underwriter with access to any and all documents, records, agreements, instruments or information relating to such Loans in the possession, or under the control, of the Sellers. In addition, the Buyer has the right to perform continuing Due Diligence Reviews of the Sellers, their Affiliates, directors, and their respective Subsidiaries and the officers, employees and significant shareholders thereof. The Sellers and Buyer further agree that all out-of-pocket costs and expenses incurred by the Buyer in connection with the Buyer’s activities pursuant to this Section 44 shall be paid by the Sellers.

45. SET-OFF

In addition to any rights and remedies of the Buyer provided by this Agreement and by law, the Buyer shall have the right, without prior notice to the Sellers, any such notice being expressly waived by the Sellers to the extent permitted by applicable law, upon any amount becoming due and payable by the Sellers hereunder (whether at the stated maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all Property and deposits (general or special, time or demand, provisional or final), in any currency, and any other collateral, credits, indebtedness or claims, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by the Buyer or any Affiliate thereof to or for the credit or the account of the Sellers or any Affiliate of Sellers. The Buyer may set-off cash, the proceeds of the liquidation of any Purchased Items and all other sums or obligations owed by the Buyer or its Affiliates to Sellers or any of Sellers' Affiliates against all of Sellers' obligations or any of Seller's Affiliates' obligations to the Buyer or its Affiliates, whether under this Agreement or under any other agreement between the parties or between Seller and any Affiliate of the Buyer, or otherwise, whether or not such obligations are then due, without prejudice to the Buyer's or its Affiliate's right to recover any deficiency. The Buyer agrees promptly to notify the Sellers after any such set-off and application made by the Buyer; provided that the failure to give such notice shall not affect the validity of such set-off and application.

46. JOINT AND SEVERAL LIABILITY; CROSS-DEFAULT

The Sellers hereby acknowledge and agree that they are jointly and severally liable to the Buyer for all representations, warranties, covenants, obligations and liabilities of each of the Sellers hereunder and under the Program Documents. The Sellers further acknowledge and agree that any Default, Event of Default or breach of a representation, warranty or covenant by any Seller under this Agreement is hereby considered a Default, Event of Default or breach by each Seller.

47. ENTIRE AGREEMENT

This Agreement and the other Program Documents embody the entire agreement and understanding of the parties hereto and thereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein and therein. No alteration, waiver, amendments, or change or supplement hereto shall be binding or effective unless the same is set forth in writing by a duly authorized representative of each party hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

NEW YORK MORTGAGE FUNDING, LLC , a Delaware limited liability company,
as Seller

THE NEW YORK MORTGAGE COMPANY, LLC , a New York limited liability company,
as Seller

By: /s/ Joseph V. Fierro
Name: Joseph V. Fierro
Title: Chief Operating Officer

By: /s/ Joseph V. Fierro
Name: Joseph V. Fierro
Title: Chief Operating Officer

Address for Notices:

1301 Avenue of the Americas, 7th Floor
New York, New York 10019
Attention: Steven B. Schnall, CEO
Telecopier No: (212) 655-6269
Telephone No: (212) 634-9449

Address for Notices:

1301 Avenue of the Americas, 7th Floor
New York, New York 10019
Attention: Steven B. Schnall, CEO
Telecopier No: (212) 655-6269
Telephone No: (212) 634-9449

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC. , a Delaware corporation, as Buyer and Agent, as applicable

NEW YORK MORTGAGE TRUST, INC. , a Maryland corporation, as Seller

By: /s/ Anthony Palmisano
Name: Anthony Palmisano
Title: Managing Director

By: /s/ David A. Akre
Name: David A. Akre
Title: Vice Chairman/Co-Chief Executive Officer

Address for Notices:

600 Steamboat Road
Greenwich, Connecticut 06830

Attention:
Telecopier No:
Telephone No.:

Address for Notices:

1301 Avenue of the Americas, 7th Floor
New York, New York 10019
Attention: David Akre, CEO
Telecopier No: (212) 655-6269
Telephone No: (212) 634-2338

With a copy to:

Attention: General Counsel
Telecopier No.: (203) 618-2132
Telephone No.: (203) 625-2700

ANNEX I

BUYER ACTING AS AGENT

This Annex I forms a part of the Master Repurchase Agreement dated as of January 5, 2006, (the “Agreement”) among The New York Mortgage Company, LLC, New York Mortgage Funding, LLC, New York Mortgage Trust, Inc., and Greenwich Capital Financial Products, Inc. This Annex I sets forth the terms and conditions governing all transactions in which the Buyer selling assets or buying assets, as the case may be (“Agent”), in a Transaction is acting as agent for one or more third parties (each, a “Principal”). Capitalized terms used but not defined in this Annex I shall have the meanings ascribed to them in the Agreement.

1. Additional Representations. Agent hereby makes the following representations, which shall continue during the term of any Transaction: Principal has duly authorized Agent to execute and deliver the Agreement and the other Program Documents on its behalf, has the power to so authorize Agent and to enter into the Transactions contemplated by the Agreement and the other Program Documents and to perform the obligations of Seller or the Buyer, as the case may be, under such Transactions, and has taken all necessary action to authorize such execution and delivery by Agent and such performance by it.
2. Identification of Principals. Agent agrees (a) to provide the other party, prior to the date on which the parties agree to enter into any Transaction under the Agreement, with a written list of Principals for which it intends to act as Agent (which list may be amended in writing from time to time with the consent of the other party) and (b) to provide the other party, before the close of business on the next business day after orally agreeing to enter into a Transaction, with notice of the specific Principal or Principals for whom it is acting in connection with such Transaction. If (i) Agent fails to identify such Principal or Principals prior to the close of business on such next business day or (ii) the other party shall determine in its sole discretion any Principal or Principals identified by Agent are not acceptable to it, the other party may reject and rescind any Transaction with such Principal or Principals, return to Agent any Purchased Loans or portion of the Purchase Price, as the case may be, previously transferred to the other party and refuse any further performance under such Transaction, and Agent shall immediately return to the other party any portion of the Purchase Price or Purchased Loans, as the case may be, previously transferred to Agent in connection with such Transaction; provided, however, that (A) the other party shall promptly (and in any event within one business day) notify Agent of its determination to reject and rescind such Transaction and (B) to the extent that any performance was rendered by any party under any Transaction rejected by the other party, and such party shall remain entitled to any Price Differential or other amounts that would have been payable to it with respect to such performance if such Transaction had not been rejected. The other party acknowledges that Agent shall not have any obligation to provide it with confidential information regarding the financial status of its Principals; Agent agrees, however, that it will assist the other party in obtaining from Agent’s Principals such Information regarding the financial status of such Principals as the other party may reasonably request.
3. Limitation of Agent’s Liability. The parties expressly acknowledge that if the representations of Agent under the Agreement, including this Annex I, are true and correct in all material respects during the term of any Transaction and Agent otherwise complies with the provisions of this Annex I, then (a) Agent’s obligations under the Agreement shall not include a guarantee of performance by its Principal or Principals; provided that Agent shall remain liable for performance pursuant to Section 10 of the Agreement, and (b) the other party’s remedies shall not include a right of setoff in respect of rights or obligations, if any, of Agent arising in other transactions in which Agent is acting as principal.

4. Multiple Principals.

- (a) In the event that Agent proposes to act for more than one Principal hereunder, Agent and the other party shall elect whether (i) to treat Transactions under the Agreement as transactions entered into on behalf of separate Principals or (ii) to aggregate such Transactions as if they were transactions by a single Principal. Failure to make such an election in writing shall be deemed an election to treat Transactions under the Agreement as transactions on behalf of a single Principal.
- (b) In the event that Agent and the other party elect (or are deemed to elect) to treat Transactions under the Agreement as transactions on behalf of separate Principals, the parties agree that (i) Agent will provide the other party, together with the notice described in Section 2(b) of this Annex I, notice specifying the portion of each Transaction allocable to the account of each of the Principals for which it is acting (to the extent that any such Transaction is allocable to the account of more than one Principal); (ii) the portion of any individual Transaction allocable to each Principal shall be deemed a separate Transaction under the Agreement; (iii) the margin maintenance obligations of Seller under Section 6(a) of the Agreement shall be determined on a Transaction-by-Transaction basis (unless the parties agree to determine such obligations on a Principal-by-Principal basis); and (iv) Buyer's remedies under the Agreement upon the occurrence of an Event of Default shall be determined as if Agent had entered into a separate Agreement with the other party on behalf of each of its Principals.
- (c) In the event that Agent and the other party elect to treat Transactions under the Agreement as if they were transactions by a single Principal, the parties agree that (i) Agent's notice under Section 2(b) of this Annex I need only identify the names of its Principals but not the portion of each Transaction allocable to each Principal's account; (ii) the margin maintenance obligations of Seller under Section 6(a) of the Agreement shall, subject to any greater requirement imposed by applicable law, be determined on an aggregate basis for all Transactions entered into by Agent on behalf of any Principal; and (iii) Buyer's remedies upon the occurrence of an Event of Default shall be determined as if all Principals were a single Buyer.
- (d) Notwithstanding any other provision of the Agreement (including, without limitation, this Annex I), the parties agree that any Transactions by Agent on behalf of an employee benefit plan under ERISA shall be treated as Transactions on behalf of separate Principals in accordance with Section 4(b) of this Annex I (and all margin maintenance obligations of the parties shall be determined on a Transaction-by-Transaction basis).

5. Interpretation of Terms. All references to “Buyer” in the Agreement shall, subject to the provisions of this Annex I (including, among other provisions, the limitations on Agent’s liability in Section 3 of this Annex 1), be construed to reflect that (i) each Principal shall have, in connection with any Transaction or Transactions entered into by Agent on its behalf, the rights, responsibilities, privileges and obligations of a “Buyer”, directly entering into such Transaction or Transactions with the other party under the Agreement, and (ii) Agent’s Principal or Principals have designated Agent as their sole agent for performance of Buyer’s obligations to Seller, and for receipt of performance by Seller of its obligations to Buyer, in connection with any Transaction or Transactions under the Agreement (including, among other things, as Agent for each Principal in connection with transfers of Loans, securities, cash or other property and as agent for giving and receiving all notices under the Agreement). Both Agent and its Principal or Principals shall be deemed “parties” to the Agreement and all references to a “party” or “either party” in the Agreement shall be deemed revised accordingly.

Schedule 1-A

REPRESENTATIONS AND WARRANTIES RE: RESIDENTIAL LOANS

Eligible Loans

As to each Purchased Loan that is secured by residential property and is subject to a Transaction hereunder (and the related Mortgage, Note, Assignment of Mortgage and Mortgaged Property), the related Seller shall be deemed to make the following representations and warranties to Buyer as of the Purchase Date and as of each date such Loan is subject to a Transaction:

(a) Loans as Described. The information set forth in the Loan Schedule with respect to the Loan is complete, true and correct in all material respects.

(b) Payments Current. The first Monthly Payment shall have been made prior to the second scheduled Monthly Payment becoming due.

(c) No Outstanding Charges. There are no defaults in complying with the terms of the Mortgage securing the Loan, and all taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, leasehold payments or ground rents which previously became due and owing have been paid, or an escrow of funds has been established in an amount sufficient to pay for every such item which remains unpaid and which has been assessed but is not yet due and payable. Neither any Seller nor the Qualified Originator from which the related Seller acquired the Loan has advanced funds (provided that any Loan which is a Negative Amortization Loan shall not be deemed to have funds), or induced, solicited or knowingly received any advance of funds by a party other than the Mortgagor, directly or indirectly, for the payment of any amount required under the Loan, except for interest accruing from the date of the Note or date of disbursement of the proceeds of the Loan, whichever is more recent, to the day which precedes by one month the Due Date of the first installment of principal and interest thereunder.

(d) Original Terms Unmodified. The terms of the Note and Mortgage have not been impaired, waived, altered or modified in any respect, from the date of origination; except by a written instrument which has been recorded, if necessary to protect the interests of the Buyer, and which has been delivered to the Custodian and the terms of which are reflected in the Loan Schedule. The substance of any such waiver, alteration or modification has been approved by the title insurer, to the extent required by the title insurance policy, and its terms are reflected on the Loan Schedule. No Mortgagor in respect of the Loan has been released, in whole or in part, except in connection with an assumption agreement approved by the title insurer, to the extent required by such policy, and which assumption agreement is part of the Mortgage File delivered to the Custodian and the terms of which are reflected in the Loan Schedule.

(e) No Defenses. The Loan is not subject to any right of rescission, setoff, counterclaim or defense, including without limitation the defense of usury, nor will the operation of any of the terms of the Note or the Mortgage, or the exercise of any right thereunder, render either the Note or the Mortgage unenforceable, in whole or in part and no such right of rescission, set-off, counterclaim or defense has been asserted with respect thereto, and no Mortgagor in respect of the Loan was a debtor in any state or Federal bankruptcy or insolvency proceeding at the time the Loan was originated.

(f) Hazard Insurance. The Mortgaged Property is insured by a fire and extended perils insurance policy, issued by a Qualified Insurer, and such other hazards as are customary in the area where the Mortgaged Property is located, and to the extent required by the Seller as of the date of origination consistent with the Underwriting Guidelines, against earthquake and other risks insured against by Persons operating like properties in the locality of the Mortgaged Property, in an amount not less than the greatest of (i) 100% of the replacement cost of all improvements to the Mortgaged Property, (ii) the outstanding principal balance of the Loan with respect to each first lien Loan, (iii) the amount necessary to avoid the operation of any co-insurance provisions with respect to the Mortgaged Property, and consistent with the amount that would have been required as of the date of origination in accordance with the Underwriting Guidelines or (iv) the amount necessary to fully compensate for any damage or loss to the improvements that are a part of such property on a replacement cost basis. If any portion of the Mortgaged Property is in an area identified by any federal Governmental Authority as having special flood hazards, and flood insurance is available, a flood insurance policy meeting the current guidelines of the Federal Insurance Administration is in effect with a generally acceptable insurance carrier, in an amount representing coverage not less than the least of (1) the outstanding principal balance of the Loan, (2) the full insurable value of the Mortgaged Property, and (3) the maximum amount of insurance available under the Flood Disaster Protection Act of 1973, as amended. All such insurance policies (collectively, the “hazard insurance policy”) contain a standard mortgagee clause naming the Seller, its successors and assigns (including without limitation, subsequent owners of the Loan), as mortgagee, and may not be reduced, terminated or canceled without 30 days’ prior written notice to the mortgagee. No such notice has been received by the Seller. All premiums due and owing on such insurance policy have been paid. The related Mortgage obligates the Mortgagor to maintain all such insurance and, at such Mortgagor’s failure to do so, authorizes the mortgagee to maintain such insurance at the Mortgagor’s cost and expense and to seek reimbursement therefor from such Mortgagor. Where required by state law or regulation, the Mortgagor has been given an opportunity to choose the carrier of the required hazard insurance, provided the policy is not a “master” or “blanket” hazard insurance policy covering a condominium, or any hazard insurance policy covering the common facilities of a planned unit development. The hazard insurance policy is the valid and binding obligation of the insurer and is in full force and effect. The Seller has not engaged in, and has no knowledge of the Mortgagor’s having engaged in, any act or omission which would impair the coverage of any such policy, the benefits of the endorsement provided for herein, or the validity and binding effect of either including, without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other Person, and no such unlawful items have been received, retained or realized by the Seller.

(g) Compliance with Applicable Laws. Any and all requirements of any federal, state or local law including, without limitation, usury, truth-in-lending, all applicable predatory and abusive lending, real estate settlement procedures, consumer credit protection, equal credit opportunity or disclosure laws applicable to the origination and servicing of such Loan have been complied with, the consummation of the transactions contemplated hereby will not involve the violation of any such laws or regulations, and the Seller shall maintain or shall cause its agent to maintain in its possession, available for the inspection of the Buyer, and shall deliver to the Buyer, upon two Business Days’ request, evidence of compliance with all such requirements.

(h) No Satisfaction of Mortgage. The Mortgage has not been satisfied, canceled, subordinated or rescinded, in whole or in part, and the Mortgaged Property has not been released from the lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such release, cancellation, subordination or rescission other than in the case of a release of a portion of the land comprising a Mortgaged Property or a release of a blanket Mortgage which release will not cause the Loan to fail to satisfy the Underwriting Guidelines. The Seller has not waived the performance by the Mortgagor of any action, if the Mortgagor’s failure to perform such action would cause the Loan to be in default, nor has the Seller waived any default resulting from any action or inaction by the Mortgagor.

(i) Location and Type of Mortgaged Property. The Mortgaged Property is located in the state identified in the Loan Schedule and consists of a single parcel of real property with a detached single family residence erected thereon, or a two- to four-family dwelling, or an individual condominium unit in a condominium project, or an individual unit in a planned unit development or a de minimis planned unit development, provided, however, that any condominium unit or planned unit development shall conform with the applicable Fannie Mae and Freddie Mac requirements regarding such dwellings, that a de minimis percentage of the Loans may be Cooperative Loans and that no residence or dwelling is a mobile home or a manufactured dwelling. Except for Mixed Use Loans, no portion of the Mortgaged Property is used for commercial purposes.

(j) Valid Lien. The Mortgage (including any Negative Amortization which may arise thereunder) is a valid, subsisting, enforceable and perfected first lien and first priority security interest with respect to each Loan on the real property included in the Mortgaged Property, including all buildings on the Mortgaged Property and all installations and mechanical, electrical, plumbing, heating and air conditioning systems located in or annexed to such buildings, and all additions, alterations and replacements made at any time with respect to the foregoing and with respect to Cooperative Loans, including the Proprietary Lease and the Cooperative Shares. The lien of the Mortgage is subject only to:

(1) the lien of current real property taxes and assessments not yet due and payable;

(2) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording acceptable to prudent mortgage lending institutions generally and specifically referred to in the lender's title insurance policy delivered to the originator of the Loan and (a) referred to or otherwise considered in the appraisal made for the originator of the Loan or (b) which do not adversely affect the Appraised Value of the related Mortgaged Property set forth in such appraisal; and

(3) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related Mortgaged Property.

Any security agreement, chattel mortgage or equivalent document related to and delivered in connection with the Loan establishes and creates a valid, subsisting and enforceable first lien and first priority security interest on the property described therein and the Seller has full right to pledge and assign the same to the Buyer. The Mortgaged Property was not, as of the date of origination of the Loan, subject to a mortgage, deed of trust, deed to secure debt or other security instrument creating a lien subordinate to the lien of the Mortgage.

(k) Validity of Mortgage Documents. The Note and the Mortgage and any other agreement executed and delivered by a Mortgagor or guarantor, if applicable, in connection with a Loan are genuine, and each is the legal, valid and binding obligation of the maker thereof enforceable in accordance with its terms. All parties to the Note, the Mortgage and any other such related agreement had legal capacity to enter into the Loan and to execute and deliver the Note, the Mortgage and any such agreement, and the Note, the Mortgage and any other such related agreement have been duly and properly executed by such related parties. No fraud, error, omission, misrepresentation, negligence or similar occurrence with respect to a Loan has taken place on the part of any Person, including, without limitation, the Mortgagor, any appraiser, any builder or developer, or any other party involved in the origination of the Loan. The Seller has reviewed all of the documents constituting the Servicing File and has made such inquiries as it deems necessary to make and confirm the accuracy of the representations set forth herein.

(l) Full Disbursement of Proceeds. The proceeds of the Loan have been fully disbursed and there is no further requirement for future advances thereunder, and any and all requirements as to completion of any on-site or off-site improvement and as to disbursements of any escrow funds therefor have been complied with; provided that a de minimis percentage of the Loans may have escrow holdbacks, as indicated on the related Loan Schedule. All costs, fees and expenses incurred in making or closing the Loan and the recording of the Mortgage were paid, and the Mortgagor is not entitled to any refund of any amounts paid or due under the Note or Mortgage.

(m) Ownership. The Seller is the sole owner and holder of the Loan. All Loans acquired by the Seller from third parties (including affiliates) were acquired in a true and legal sale pursuant to which such third party sold, transferred, conveyed and assigned to the Seller all of its right, title and interest in, to and under such Loan and retained no interest in such Loan. In connection with such sale, such third party received reasonably equivalent value and fair consideration and, in accordance with GAAP and for federal income tax purposes, reported the sale of such Loan to the Seller as a sale of its interests in such Loan. The Loan is not assigned or pledged, and the Seller has good, indefeasible and marketable title thereto, and has full right to transfer, pledge and assign the Loan to the Buyer free and clear of any encumbrance, equity, participation interest, lien, pledge, charge, claim or security interest, and has full right and authority subject to no interest or participation of, or agreement with, any other party, to assign, transfer and pledge each Loan pursuant to this Agreement and following the pledge of each Loan, the Buyer will hold such Loan free and clear of any encumbrance, equity, participation interest, lien, pledge, charge, claim or security interest except any such security interest created pursuant to the terms of this Agreement.

(n) Doing Business. All parties which have had any interest in the Loan, whether as mortgagee, assignee, pledgee or otherwise, are (or, during the period in which they held and disposed of such interest, were) (i) in compliance with any and all applicable licensing requirements of the laws of the state wherein the Mortgaged Property is located, and (ii) either (A) organized under the laws of such state, (B) qualified to do business in such state, (C) a federal savings and loan association, a savings bank or a national bank having a principal office in such state or (D) not doing business in such state.

(o) LTV. As of the date of origination of the Loan, the LTV and is as identified on the Loan Schedule.

(p) Title Insurance. The Loan is covered by either (i) an attorney's opinion of title and abstract of title, the form and substance of which is acceptable to prudent mortgage lending institutions making mortgage loans in the area wherein the Mortgaged Property is located or (ii) an ALTA lender's title insurance policy or other generally acceptable form of policy or insurance acceptable to Fannie Mae or Freddie Mac and each such title insurance policy is issued by a title insurer acceptable to Fannie Mae or Freddie Mac and qualified to do business in the jurisdiction where the Mortgaged Property is located, insuring the Seller, its successors and assigns, as to the first priority lien of the Mortgage in the original principal amount of the Loan (including, to the extent a Note provides for Negative Amortization, the maximum amount of Negative Amortization in accordance with the Mortgage), subject only to the exceptions contained in clauses (1), (2) and (3) of paragraph (j) of this Part I of Schedule 1-A, and in the case of Adjustable Rate Loans, against any loss by reason of the invalidity or unenforceability of the lien resulting from the provisions of the Mortgage providing for adjustment to the Mortgage Interest Rate and Monthly Payment and Negative Amortization. Where required by state law or regulation, the Mortgagor has been given the opportunity to choose the carrier of the required mortgage title insurance. Additionally, such lender's title insurance policy affirmatively insures ingress and egress and against encroachments by or upon the Mortgaged Property or any interest therein. The title policy does not contain any special exceptions (other than the standard exclusions) for zoning and uses and has been marked to delete the standard survey exception or to replace the standard survey exception with a specific survey reading. The Seller, its successors and assigns, are the sole insureds of such lender's title insurance policy, and such lender's title insurance policy is valid and remains in full force and effect and will be in force and effect upon the consummation of the transactions contemplated by this Agreement. No claims have been made under such lender's title insurance policy, and no prior holder or servicer of the related Mortgage, including the Seller, has done, by act or omission, anything which would impair the coverage of such lender's title insurance policy, including, without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other Person, and no such unlawful items have been received, retained or realized by the Seller.

(q) No Defaults . There is no default, breach, violation or event of acceleration existing under the Mortgage or the Note and no event has occurred which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration, and neither the Seller nor its predecessors have waived any default, breach, violation or event of acceleration.

(r) No Mechanics' Liens . At origination, there were no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under the law could give rise to such liens) affecting the Mortgaged Property which are or may be liens prior to, or equal or coordinate with the lien of the Mortgage.

(s) Location of Improvements; No Encroachments . All improvements which were considered in determining the Appraised Value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of the Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property. No improvement located on or being part of the Mortgaged Property is in violation of any applicable zoning and building law, ordinance or regulation.

(t) Origination; Payment Terms . The Loan was originated by or in conjunction with a mortgagee approved by the Secretary of Housing and Urban Development pursuant to Sections 203 and 211 of the National Housing Act, a savings and loan association, a savings bank, a commercial bank, credit union, insurance company or similar banking institution which is supervised and examined by a federal or state authority. Principal payments on the Loan commenced no more than sixty (60) days after funds were disbursed in connection with the Loan. The Mortgage Interest Rate is adjusted, with respect to Adjustable Rate Loans, on each Interest Rate Adjustment Date to equal the Index plus the Gross Margin (rounded up or down to the nearest .125 %), subject to the Mortgage Interest Rate Cap. With respect to each Negative Amortization Loan, the related Note requires a Monthly Payment which is sufficient during the period following each Payment Adjustment Date, to fully amortize the outstanding principal balance as of the first day of such period (including any Negative Amortization) over the then remaining term of such Note and to pay interest at the related Mortgage Interest Rate; provided, that the Monthly Payment shall not increase to an amount that exceeds 107.5% of the amount of the Monthly Payment that was due immediately prior to the Payment Adjustment Date; provided, further, that the payment adjustment cap shall not be applicable with respect to the adjustment made to the Monthly Payment that occurs in a year in which the Loan has been outstanding for a multiple of five (5) years and in any such year the Monthly Payment shall be adjusted to fully amortize the Loan over the remaining term. The Due Date of the first payment under the Note is no more than 60 days from the date of the Note.

(u) Customary Provisions . The Note has a stated maturity. The Mortgage contains customary and enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security provided thereby, including, (i) in the case of a Mortgage designated as a deed of trust, by trustee's sale, and (ii) otherwise by judicial foreclosure. Upon default by a Mortgagor on a Loan and foreclosure on, or trustee's sale of, the Mortgaged Property pursuant to the proper procedures, the holder of the Loan will be able to deliver good and merchantable title to the Mortgaged Property. There is no homestead or other exemption available to a Mortgagor which would interfere with the right to sell the Mortgaged Property at a trustee's sale or the right to foreclose the Mortgage.

(v) Conformance with Underwriting Guidelines and Agency Standards . The Loan was underwritten in accordance with the applicable Underwriting Guidelines. The Note and Mortgage are on forms similar to those used by Freddie Mac or Fannie Mae and the Seller has not made any representations to a Mortgagor that are inconsistent with the mortgage instruments used.

(w) Occupancy of the Mortgaged Property . As of the Purchase Date the Mortgaged Property is either vacant or lawfully occupied under applicable law. All inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Mortgaged Property and, with respect to the use and occupancy of the same, including but not limited to certificates of occupancy and fire underwriting certificates, have been made or obtained from the appropriate authorities. The Seller has not received written notification from any governmental authority that the Mortgaged Property is in material non-compliance with such laws or regulations, is being used, operated or occupied unlawfully or has failed to have or obtain such inspection, licenses or certificates, as the case may be. The Seller has not received notice of any violation or failure to conform with any such law, ordinance, regulation, standard, license or certificate. Except as otherwise set forth in the Loan Schedule, the Mortgagor represented at the time of origination of the Loan that the Mortgagor would occupy the Mortgaged Property as the Mortgagor's primary residence.

(x) No Additional Collateral . The Note is not and has not been secured by any collateral except the lien of the corresponding Mortgage and the security interest of any applicable security agreement or chattel mortgage referred to in clause (j) above.

(y) Deeds of Trust . In the event the Mortgage constitutes a deed of trust, a trustee, authorized and duly qualified under applicable law to serve as such, has been properly designated and currently so serves and is named in the Mortgage, and no fees or expenses are or will become payable by the Custodian or the Buyer to the trustee under the deed of trust, except in connection with a trustee's sale after default by the Mortgagor.

(z) Delivery of Mortgage Documents . If the Loan is a Dry Loan, the Note, the Mortgage, the Assignment of Mortgage (other than for a MERS Loan) and any other documents required to be delivered under the Custodial Agreement for each Loan have been delivered to the Custodian. The Seller or its agent is in possession of a complete, true and materially accurate Mortgage File in compliance with the Custodial Agreement, except for such documents the originals of which have been delivered to the Custodian.

(aa) Transfer of Loans . The Assignment of Mortgage is in recordable form and is acceptable for recording under the laws of the jurisdiction in which the Mortgaged Property is located.

(bb) Due-On-Sale . The Mortgage contains an enforceable provision for the acceleration of the payment of the unpaid principal balance of the Loan in the event that the Mortgaged Property is sold or transferred without the prior written consent of the mortgagee thereunder.

(cc) No Buydown Provisions; No Graduated Payments or Contingent Interests . The Loan does not contain provisions pursuant to which Monthly Payments are paid or partially paid with funds deposited in any separate account established by the Seller, the Mortgagor, or anyone on behalf of the Mortgagor, or paid by any source other than the Mortgagor nor does it contain any other similar provisions which may constitute a "buydown" provision. The Loan is not a graduated payment mortgage loan and the Loan does not have a shared appreciation or other contingent interest feature.

(dd) Consolidation of Future Advances. Any future advances made to the Mortgagor prior to the origination of the Loan have been consolidated with the outstanding principal amount secured by the Mortgage, and the secured principal amount, as consolidated, bears a single interest rate and single repayment term. The lien of the Mortgage securing the consolidated principal amount is expressly insured as having first lien priority by a title insurance policy, an endorsement to the policy insuring the mortgagee's consolidated interest or by other title evidence acceptable to Fannie Mae and Freddie Mac. The consolidated principal amount does not exceed the original principal amount of the Loan plus any Negative Amortization.

(ee) Mortgaged Property Undamaged. The Mortgaged Property (and with respect to any Cooperative Loan, the Cooperative Unit) is undamaged by waste, fire, earthquake or earth movement, windstorm, flood, tornado or other casualty so as to affect adversely the value of the Mortgaged Property as security for the Loan or the use for which the premises were intended and each Mortgaged Property is in good repair. There have not been any condemnation proceedings with respect to the Mortgaged Property and the Seller has no knowledge of any such proceedings.

(ff) Collection Practices; Escrow Deposits; Interest Rate Adjustments. The origination and collection practices used by the originator, each servicer of the Loan and the Seller with respect to the Loan have been in all material respects in compliance with Accepted Servicing Practices, applicable laws and regulations, and have been in all respects legal and proper. With respect to escrow deposits and Escrow Payments, all such payments are in the possession of, or under the control of, the Seller and there exist no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made. All Escrow Payments have been collected in full compliance with state and federal law. An escrow of funds is not prohibited by applicable law and has been established in an amount sufficient to pay for every item that remains unpaid and has been assessed but is not yet due and payable. No escrow deposits or Escrow Payments or other charges or payments due the Seller have been capitalized under the Mortgage or the Note. All Mortgage Interest Rate adjustments have been made in strict compliance with state and federal law and the terms of the related Note. Any interest required to be paid pursuant to state, federal and local law has been properly paid and credited.

(gg) Conversion to Fixed Interest Rate. With respect to Adjustable Rate Loans, the Loan is not convertible to a fixed interest rate Loan unless otherwise disclosed to Buyer on the related Loan Schedule.

(hh) Other Insurance Policies. No action, inaction or event has occurred and no state of facts exists or has existed that has resulted or will result in the exclusion from, denial of, or defense to coverage under any applicable special hazard insurance policy, PMI Policy or bankruptcy bond, irrespective of the cause of such failure of coverage. In connection with the placement of any such insurance, no commission, fee, or other compensation has been or will be received by the Seller or by any officer, director, or employee of the Seller or any designee of the Seller or any corporation in which the Seller or any officer, director, or employee had a financial interest at the time of placement of such insurance.

(ii) Servicepersons' Civil Relief Act. The Mortgagor has not notified the Seller, and the Seller has no knowledge, of any relief requested or allowed to the Mortgagor under the Servicepersons' Civil Relief Act.

(jj) Appraisal. The Mortgage File contains an appraisal of the related Mortgaged Property signed prior to the approval of the Loan application by a qualified appraiser, duly appointed by the Seller or the Qualified Originator, who had no interest, direct or indirect in the Mortgaged Property or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Loan, and the appraisal and appraiser both satisfy the requirements of Fannie Mae or Freddie Mac and Title XI of the Federal Institutions Reform, Recovery, and Enforcement Act of 1989 as amended and the regulations promulgated thereunder, all as in effect on the date the Loan was originated.

(kk) Disclosure Materials. The Mortgagor has executed a statement to the effect that the Mortgagor has received all disclosure materials required by applicable law with respect to the making of adjustable rate mortgage loans, and the Seller maintains such statement in the Mortgage File.

(ll) Construction or Rehabilitation of Mortgaged Property. No Loan was made in connection with the construction or rehabilitation of a Mortgaged Property or facilitating the trade-in or exchange of a Mortgaged Property.

(mm) No Defense to Insurance Coverage. No action has been taken or failed to be taken, no event has occurred and no state of facts exists or has existed on or prior to the Purchase Date (whether or not known to the Seller on or prior to such date) which has resulted or will result in an exclusion from, denial of, or defense to coverage under any private mortgage insurance (including, without limitation, any exclusions, denials or defenses which would limit or reduce the availability of the timely payment of the full amount of the loss otherwise due thereunder to the insured) whether arising out of actions, representations, errors, omissions, negligence, or fraud of the Seller, the related Mortgagor or any party involved in the application for such coverage, including the appraisal, plans and specifications and other exhibits or documents submitted therewith to the insurer under such insurance policy, or for any other reason under such coverage, but not including the failure of such insurer to pay by reason of such insurer's breach of such insurance policy or such insurer's financial inability to pay.

(nn) Capitalization of Interest. The Note does not by its terms provide for the capitalization or forbearance of interest.

(oo) No Equity Participation. No document relating to the Loan provides for any contingent or additional interest in the form of participation in the cash flow of the Mortgaged Property or a sharing in the appreciation of the value of the Mortgaged Property. The indebtedness evidenced by the Note is not convertible to an ownership interest in the Mortgaged Property or the Mortgagor and the Seller has not financed nor does it own directly or indirectly, any equity of any form in the Mortgaged Property or the Mortgagor.

(pp) Withdrawn Loans. If the Loan has been released to the Seller pursuant to a Request for Release as permitted under Section 5 of the Custodial Agreement, then the promissory note relating to the Loan was returned to the Custodian within 10 days (or if such tenth day was not a Business Day, the next succeeding Business Day).

(qq) No Exception. Other than as noted by the Custodian on the Exception Report; no Exception exists (as defined in the Custodial Agreement) with respect to the Loan which would materially adversely affect the Loan or the Buyer's security interest, granted by the Seller, in the Loan as determined by the Buyer in its sole discretion.

(rr) Qualified Originator. The Loan has been originated by, and, if applicable, purchased by the Seller from, a Qualified Originator.

(ss) Mortgage Submitted for Recordation. The Mortgage (other than for a MERS Loan) has been submitted for recordation in the appropriate governmental recording office of the jurisdiction where the Mortgaged Property is located.

(tt) Reserved.

(uu) Acceptable Investment . No specific circumstances or conditions exist with respect to the Mortgage, the Mortgaged Property, the Mortgagor or the Mortgagor's credit standing that should reasonably be expected to (i) cause private institutional investors which invest in Loans similar to the Loan to regard the Loan as an unacceptable investment, (ii) cause the Loan to be more likely to become past due in comparison to similar Loans, or (iii) adversely affect the value or marketability of the Loan in comparison to similar Loans;

(vv) Environmental Matters . The Mortgaged Property is free from any and all toxic or hazardous substances and there exists no violation of any local, state or federal environmental law, rule or regulation;

(ww) Ground Leases . With respect to each ground lease to which the Mortgaged Property is subject (a "Ground Lease"): (i) the Mortgagor is the owner of a valid and subsisting interest as tenant under the Ground Lease; (ii) the Ground Lease is in full force and effect, unmodified and not supplemented by any writing or otherwise; (iii) all rent, additional rent and other charges reserved therein have been paid to the extent they are payable to the date hereof; (iv) the Mortgagor enjoys the quiet and peaceful possession of the estate demised thereby, subject to any sublease; (v) the Mortgagor is not in default under any of the terms thereof and there are no circumstances which, with the passage of time or the giving of notice or both, would constitute an event of default thereunder; (vi) the lessor under the Ground Lease is not in default under any of the terms or provisions thereof on the part of the lessor to be observed or performed; (vii) the lessor under the Ground Lease has satisfied all of its repair or construction obligations, if any, to date pursuant to the terms of the Ground Lease; (viii) the remaining term of the Ground Lease extends not less than ten (10) years following the maturity date of such Loan; and (ix) the execution, delivery and performance of the Mortgage do not require the consent (other than those consents which have been obtained and are in full force and effect) under, and will not contravene any provision of or cause a default under, the Ground Lease;

(xx) Value of Mortgaged Property . The Seller has no knowledge of any circumstances existing that should reasonably be expected to adversely affect the value or the marketability of the Mortgaged Property or the Loan or to cause the Loan to prepay during any period materially faster or slower than the Loans originated by the Seller generally;

(yy) HOEPA . No Loan is (a) subject to the provisions of the Homeownership and Equity Protection Act of 1994 as amended ("HOEPA"), (b) a "high cost" mortgage loan, "covered" mortgage loan, "high risk home" mortgage loan, or "predatory" mortgage loan or any other comparable term, no matter how defined under any federal, state or local law, (c) subject to any comparable federal, state or local statutes or regulations, or any other statute or regulation providing for heightened regulatory scrutiny or assignee liability to holders of such mortgage loans, or (d) a High Cost Loan or Covered Loan, as applicable (as such terms are defined in the current Standard & Poor's LEVELS® Glossary Revised, Appendix E);

(zz) No Predatory Lending . No predatory, abusive or deceptive lending practices, including but not limited to, the extension of credit to a mortgagor without regard for the mortgagor's ability to repay the Loan and the extension of credit to a mortgagor which has no tangible net benefit to the mortgagor, were employed in connection with the origination of the Loan;

(aaa) Georgia Mortgage Loans . No Loan which is secured by a Mortgaged Property which is located in the state of Georgia was originated prior to March 7, 2004; and

(bbb) Cooperative Loans. With respect to each Cooperative Loan, each original UCC financing statement, continuation statement or other governmental filing or recordation necessary to create or preserve the perfection and priority of the first priority lien and security interest in the Cooperative Shares and Proprietary Lease has been timely and properly made. Any security agreement, chattel mortgage or equivalent document related to the Cooperative Loan and delivered to the Seller or its designee establishes in the Seller a valid and subsisting perfected first lien on and security interest in the Mortgaged Property described therein, and the Seller has full right to sell and assign the same.

(ccc) MERS Loans. With respect to each MERS Loan, a Mortgage Identification Number has been assigned by MERS and such Mortgage Identification Number is accurately provided on the Loan Schedule. The related Assignment of Mortgage to MERS has been duly and properly recorded. With respect to each MERS Loan, Seller has not received any notice of liens or legal actions with respect to such Loan and no such notices have been electronically posted by MERS.

(ddd) Eligibility Criteria. The Loan is an Eligible Loan and complies with all other eligibility requirements set forth in the Pricing Side Letter.

Schedule 1-A

REPRESENTATIONS AND WARRANTIES RE: SMALL BALANCE COMMERCIAL LOANS

Eligible Loans

As to each Purchased Loan that is a Small Balance Commercial Loan and is subject to a Transaction hereunder (and the related Mortgage, Note, Assignment of Mortgage and Mortgaged Property), the related Seller shall be deemed to make the following representations and warranties to Buyer as of the Purchase Date and as of each date such Loan is subject to a Transaction:

(a) Loan Schedule. The information set forth in the Loan Schedule is complete, true and correct in all material respects as of the date set forth therein.

(b) Whole Loan; Ownership of Loans. Each Loan is a whole loan and not a participation interest in a mortgage loan. Immediately prior to the transfer to the Buyer, the Seller has good title to, and is the sole owner of, each Loan and has full right, power and authority to sell, transfer, pledge and assign each of the Loans to the Buyer free and clear of any and all pledges, liens, charges, security interests and/or other encumbrances. The Seller and each prior holder of the Loan, if any, was qualified and appropriately licensed (or was exempt from such qualification or license) to transact business in the jurisdiction in which the related Mortgaged Property is located at the time such entity had possession of the Note except where the failure to be qualified or licensed would not have a material adverse effect on the Loans. The sale of the Loans to the Buyer does not require the Seller to obtain any governmental or regulatory approval or consent that has not been obtained. None of the Mortgage Loan Documents restricts the Seller's right to transfer the Loan to the Buyer.

(c) Lien; Valid Assignment. No Loan is a second lien Loan. The Mortgage related to and delivered in connection with each Loan constitutes a valid and, subject to the exceptions set forth below, enforceable first priority lien upon the related Mortgaged Property, prior to all other liens and encumbrances, except for (i) the lien for current real estate taxes and assessments not yet past due and payable, (ii) covenants, conditions and restrictions, rights of way, easements and other matters that are of public record and/or are referred to in the related lender's title insurance policy, (iii) exceptions and exclusions specifically referred to in such lender's title insurance policy, and (iv) other matters to which like properties are commonly subject, none of which matters referred to in clauses (ii), (iii) or (iv), individually or in the aggregate, materially interferes with the security intended to be provided by such Mortgage, the value or current use or operation of the Mortgaged Property or the current ability of the Mortgaged Property to generate operating income sufficient to service the Loan debt (the foregoing items (i) through (iv) being herein referred to as the "Permitted Encumbrances"). The related Assignment of Mortgage executed and delivered to the Custodian in blank, is otherwise in recordable form and constitutes a legal, valid and binding assignment, and, assuming that the assignee has the capacity to acquire such Mortgage, sufficient to convey to the assignee named therein all of the assignor's right, title and interest in, to and under such Mortgage. Notwithstanding the fact that the Seller shall not be required to file Uniform Commercial Code financing statements or continuation statements, such Mortgage, together with any separate security agreements, chattel mortgages or equivalent instruments, establishes and creates a valid and, subject to the exceptions set forth in this paragraph (c) above, enforceable security interest in favor of the holder thereof in all of the related Mortgagor's personal property used in the operation of the related Mortgaged Property.

(d) Assignment of Leases and Rents. The assignment of leases, rents and profits or similar document or instrument in connection with each Loan and executed by the related Mortgagor, assigning to the mortgagee all of the income, rents and profits derived from the ownership, operation leasing or disposition of all or a portion of each Mortgaged Property, in the form which was duly executed, acknowledged and delivered, and as amended, modified, renewed or extended through the date hereof and from time to time hereafter (each an "Assignment of Leases and Rents") establishes and creates a valid and, subject to the exceptions set forth in paragraph (c) above, enforceable first priority collateral assignment in the related Mortgagor's interest in all leases, sub-leases, licenses or other agreements pursuant to which any person is entitled to occupy, use or possess all or any portion of the real property subject to the related Mortgage, subject to legal limitations of general applicability to mortgage loans similar to the Loans, and the Mortgagor and each assignor of such Assignment of Leases and Rents to the Seller have the full right to assign the same. Other than with respect to MERS Loans, the related assignment of any Assignment of Leases and Rents not included in a Mortgage, deed of trust, deed to secure debt or similar document that secures, in whole or in part, the related Mortgaged property and creates a Mortgage, has been executed and delivered to the Custodian in blank, is otherwise in recordable form and constitutes a legal, valid and binding assignment, sufficient to convey to the assignee named therein (assuming that the assignee has the capacity to acquire such Assignment of Leases and Rents) all of the assignor's right, title and interest in, to and under such Assignment of Leases and Rents.

(e) Mortgage Status; Waivers and Modifications. No Mortgage has been satisfied, cancelled, rescinded or (except for Permitted Encumbrances) subordinated in whole or in part, and the related Mortgaged Property has not been released from the lien of such Mortgage, in whole or in part, nor has any instrument been executed that would effect any such satisfaction, cancellation, subordination (except for Permitted Encumbrances), rescission or release, in any manner that, in each case, materially and adversely affects the value of the related Mortgaged Property except for any partial reconveyances of real property that are included in the related Mortgage File. None of the terms of any Note, Mortgage or Assignment of Leases and Rents has been impaired, waived, altered or modified, in each case in any material respect. Any non-material waivers, alterations or modifications with respect to any Loan are evidenced by written instruments, all of which are included in the related Mortgage File.

(f) Condition of Property; Condemnation. The Mortgaged Property for each Loan is in good repair and condition and free of any structural deficiencies or deferred maintenance that would influence the originator's decision to originate any such Loan or the Buyer's decision to purchase such Loan.

As of the date of its origination, there was no proceeding pending for the total or partial condemnation of any related Mortgaged Property that materially affects the value thereof, there is no pending proceeding for the total or partial condemnation of the related Mortgaged Property that materially affects the value thereof. To the best of Seller's knowledge (based on surveys and/or title insurance obtained in connection with the origination of the Loans), as of the date of the origination of each Loan, all of the material improvements on the related Mortgaged Property that were considered in determining the value of the Mortgaged Property lay wholly within the boundaries of such property, except for encroachments that are insured against by the lender's title insurance policy referred to herein or that do not materially and adversely affect the value or marketability of such Mortgaged Property, and no improvements on adjoining properties materially encroached upon such Mortgaged Property so as to materially and adversely affect the value or marketability of such Mortgaged Property, except those encroachments that are insured against by the Title Policy referred to herein.

(g) Title Insurance. Each Mortgaged Property is covered by an American Land Title Association (or an equivalent form of) lender's title insurance policy or pro forma policy (the "Title Policy") in the original principal amount of the related Loan after all advances of principal. Each Title Policy insures the Seller and its successors and assigns that the related Mortgage is a valid first priority lien on such Mortgaged Property, subject only to the Permitted Encumbrances stated therein (or a marked up title insurance commitment or pro forma policy marked as binding and counter-signed by the title insurer or its authorized agent on which the required premium has been paid exists which evidences that such Title Policy will be issued). Each Title Policy (or, if it has yet to be issued, the coverage to be provided thereby) is in full force and effect, all premiums thereon have been paid, no material claims have been made thereunder and no claims have been paid thereunder. Neither the Seller nor any prior holder under the related Mortgage has done, by act or omission, anything that would materially impair the coverage under such Title Policy. The insurer issuing such Title Policy is qualified to do business in the jurisdiction in which the related Mortgaged Property is located. Such Title Policy contains no exclusions for or affirmatively insures (other than in jurisdictions where affirmative insurance is unavailable), (i) access to public roads, and (ii) against material losses due to encroachments of any part of the building thereon over easements.

(h) No Holdbacks. The proceeds of each Loan have been fully disbursed and there is no obligation for future advances with respect thereto. With respect to each Loan, any and all requirements as to completion of any on-site or off-site improvement and as to disbursements of any funds escrowed for such purpose that were to have been complied with on or before the related Purchase Date have been complied with, or any such funds so escrowed have not been released. All costs, fees and expenses incurred in making or closing the Loan and the recording of the Mortgage have been paid, and the Mortgagor is not entitled to any refund or any amounts paid or due to the Mortgagee pursuant to the Note or Mortgage.

(i) Mortgage Provisions. The Note or Mortgage for each Loan, together with applicable state law, contains customary and enforceable provisions (subject to the exceptions set forth in paragraph (c) above), including foreclosure, such as to render the rights and remedies of the holder thereof adequate for the practical realization against the related Mortgaged Property of the principal benefits of the security intended to be provided thereby. The related Mortgage Loan Documents provide for the appointment of a receiver of rents following an event of default under such Mortgage Loan Documents, to the extent available under applicable law.

(j) Trustee under Deed of Trust. If any Mortgage is a deed of trust, (a) a trustee, duly qualified under applicable law to serve as such, is properly designated and serving under such Mortgage, and (b) no fees or expenses are payable to such trustee by the Seller, the Buyer or any transferee thereof except in connection with a trustee's sale after default by the related Mortgagor or in connection with any full or partial release of the related Mortgaged Property or related security for the related Loan.

(k) Environmental Conditions. Each Loan will be covered by an environmental insurance policy issued by Zurich American Insurance Company or a comparable insurance company acceptable to the Buyer in its reasonable discretion. Such insurance policy shall cover losses resulting from an environmental condition on a Mortgaged Property after the default of the related Mortgagor and the insured amount under each such insurance policy, in the aggregate, will be at least equal to 125% of the aggregate principal balance of all Loans financed by the Buyer pursuant to this Agreement. In the event that the originator has obtained an environmental site assessment meeting ASTM standards and assessing all hazards generally assessed for similar properties (as of the date of such assessment), including type, use and tenants for such similar properties (“Environmental Report”) or a Phase I and/or Phase II environmental report with respect to any Mortgaged Property in connection with the origination of any Loan, the Seller shall provide such reports to the Buyer.

With respect to each Mortgaged Property for which an Environmental Report was prepared, other than as disclosed in such Environmental Report, to the best of Seller's knowledge, (X) no Hazardous Material is present on such Mortgaged Property, such that (1) the value, use or operations of such Mortgaged Property is materially and adversely affected, or (2) under applicable federal, state or local law and regulations, (i) such Hazardous Material could be required to be eliminated, remediated or otherwise responded to at a cost or in a manner materially and adversely affecting the value, use or operations of the Mortgaged Property before such Mortgaged Property could be altered, renovated, demolished or transferred or (ii) the presence of such Hazardous Material could (upon action by the appropriate governmental authorities) subject the owner of such Mortgaged Property, or the holders of a security interest therein, to liability for the cost of eliminating, remediating or otherwise responding to such Hazardous Material or the hazard created thereby at a cost or in a manner materially and adversely affecting the value, use or operations of the Mortgaged Property, and (Y) such Mortgaged Property is in material compliance with all applicable federal, state and local laws and regulations pertaining to Hazardous Materials or environmental hazards, any noncompliance with such laws or regulations does not have a material adverse effect on the value, use or operations of such Mortgaged Property and neither the Seller nor, to the best of the Seller's knowledge, the related Mortgagor or any current tenant thereon, has received any notice of any violation or potential violation of any such law or regulation. With respect to any condition disclosed in the Environmental Report, which condition constituted a violation of applicable laws or regulations or would materially and adversely affect the value, use or operations of the related Mortgaged Property if not remedied, such condition has either been satisfactorily remedied, consistent with prudent multi-family, commercial or mixed-use mortgage lending practices (as applicable), or the applicable loan documents contain provisions which address such condition to the satisfaction of the Seller, consistent with prudent multi-family, commercial and or mixed-use mortgage lending practices (as applicable), and adequate funding or resources, consistent with prudent multi-family, commercial or mixed-use mortgage lending practices (as applicable), were available to remedy or otherwise respond to such condition.

Each Mortgage requires the related Mortgagor to comply with all applicable federal, state and local environmental laws and regulations.

“Hazardous Materials” means gasoline, petroleum products, explosives, radioactive materials, polychlorinated biphenyls or related or similar materials, and any other substance, material or waste as may be defined as a hazardous or toxic substance, material or waste by a federal, state or local environmental law, ordinance, rule, regulation or order, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.), the Clean Air Act, as amended (42 U.S.C. §§ 7401 et seq.), and any regulations promulgated pursuant thereto.

(l) Loan Document Status. Each Note, Mortgage and other agreement that evidences or secures such Loan and that was executed by or on behalf of the related Mortgagor is the legal, valid and binding obligation of the maker thereof (subject to any non-recourse provisions contained in any of the foregoing agreements and any applicable state anti-deficiency or market value limit deficiency legislation), enforceable in accordance with its terms, except with respect to provisions relating to default interest, yield maintenance charges and prepayment premiums and as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors’ rights generally, and by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law) and, to the best of Seller’s knowledge, there is no valid defense, counterclaim or right of offset or rescission available to the related Mortgagor with respect to such Note, Mortgage or other agreements.

(m) Insurance. Each Mortgaged Property is required (or the holder of the Mortgage can require) pursuant to the related Mortgage to be, and at origination the originator received evidence that such Mortgaged Property was, insured by (i) a fire and extended perils insurance policy providing coverage against loss or damage sustained by reason of fire, lightning, hail, windstorm (except with respect to the Loans set forth in a written notice to the Buyer upon the Buyer’s request), explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke, and, to the extent required as of the date of origination by the originator of such Loan consistent with its normal multi-family, commercial or mixed use mortgage lending practices (as applicable), against other risks insured against by persons operating like properties in the locality of the Mortgaged Property, in an amount not less than the lesser of the principal balance of the related Loan and the replacement cost of the improvements on the Mortgaged Property, and with no provisions for a deduction for depreciation in respect of awards for the reconstruction of the improvements, and not less than the amount necessary to avoid the operation of any co-insurance provisions with respect to the Mortgaged Property; and (ii) a flood insurance policy (if any portion of buildings or other structures (excluding parking) on the Mortgaged Property are located in an area identified by the Federal Emergency Management Agency (“FEMA”) as a special flood hazard area (which “special flood hazard area” does not include areas designated by FEMA as Zones B, C or X)). With respect to each Mortgaged Property, such Mortgaged Property is required pursuant to the related Mortgage to be (or the holder of the Mortgage can require that the Mortgaged Property be), and at origination the originator received evidence that such Mortgaged Property was, insured by a multi-family, commercial or mixed use general liability insurance policy (as applicable) in amounts as are generally required by multi-family, commercial or mixed use mortgage lenders (as applicable) for similar properties, and in any event not less than \$1 million per occurrence. Under such insurance policies either (i) the originator and its successors and assigns is named as mortgagee under a standard mortgagee clause or (ii) the originator and its successors and assigns is named as an additional insured, and is entitled to receive prior notice as the holder of the Mortgage of termination or cancellation. No such notice has been received, including any notice of nonpayment of premiums, that has not been cured. Each Mortgage obligates the related Mortgagor to maintain or cause to be maintained all such insurance and, upon such Mortgagor’s failure to do so, authorizes the holder of the Mortgage to maintain or to cause to be maintained such insurance at the Mortgagor’s cost and expense and to seek reimbursement therefor from such Mortgagor. Each Loan provides that casualty insurance proceeds will be applied either to the restoration or repair of the related Mortgaged Property or to the reduction of the principal amount of the Loan. Each Mortgage provides that any related insurance proceeds, other than for a total loss or taking, will be applied either to the repair or restoration of all or part of the related Mortgaged Property, with the mortgagee or a trustee appointed by the mortgagee having the right to hold and disburse such proceeds as the repair or restoration progresses (except in such cases where a provision entitling another party to hold and disburse such proceeds would not be viewed as commercially unreasonable by a prudent multi-family, commercial or mixed-use mortgage lender(as applicable)), or to the payment of the outstanding principal balance of the Loan together with any accrued interest thereon, and any insurance proceeds in respect of a total or substantially total loss or taking may be applied either to payment of outstanding principal and interest on the Loan (except as otherwise provided by law) or to rebuilding of the Mortgaged Property.

(n) Taxes and Assessments and Ground Lease Rents. There are no delinquent taxes, assessments or other outstanding charges affecting any Mortgaged Property that are or may become a lien of priority equal to or higher than the lien of the related Mortgage. For purposes of this representation and warranty, real property taxes and assessments shall be considered delinquent commencing from the date on which interest or penalties would be first payable thereon. There are no delinquent rents on any ground leases for any Mortgaged Property.

(o) Mortgagor Bankruptcy. No Mortgagor is a debtor in any state or federal bankruptcy or insolvency proceeding and no Mortgaged Property or any portion thereof is subject to a plan in any such proceeding.

(p) Leasehold Estate. Each Mortgaged Property consists of the related Mortgagor's fee simple estate in real estate (the "Fee Interest") or the related Loan is secured in whole or in part by the interest of the related Mortgagor as a lessee under a ground lease of the Mortgaged Property (a "Ground Lease"), and if secured in whole or in part by a Ground Lease, either (1) the ground lessor's fee interest is subordinated to the lien of the Mortgage and the Mortgage will not be subject to any lien or encumbrances on the ground lessor's fee interest, other than Permitted Encumbrances, and the holder of the Mortgage is permitted to foreclose the ground lessor's fee interest within a commercially reasonable time period or (2) the following apply to such Ground Lease:

1. Such Ground Lease or a memorandum thereof has been or will be duly recorded; such Ground Lease (or the related estoppel letter or lender protection agreement between the originator and related lessor) permits the interest of the lessee thereunder to be encumbered by the related Mortgage; does not restrict the use of the related Mortgaged Property by the lessee or its permitted successors and assigns in a manner that would materially and adversely affect the security provided by the related Mortgage; and there has been no material change in the payment terms of such Ground Lease since the origination of the related Loan, with the exception of material changes reflected in written instruments that are a part of the related Mortgage File;

2. The lessee's interest in such Ground Lease is not subject to any liens or encumbrances superior to, or of equal priority with, the related Mortgage, other than the ground lessor's related fee interest and Permitted Encumbrances;

3. The Mortgagor's interest in such Ground Lease is assignable to the Buyer and its successors and assigns upon notice to, but (except in the case where such consent cannot be unreasonably withheld) without the consent of, the lessor thereunder (or, if such consent is required, it has been obtained prior to the related Purchase Date) and, in the event that it is so assigned, is further assignable by the Buyer and its successors and assigns upon notice to, but without the need to obtain the consent of, such lessor (except in the case where such consent cannot be unreasonably withheld);

4. Such Ground Lease is in full force and effect, and the Seller has received no notice that an event of default has occurred thereunder, and, to the best of Seller's knowledge, there exists no condition that, but for the passage of time or the giving of notice, or both, would result in an event of default under the terms of such Ground Lease;

5. Such Ground Lease, or an estoppel letter or other agreement, requires the lessor under such Ground Lease to give notice of any material default by the lessee to the mortgagee (concurrent with notice given to the lessee), provided that the mortgagee has provided the lessor with notice of its lien in accordance with the provisions of such Ground Lease, and such Ground Lease, or an estoppel letter or other agreement, further provides that no notice of termination given under such Ground Lease is effective against the mortgagee unless a copy has been delivered to the mortgagee. The Seller has provided the lessor under the Ground Lease with notice of the Seller's lien on the Mortgaged Property in accordance with the provisions of such Ground Lease;

6. A mortgagee is permitted a reasonable opportunity (including, where necessary, sufficient time to gain possession of the interest of the lessee under such Ground Lease) to cure any default under such Ground Lease, which is curable after the receipt of notice of any such default, before the lessor thereunder may terminate such Ground Lease by reason of such default;

7. Such Ground Lease has an original term, along with any extensions set forth in such Ground Lease, not less than 10 years beyond the full amortization term of the Loan;

8. Under the terms of such Ground Lease and the related Mortgage, taken together, any related insurance proceeds, other than for a total loss or taking, will be applied either to the repair or restoration of all or part of the related Mortgaged Property, with the mortgagee or a trustee appointed by the mortgagee having the right to hold and disburse such proceeds as the repair or restoration progresses (except in such cases where a provision entitling another party to hold and disburse such proceeds would not be viewed as commercially unreasonable by a prudent multi-family, commercial or mixed-use mortgage lender (as applicable)), or to the payment of the outstanding principal balance of the Loan together with any accrued interest thereon, and any insurance proceeds in respect of a total or substantially total loss or taking may be applied either to payment of outstanding principal and interest on the Loan (except as otherwise provided by law) or to rebuilding of the Mortgaged Property;

9. Such Ground Lease does not impose any restrictions on subletting which would be viewed, as of the date of origination of the related Loan, as commercially unreasonable by the Seller; and such Ground Lease contains a covenant that the lessor thereunder is not permitted, in the absence of an uncured default, to disturb the possession, interest or quiet enjoyment of any subtenant of the lessee, or in any manner, which would materially and adversely affect the security provided by the related Mortgage;

10. Such Ground Lease or an estoppel or other agreement requires the lessor to enter into a new lease with the Seller or its successors or assigns under terms which do not materially vary from the economic terms of the Ground Lease, in the event of a termination of the Ground Lease by reason of a default by the Mortgagor under the Ground Lease, including rejection of the Ground Lease in a bankruptcy proceeding; and

11. Such Ground Lease may not be materially amended, modified or, except in the case of a default, cancelled or terminated without the prior written consent of the holder of the Loan, and any such action without such consent is not binding on such holder, including any increase in the amount of rent payable by the lessee thereunder during the term of the Loan.

(q) Escrow Deposits. All escrow deposits and payments relating to each Loan that are required to be deposited or paid have been so deposited or paid, and those escrow deposits and payments are under control of the Seller or its agents.

(r) No Fraud. In the origination and servicing of the Loan, neither the Seller nor any Affiliate thereof participated in any fraud or intentional material misrepresentation with respect to the Loan. No Mortgagor is guilty of defrauding or making a material misrepresentation to the Seller with respect to the origination of the Loan.

(s) Advancement of Funds by the Seller. The Seller has not advanced funds, or induced, solicited or knowingly received any advance of funds from a party other than the owner of the related Mortgaged Property (or any tenant required to make its lease payments directly to the holder of the related Loan), directly or indirectly, for the payment of any amount required by such Loan.

(t) No Mechanics' Liens. As of the date the Loan was originated and as of the related Purchase Date, each Mortgaged Property is free and clear of any and all mechanics' and materialmen's liens that are prior or equal to the lien of the related Mortgage and no rights are outstanding that under law could give rise to any such lien that would be prior or equal to the lien of the related Mortgage except, in each case, for liens insured against by the Title Policy referred to herein, or, if any such liens existing as of the related Purchase Date are not insured against by the Title Policy referred to herein, such liens will not have a material adverse effect on the value of the related Mortgaged Property.

(u) Compliance With Laws. On the date of its origination, each Loan complied in all material respects with, or was exempt from, all requirements of federal, state or local law relating to the origination, funding and servicing of such Loan and assuming the Mortgage Interest Rate effective on the date of origination remains constant throughout the life of the Loan, the Loan complied with, or is exempt from, applicable state or federal laws, regulations or other requirements pertaining to usury.

(v) Cross-collateralization. No Loan is cross-collateralized or cross-defaulted with any loan other than one or more other Loans.

(w) Releases of Mortgaged Property. No Note or Mortgage requires the mortgagee to release all or any material portion of the related Mortgaged Property that was included in the valuation for such Mortgaged Property, and/or generates income, from the lien of the related Mortgage except upon payment in full of all amounts due under the related Loan, or upon satisfaction of the defeasance provisions of such Loan, other than the Loans that require the mortgagee to grant a release of a portion of the related Mortgaged Property upon (i) the satisfaction of certain legal and underwriting requirements where the portion of the related Mortgaged Property permitted to be released was not considered by the originator to be material in underwriting the Loan or, in the case of a substitution, where the Mortgagor is entitled to substitute a replacement parcel at its unilateral option upon the satisfaction of specified conditions, and/or (ii) the payment of a release price and prepayment consideration in connection therewith, consistent with the Seller's normal multi-family, commercial or mixed-use mortgage lending practices (as applicable) (and in both (i) and (ii), any release of the Mortgaged Property has been reflected in the Loan Schedule). Except as described in the prior sentence (other than with respect to defeasance and substitution), no Loan permits the full or partial release or substitution of collateral unless (i) the mortgagor is entitled to substitute a replacement parcel at its unilateral option upon satisfaction of specified conditions, and (ii) the mortgagee or servicer can require the Mortgagor to provide an opinion of tax counsel to the effect that such release or substitution of collateral (x) would not constitute a "significant modification" of such Loan within the meaning of Treas. Reg. §1.1001-3 and (y) would not cause such Loan to fail to be a "qualified mortgage" within the meaning of Section 860G(a)(3)(A) of the Code. The loan documents with respect to each Loan that permits the full or partial release or substitution of collateral require the related Mortgagor to bear the cost of such opinion.

(x) No Equity Participation or Contingent Interest. No Loan is a negative amortization mortgage loan, contains any equity participation or provides for any contingent or additional interest in the form of participation in the cash flow of the related Mortgaged Property. Neither the Seller nor any Affiliate thereof has any obligation to make any capital contribution to the Mortgagor under the Loan or otherwise.

(y) No Material Default. Other than payments due but not yet 60 or more days delinquent (and only to the extent past due Loans are permitted in the definition of Eligible Loan), there exists no material default, breach, violation or event giving the lender the right to accelerate the Loan (and, to the best of Seller's knowledge, no event has occurred which, with the passage of time or the giving of notice, or both, would constitute any of the foregoing) under the documents evidencing or securing the Loan, in any such case to the extent the same materially and adversely affects the value of the Loan and the related Mortgaged Property. The Seller has not waived any material default, breach, violation or event of acceleration under any of such documents and under the terms of each Loan, each related Note, each related Mortgage and the other Mortgage Loan Documents, no person or party other than the mortgagee may declare an event of default or accelerate the related indebtedness under such Loan, Mortgage Note or Mortgage.

(z) Local Law Compliance. To the best of Seller's knowledge, based on due diligence performed by the originator at origination that would be considered reasonable by prudent multi-family, commercial or mixed-use mortgage lenders (as applicable) in the lending area where the Mortgaged Property is located, the improvements located on or forming part of each Mortgaged Property comply with applicable zoning laws and ordinances, or constitute a legal non-conforming use or structure or, if any such improvement does not so comply, such non-compliance does not materially and adversely affect the value of the related Mortgaged Property, such value as determined by the appraisal or internal or external market study performed at origination. The Mortgaged Property is lawfully occupied under applicable law; all inspections, licenses and certificates required in connection with the origination of any Loan with respect to the occupancy of the same, including but not limited to certificates of occupancy and fire underwriting certificates, have been made or obtained from the appropriate authorities.

(aa) Junior Liens. Except as otherwise approved by the prior written consent of the Buyer, none of the Mortgage Loans permits the related Mortgaged Property to be encumbered by any lien (other than a Permitted Encumbrance) junior to or of equal priority with the lien of the related Mortgage.

(bb) Actions Concerning Loans. To the best of Seller's knowledge, there are no actions, suits or proceedings before any court, administrative agency or arbitrator concerning any Loan, Mortgagor or related Mortgaged Property that could reasonably be expected to adversely affect title to the Mortgaged Property or the validity or enforceability of the related Mortgage or that could reasonably be expected to materially and adversely affect the value of the Mortgaged Property as security for the Loan or the use for which the premises were intended and no such actions, suites or proceedings are pending before any court, and/or agency or arbitrator.

(cc) Servicing. The servicing and collection practices used by the Servicer or any prior holder or servicer of each Loan have been in all material respects legal, proper and prudent and have met customary industry standards utilized by multi-family, commercial or mixed-use mortgage lending institutions (as applicable) in the area where the related Mortgaged Property is located. The servicer of such Loan has not assessed the Mortgagor any delinquent payment fees that are not specifically prescribed in the Mortgage or Note, including but not limited to demand letter charges, or assessed the Mortgagor interest on any advances made by the servicer.

(dd) Licenses and Permits. To the best of Seller's knowledge, based on due diligence that the originator customarily performs in the origination of comparable mortgage loans, as of the date of origination of each Loan, and to the best of Seller's knowledge, based on servicing procedures customarily performed in the Servicer's servicing of the Loans, the related Mortgagor was in possession of all material licenses, permits and franchises required by applicable law for the ownership and operation of the related Mortgaged Property as it was then operated.

(ee) Collateral in Trust. The Note for each Loan is not secured by a pledge of any collateral that has not been assigned to the Buyer.

(ff) Due on Sale/Due on Encumbrance. Each Loan contains a "due on sale" clause, which provides for the acceleration of the payment of the unpaid principal balance of the Loan if, without prior written consent of the holder of the Mortgage, the property subject to the Mortgage or any material portion thereof, is transferred, sold or encumbered by a junior mortgage or deed of trust; provided, however, that certain Loans provide a mechanism for the assumption of the loan by a third party upon the Mortgagor's satisfaction of certain conditions precedent, and upon payment of a transfer fee, if any, or transfer of interests in the Mortgagor or constituent entities of the Mortgagor to a third party or parties related to the Mortgagor upon the Mortgagor's satisfaction of certain conditions precedent.

(gg) Recourse. Subject to the requirements and restrictions of governing law, each Loan with an original principal balance less than \$1,000,000 provides for full recourse to the Mortgagor or the related guarantor. Each Loan with an original principal balance greater than \$1,000,000 provides for recourse to the Mortgagor or the related guarantor of \$1,000,000. Either the Mortgagor or a guarantor with respect to each Loan is a natural person.

(hh) Underwriting Policies. Each Loan was either originated, purchased, acquired or arranged by the originator thereof, and each such origination, purchase, acquisition or arrangement of such Loan substantially complied in all material respects with the Loan Underwriting Guidelines in effect as of such Loan's origination date.

(ii) REMIC Eligibility. Each Loan is a "qualified mortgage" as such term is defined in Section 860G(a)(3) of the Code (without regard to Treasury Regulations Section 1.860G-2(f)(2), which treats certain defective mortgage loans as qualified mortgages). Each Mortgaged Property will qualify as foreclosure property within the meaning of Section 856(e) of the Code if obtained by foreclosure or deed in lieu of foreclosure.

(jj) Property Appraisal. Each Loan will contain an appraisal, which appraisal is signed by an appraiser, who, to the best of the Seller's knowledge, had no interest, direct or indirect, in the Mortgaged Property or the Mortgagor or in any loan made or the security thereof, and whose compensation is not affected by the approval or disapproval of the Loan. Each appraisal of the Loan was made in accordance with the relevant provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. Such appraisal conforms to Uniform Standards of Professional Appraisal Practice guidelines. For each Loan with an original principal balance greater than \$1,000,000, the Seller has provided a full self-contained report written in summary format including three valuation approaches and for each Loan with an original principal balance less than \$1,000,000, the Seller has provided either a full self-contained report written in summary format including three valuation approaches or a report in summary form prepared in the standard Freddie Mac format (FHLMC Form 71 (B)) or form UCIAR-EP 7/90.

(kk) Yield Maintenance Premium. Subject to the requirements and restrictions of governing law, each yield maintenance premium is consistent with that charged by the Seller in its customary lending practices with respect to mortgage loans of the size and character of the Loans.

(ll) Loan Provisions. No Loan contains a provision that by its terms would automatically or at the unilateral option of the Mortgagor cause such Loan not be a "qualified mortgage" as such term is defined in Section 860G(a)(3) of the Code.

(mm) Defeasance and Assumption Costs. If the related Mortgage Loan Documents provide for defeasance, such documents provide that the related Mortgagor is responsible for the payment of all reasonable costs and expenses of Buyer incurred in connection with the defeasance of such Loan and the release of the related Mortgaged Property. The related Mortgage Loan Documents require the related Mortgagor to pay all reasonable costs and expenses of Buyer associated with the approval of an assumption of such Loan.

(nn) Defeasance. No Loan provides that it can be defeased prior to the date that is two years after the related origination date.

(oo) Confidentiality. There are no provisions in any Note, Mortgage or related loan documents with respect to any Loan, nor any other agreements or enforceable understandings with any Mortgagor, Mortgagor principal or guarantor, which restrict the dissemination of information regarding any Mortgagor, Mortgagor principal, guarantor or Mortgaged Property by the owner or holder of the Loan or requires such owner or holder to treat any information regarding any Mortgagor, Mortgagor principal, guarantor or Mortgaged Property as confidential; provided, however that state and federal laws may specifically limit the use and/or dissemination of such information.

(pp) Separate Tax Lots. Each Mortgaged Property contains one or more separate tax lots (or will constitute separate tax lots when the next tax maps are issued) or is subject to an endorsement under the related Title Policy.

(qq) Status of Mortgage. The Mortgage has not been satisfied, cancelled, subordinated or rescinded, in whole or in part, and the Mortgaged Property has not been released from the lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such satisfaction, cancellation, subordination, rescission or release.

(rr) Assignment of Mortgage. Other than with respect to MERS Loans, the related Assignment of Mortgage executed and delivered to the Custodian in blank, is otherwise in recordable form and constitutes a legal, valid and binding assignment, and, assuming that the assignee has the capacity to acquire such Mortgage, sufficient to convey to the assignee named therein all of the assignor's right, title and interest in, to and under such Mortgage. The endorsement of the Note is valid, legal and enforceable under the laws of the jurisdiction in which the Mortgaged Property is located.

(ss) Servicemembers' Civil Relief Act. The Mortgagor has not notified the Seller and the Seller has no knowledge of any relief requested or allowed to the Mortgagor under the Servicemembers' Civil Relief Act or similar state laws.

(tt) No Construction or Rehabilitation Loans. No Loan was made in connection with (A) the construction or rehabilitation of a Mortgaged Property or (B) facilitating the trade in or exchange of a Mortgaged Property.

(uu) No Predatory or High Cost Loans. No Loan is (a) subject to the provisions of the Homeownership and Equity Protection Act of 1994 as amended, (b) a "high cost" mortgage loan, "covered" mortgage loan, "high risk home" mortgage loan or "predatory" mortgage loan or any other comparable term, no matter how defined under any federal, state or local law, (c) subject to any comparable federal, state or local statutes or regulations, or any other statute or regulation providing for heightened regulatory scrutiny or assignee liability to holders of such mortgage loans, or (d) a High Cost Loan or Covered Loan, as applicable (as such terms are defined in the current Standard & Poor's LEVELS® Glossary Revised, Appendix E).

(vv) Compliance with Anti-Money Laundering Laws. The Seller has complied with all applicable anti-money laundering laws and regulations, including without limitation the USA PATRIOT Act of 2001 (collectively, the "Anti-Money Laundering Laws") if any, to the extent required by such Anti-Money Laundering Laws; the Seller has established an anti-money laundering compliance program. No Loan is subject to nullification pursuant to Executive Order 13224 (the "Executive Order") or the regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury (the "OFAC Regulations") or in violation of the Executive Order or the OFAC Regulations, and no Mortgagor is subject to the provisions of such Executive Order or the OFAC Regulations nor listed as a "blocked person" for purposes of the OFAC Regulations.

(ww) Eligibility Criteria. The Loan is an Eligible Loan and complies with all other eligibility requirements set forth in the Pricing Side Letter.

(xx) Wet Loans. With respect to each Wet Loan, the Seller has obtained an Escrow Letter and an Insured Closing Letter, and will provide a copy of such Escrow Letter and Insured Closing Letter to Buyer promptly upon request.

Schedule 2

Filing Jurisdictions and Offices

New York Mortgage Funding, LLC

Delaware

The New York Mortgage Company, LLC

New York

New York Mortgage Trust, Inc.

Maryland

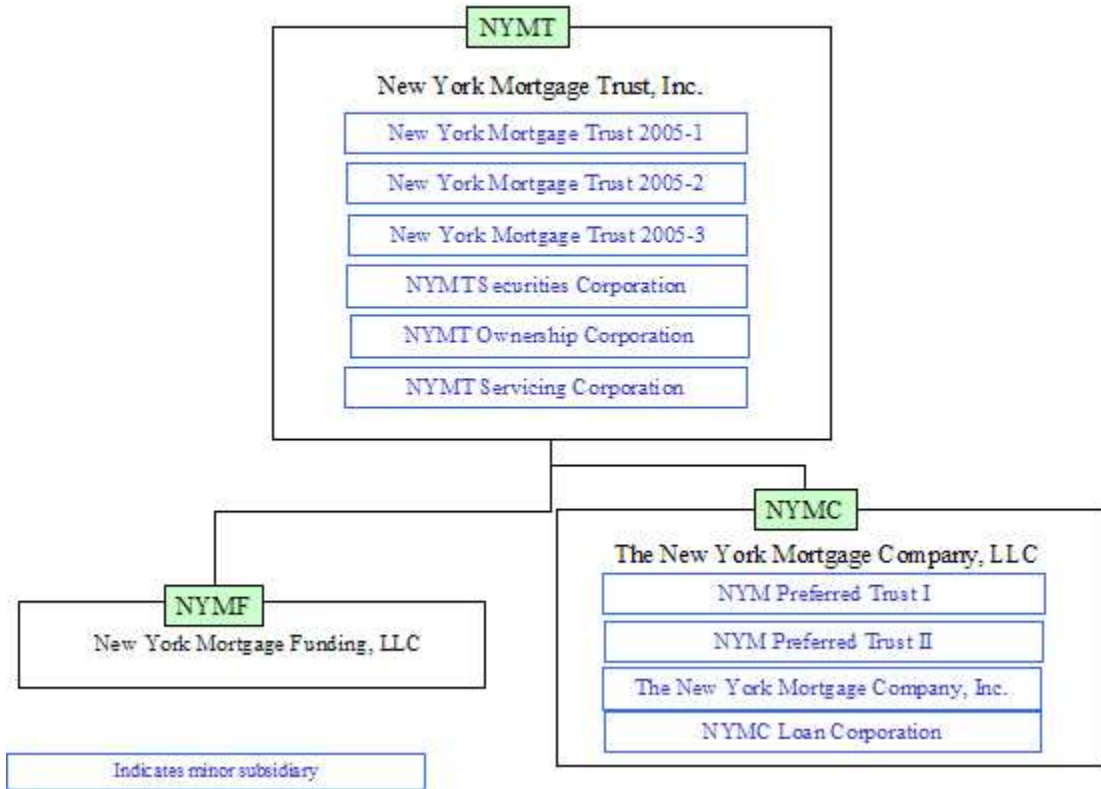
Schedule 3

Relevant States

Alabama
Alaska
Arizona
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Ohio
Oklahoma
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wyoming

Schedule 4

Subsidiaries



Schedule 5

Litigation

Wanek v. The New York Mortgage Company, LLC , No.: 05-C-4774 (United States District Court for the Northern District of Illinois).

Plaintiff has filed this purported class action against The New York Mortgage Company, LLC (“NYMC”) alleging violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”). Plaintiff asserts that an NYMC mailing sent to him offering an FHA streamline refinance loan violated FCRA in two respects. First, plaintiff contends that the mailing failed to constitute a “firm offer of credit” under section 1681b of FCRA because it did not contain specific terms. Second, plaintiff asserts that the mailing did not contain the “clear and conspicuous” disclosures mandated by section 1681m of FCRA regarding a consumer’s ability to prohibit the use of credit information in a transaction not initiated by the consumer.

NYMC has moved to dismiss plaintiff’s Complaint on the ground that there is no longer a private right of action under section 1681m of FCRA that requires “clear and conspicuous” disclosures. As to the section 1681b claim that NYMC’s offer was not a “firm offer of credit,” given the specialized type of loan product involved, New York Mortgage asserts that the offer letter was sufficiently detailed for purposes of FCRA. NYMC has retained the Washington, DC law firm of Weiner Brodsky Sidman Kider PC, experts in the areas of regulatory compliance and consumer class action defense, to handle this litigation. The motion to dismiss has been fully briefed and is currently pending before the Court. Because this case is still in its early stages, we are unable to predict the outcome of the lawsuit or estimate the potential financial exposure to NYMC, if any.

It is not possible for the Sellers to determine with certainty whether the legal proceedings listed above are or will be material to the Sellers. By disclosing these legal proceedings on this Schedule, the Sellers do not intend to imply, and are not admitting, that the legal proceedings are in fact material legal proceedings within the meaning of Item 103 of Regulation S-K under the federal securities laws or SEC Staff Accounting Release 99.

EXHIBIT A

QUARTERLY CERTIFICATION

I, _____, _____ of NEW YORK MORTGAGE TRUST, INC. (“NYMT”), do hereby certify that

- (i) each of New York Mortgage Funding, LLC, The New York Mortgage Company, LLC, and NYMT is in compliance with all provisions and terms of the Master Repurchase Agreement, dated as of January 5, 2006 by and among Greenwich Capital Financial Products, Inc., New York Mortgage Funding, LLC, The New York Mortgage Company, LLC, and New York Mortgage Trust, Inc.;
- (ii) no Default has occurred thereunder;
- (iii) there have not been any modifications to the Underwriting Guidelines that have not been approved by Buyer;
- (iv) all additional modifications to the Underwriting Guidelines since the date of the most recent disclosure to Buyer of any modification to the Underwriting Guidelines are set forth herewith;
- (v) NYMT’s Tangible Net Worth (increased for purposes of determining such amount by the outstanding principal amount of the Trust Preferred Obligations) is not less than \$100,000,000, or such higher amount provided under any other repurchase, financing, credit or other similar facility entered into by the Sellers. NYMT has at all times Cash Equivalents in an amount not less than \$5,000,000. The ratio of NYMT’s Total Indebtedness to Tangible Net Worth is not greater than 20:1. The Sellers has cash, Cash Equivalents and unused borrowing capacity on unencumbered assets that could be drawn against (taking into account required haircuts) under committed warehouse and repurchase facilities in an amount equal to not less than \$10,000,000; and
- (vi) NYMT had after-tax Net Income of at least \$1.00 for the preceding fiscal quarter.

IN WITNESS WHEREOF, I have signed this certificate.

Date: _____, 200__

NEW YORK MORTGAGE TRUST, INC.

Name:

Title:

EXHIBIT B

FORM OF CUSTODIAL AGREEMENT

A-1-2

EXHIBIT C

FORM OF OPINION OF COUNSEL TO THE SELLERS

(date)

Greenwich Capital Financial Products, Inc.
600 Steamboat Road
Greenwich, Connecticut 06830

Dear Sirs and Mesdames:

You have requested [our] [my] opinion, as counsel to New York Mortgage Funding, LLC, a Delaware limited liability company, The New York Mortgage Company, LLC, a New York limited liability company and New York Mortgage Trust, Inc., a Maryland corporation (collectively, the “Sellers”), with respect to certain matters in connection with that certain Master Repurchase Agreement, dated as of January 5, 2006 (the “Agreement”), by and among the Sellers and Greenwich Capital Financial Products, Inc. (the “Buyer”), being executed contemporaneously with a Custodial Agreement, dated as of January 5, 2006 (the “Custodial Agreement”), by and among the Sellers, LaSalle Bank, National Association (the “Custodian”), and the Buyer. Capitalized terms not otherwise defined herein have the meanings set forth in the Agreement.

[We] [I] have examined the following documents:

1. the Agreement;
2. Custodial Agreement;
3. Pricing Side Letter;
4. the Amended and Restated Electronic Tracking Agreement;
5. the Servicing Agreement;
6. the Servicing Side Letter [insert other agreements]; and
7. such other documents, records and papers as we have deemed necessary and relevant as a basis for this opinion.

Documents 1 through [6] above shall hereinafter be referred to as the “Program Documents”. To the extent [we] [I] have deemed necessary and proper, [we] [I] have relied upon the representations and warranties of the Seller contained in the Agreement. [We] [I] have assumed the authenticity of all documents submitted to me as originals, the genuineness of all signatures, the legal capacity of natural persons and the conformity to the originals of all documents.

Based upon the foregoing, it is [our] [my] opinion that:

[Opinions to be rendered for each Seller]

12. The Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of [state] and is qualified to transact business in, duly licensed and is in good standing under, the laws of each state in which any Mortgaged Property is located to the extent necessary to ensure the enforceability of each Loan and the servicing of each Loan pursuant to the Agreement.

13. The Seller has the corporate power to engage in the transactions contemplated by each of the Program Documents and the Custodial Agreement and all requisite corporate power, authority and legal right to execute and deliver each of the Program Documents and observe the terms and conditions of such instruments. The Seller has all requisite corporate power to enter into Transactions under the Agreement and to grant a security interest in the Purchased Items pursuant to the Agreement.

14. The execution, delivery and performance by the Seller of each of the Program Documents, and the sale by the Seller of the Purchased Items under the Agreement have been duly authorized by all necessary corporate action on the part of the Seller. Each of the Program Documents have been executed and delivered by the Seller and are legal, valid and binding agreements enforceable in accordance with their respective terms against the Seller, subject to bankruptcy laws and other similar laws of general application affecting rights of creditors and subject to the application of the rules of equity, including those respecting the availability of specific performance, none of which will materially interfere with the realization of the benefits provided thereunder or with the Buyer's security interest in the Loans.

15. No consent, approval, authorization or order of, and no filing or registration with, any court or governmental agency or regulatory body is required on the part of the Seller for the execution, delivery or performance by the Seller of any of the Program Documents or for the borrowings by the Seller under the Agreement or the granting of a security interest to the Buyer in the Purchased Items, pursuant to the Agreement.

16. The execution, delivery and performance by the Seller of, and the consummation of the transactions contemplated by each of the Program Documents do not and will not (a) violate any provision of the Seller's charter or by-laws, (b) violate any applicable law, rule or regulation, (c) violate any order, writ, injunction or decree of any court or governmental authority or agency or any arbitral award applicable to the Seller of which I have knowledge (after due inquiry) or (d) result in a breach of, constitute a default under, require any consent under, or result in the acceleration or required prepayment of any indebtedness pursuant to the terms of, any agreement or instrument of which I have knowledge (after due inquiry) to which the Seller is a party or by which it is bound or to which it is subject, or (except for the Liens created pursuant to the Repurchase Agreement) result in the creation or imposition of any Lien upon any Property of the Seller pursuant to the terms of any such agreement or instrument.

17. There is no action, suit, proceeding or investigation pending or, to the best of [our] [my] knowledge, threatened against the Seller which, in [our] [my] judgment, either in any one instance or in the aggregate, would be reasonably likely to result in any material adverse change in the properties, business or financial condition, or prospects of the Seller or in any material impairment of the right or ability of the Seller to carry on its business substantially as now conducted or in any material liability on the part of the Seller or which would draw into question the validity of any of the Program Documents or the Loans or of any action taken or to be taken in connection with the transactions contemplated thereby, or which would be reasonably likely to impair materially the ability of the Seller to perform under the terms of any of the Program Documents or the Loans.

18. The Agreement is effective to create, in favor of the Buyer, a valid security interest under the Uniform Commercial Code in all of the right, title and interest of the Seller in, to and under the Purchased Items as collateral security for the payment of the Secured Obligations (as defined in the Agreement), except that (a) such security interests will continue in the Purchased Items after their sale, exchange or other disposition only to the extent provided in Section 9-306 of the Uniform Commercial Code, (b) the security interests in Purchased Items in which the Seller acquires rights after the commencement of a case under the Bankruptcy Code in respect of the Seller may be limited by Section 552 of the Bankruptcy Code.

19. When the Notes are delivered to the Custodian, endorsed in blank by a duly authorized officer of the Seller, the security interest referred to in paragraph 7 above in the Notes will constitute a fully perfected first priority security interest in all right, title and interest of the Seller therein, in the Loan evidenced thereby and in the Seller's interest in the related Mortgaged Property.

(a) Upon the filing of financing statements on Form UCC-1 naming the Buyer as "Secured Party" and the Seller as "Debtor", and describing the Purchased Items, in the jurisdictions and recording offices listed on Schedule 1 attached hereto, the security interests referred to in paragraph 8 above will constitute fully perfected security interests under the Uniform Commercial Code in all right, title and interest of the Seller in, to and under such Purchased Items, which can be perfected by filing under the Uniform Commercial Code.

(b) The UCC Search Report sets forth the proper filing offices and the proper debtors necessary to identify those Persons who have on file in the jurisdictions listed on Schedule 1 financing statements covering the Filing Collateral as of the dates and times specified on Schedule 2. Except for the matters listed on Schedule 2, the UCC Search Report identifies no Person who has filed in any Filing Office a financing statement describing the Filing Collateral prior to the effective dates of the UCC Search Report.

20. Neither the Seller nor any of its Subsidiaries is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. The Seller is not subject to any Federal or state statute or regulation which limits its ability to incur indebtedness.

21. The Assignments of Mortgage are in recordable form, except for the insertion of the name of the assignee, and upon the name of the assignee being inserted, are acceptable for recording under the laws of the state where each related Mortgaged Property is located.

22. The Seller is duly registered as a [_____] in each state in which Loans were originated to the extent such registration is required by applicable law, and has obtained all other licenses and governmental approvals in each jurisdiction to the extent that the failure to obtain such licenses and approvals would render any Loan unenforceable or would materially and adversely affect the ability of the Seller to perform any of its obligations under, or the enforceability of, the Program Documents.

23. Assuming that all other elements necessary to render a Loan legal, valid, binding and enforceable were present in connection with the execution, delivery and performance of each Loan (including completion of the entire Loan fully, accurately and in compliance with all applicable laws, rules and regulations) and assuming further that no action was taken in connection with the execution, delivery and performance of each Loan (including in connection with the sale of the related Mortgaged Property) that would give rise to a defense to the legality, validity, binding effect and enforceability of such Loan, nothing in the forms of such Loans, as attached hereto as Exhibit A, would render such Loans other than legal, valid, binding and enforceable.

24. Assuming their validity, binding effect and enforceability in all other respects (including completion of the entire Loan fully, accurately and in compliance with all applicable laws, rules and regulations), the forms of Loans attached hereto as Exhibit A are in sufficient compliance with _____ law and Federal consumer protection laws so as not to be rendered void or voidable at the election of the Mortgagor thereunder.

25. The Agreement is a “repurchase agreement” and a “securities contract” within the meaning of Bankruptcy Code Sections 101(47) and 741(7), and the rights of the Buyer contained in Section 9 thereof to setoff mutual debts and claims, and in Section 35 thereof to liquidate, terminate and accelerate the Agreement, in the event of the bankruptcy of the Seller will not be stayed, avoided, or otherwise limited by operation of any provision of the Bankruptcy Code or by order of a court or administrative agency in any proceeding thereunder, including without limitation the automatic stay provisions of Bankruptcy Code Section 362(a) pursuant to Sections 362(b)[(6) and] (7) thereof.

Very truly yours,

EXHIBIT D

FORM OF TRANSACTION NOTICE

[insert date]

Greenwich Capital Financial Products, Inc.
600 Steamboat Road
Greenwich, Connecticut 06830
Attention: _____

Transaction Notice No.: _____

Ladies/Gentlemen:

Reference is made to the Master Repurchase Agreement, dated as of January 5, 2006 (the "Repurchase Agreement"; capitalized terms used but not otherwise defined herein shall have the meaning given them in the Repurchase Agreement), among New York Mortgage Funding, LLC, The New York Mortgage Company, LLC, New York Mortgage Trust, Inc. (each, and jointly and severally, the "Seller") and Greenwich Capital Financial Products, Inc. (the "Buyer").

In accordance with Section 3(a) of the Repurchase Agreement, the undersigned Seller hereby requests that you, the Buyer, agree to enter into a Transaction with us in connection with our delivery of Loans on _____ [insert requested Purchase Date, which in the case of Dry Loans must be at least two (2) Business Days following the date of the request] (the "Purchase Date"), in connection with which we shall sell to you the Loans set forth on the Loan Schedule attached hereto. The Purchase Price shall be _____ [insert applicable Purchase Price pursuant to the terms of the Pricing Side Letter], the Pricing Rate shall be _____ [insert applicable Pricing Rate pursuant to the terms of the Pricing Side Letter], and the Seller agrees to repurchase such Loans on _____ [insert requested Repurchase Date] at the Repurchase Price.

The Seller hereby certifies, as of such Purchase Date, that:

1. no Default or Event of Default has occurred and is continuing on the date hereof nor will occur after giving effect to such Transaction as a result of such Transaction;
2. each of the representations and warranties made by the Seller in or pursuant to the Program Documents is true and correct in all material respects on and as of such date (in the case of the representations and warranties in respect of Loans, solely with respect to Loans being purchased on the Purchase Date) as if made on and as of the date hereof (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date);
3. the Seller is in compliance with all governmental licenses and authorizations and is qualified to do business and is in good standing in all required jurisdictions; and
4. the Seller has satisfied all conditions precedent in Sections 9(a) and (b) of the Repurchase Agreement and all other requirements of the Program Documents.

The undersigned duly authorized officer of Seller further represents and warrants that (1) the documents constituting the Custodial File (as defined in the Custodial Agreement) with respect to the Loans that are the subject of the Transaction requested herein and more specifically identified on the mortgage loan schedule or computer readable magnetic transmission delivered to both the Buyer and the Custodian in connection herewith (the "Received Loans") [with respect to Dry Loans: have been or are hereby submitted] [with respect to Wet Loans: shall be delivered, within ____ (__) days of the date of the execution of this Transaction Notice] to Custodian and such Required Documents are to be held by the Custodian for the Buyer, (2) all other documents related to such Received Loans (including, but not limited to, mortgages, insurance policies, loan applications and appraisals) have been or will be created and held by Seller in trust for Buyer, (3) all documents related to such Received Loans withdrawn from Custodian shall be held in trust by Seller for Buyer, and (4) upon Buyer's wiring of the Purchase Price pursuant to Section 3(c) of the Repurchase Agreement, Buyer will have agreed to the terms of the Transaction as set forth herein and purchased the Received Loans from Seller.

Seller hereby represents and warrants that (x) the Received Loans have an unpaid principal balance as of the date hereof of \$_____ and (y) the number of Received Loans is _____.

Very truly yours,

By: _____

Name:

Title:

EXHIBIT E

UNDERWRITING GUIDELINES

[Underwriting guidelines to be attached]

EXHIBIT F

REQUIRED FIELDS FOR SERVICING TRANSMISSION

As agreed to among Buyer and Sellers

EXHIBIT G

REQUIRED FIELDS FOR LOAN DATA TRANSMISSION

As agreed to among Buyer and Sellers

EXHIBIT H

FORM OF MARKET VALUE CERTIFICATION

As agreed to among Buyer and Sellers

H-1

EXHIBIT I

FORM OF CONFIDENTIALITY AGREEMENT

In connection with your consideration of a possible or actual acquisition of a participating interest (the "Transaction") in an advance, note or commitment of Greenwich Capital Financial Products, Inc. ("Buyer") pursuant to a Master Repurchase Agreement between Buyer and The New York Mortgage Company, LLC, New York Mortgage Funding, LLC, New York Mortgage Trust (the "Seller") dated January 5, 2006, you have requested the right to review certain non-public information regarding the Seller that is in the possession of Buyer. In consideration of, and as a condition to, furnishing you with such information and any other information (whether communicated in writing or communicated orally) delivered to you by Buyer or its affiliates, directors, officers, employees, advisors, agents or "controlling persons" (within the meaning of the Securities Exchange Act of 1934, as amended (the "1934 Act")) (such affiliates and other persons being herein referred to collectively as Buyer "Representatives") in connection with the consideration of a Transaction (such information being herein referred to as "Evaluation Material"), Buyer hereby requests your agreement as follows:

1. The Evaluation Material will be used solely for the purpose of evaluating a possible Transaction with Buyer involving you or your affiliates, and unless and until you have completed such Transaction pursuant to a definitive agreement between you or any such affiliate and Buyer, such Evaluation Material will be kept strictly confidential by you and your affiliates, directors, officers, employees, advisors, agents or controlling persons (such affiliates and other persons being herein referred to collectively as "your Representatives"), except that the Evaluation Material or portions thereof may be disclosed to those of your Representatives who need to know such information for the purpose of evaluating a possible Transaction with Buyer (it being understood that prior to such disclosure your Representatives will be informed of the confidential nature of the Evaluation Material and shall agree to be bound by this Agreement). You agree to be responsible for any breach of this Agreement by your Representatives.

2. The term "Evaluation Material" does not include any information which (i) at the time of disclosure or thereafter is generally known by the public (other than as a result of its disclosure by you or your Representatives) or (ii) was or becomes available to you on a nonconfidential basis from a person not otherwise bound by a confidential agreement with Buyer or its Representatives or is not otherwise prohibited from transmitting the information to you. As used in this Agreement, the term "person" shall be broadly interpreted to include, without limitation, any corporation, company, joint venture, partnership or individual.

3. In the event that you receive a request to disclose all or any part of the information contained in the Evaluation Material under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, you agree to (i) immediately notify Buyer and the Seller of the existence, terms and circumstances surrounding such a request, (ii) consult with the Seller on the advisability of taking legally available steps to resist or narrow such request, and (iii) if disclosure of such information is required, exercise your best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such information.

4. Unless otherwise required by law in the opinion of your counsel, neither you nor your Representative will, without our prior written consent, disclose to any person the fact that the Evaluation Material has been made available to you.

5. You agree not to initiate or maintain contact (except for those contacts made in the ordinary course of business) with any officer, director or employee of the Seller regarding the business, operations, prospects or finances of the Seller or the employment of such officer, director or employee, except with the express written permission of the Seller.

6. You understand and acknowledge that the Seller is not making any representation or warranty, express or implied, as to the accuracy or completeness of the Evaluation Material or any other information provided to you by Buyer. The Seller, its respective affiliates or Representatives, nor any of its respective officers, directors, employees, agents or controlling persons (within the meaning of the 1934 Act) shall have any liability to you or any other person (including, without limitation, any of your Representatives) resulting from your use of the Evaluation Material.

7. You agree that neither Buyer or the Seller has not granted you any license, copyright, or similar right with respect to any of the Evaluation Material or any other information provided to you by Buyer.

8. If you determine that you do not wish to proceed with the Transaction, you will promptly deliver to Buyer all of the Evaluation Material, including all copies and reproductions thereof in your possession or in the possession of any of your Representatives.

9. Without prejudice to the rights and remedies otherwise available to the Seller, the Seller shall be entitled to equitable relief by way of injunction if you or any of your Representatives breach or threaten to breach any of the provisions of this Agreement. You agree to waive, and to cause your Representatives to waive, any requirement for the securing or posting of any bond in connection with such remedy.

10. The validity and interpretation of this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York applicable to agreements made and to be fully performed therein (excluding the conflicts of law rules). You submit to the jurisdiction of any court of the State of New York or the United States District Court for the Southern District of the State of New York for the purpose of any suit, action, or other proceeding arising out of this Agreement.

11. The benefits of this Agreement shall inure to the respective successors and assigns of the parties hereto, and the obligations and liabilities assumed in this Agreement by the parties hereto shall be binding upon the respective successors and assigns.

12. If it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that any term or provision hereof is invalid or unenforceable, (i) the remaining terms and provisions hereof shall be unimpaired and shall remain in full force and effect and (ii) the invalid or unenforceable provision or term shall be replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term or provision.

13. This Agreement embodies the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No alteration, waiver, amendments, or change or supplement hereto shall be binding or effective unless the same is set forth in writing by a duly authorized representative of each party and may be modified or waived only by a separate letter executed by the Seller and you expressly so modifying or waiving such Agreement.

14. For the convenience of the parties, any number of counterparts of this Agreement may be executed by the parties hereto. Each such counterpart shall be, and shall be deemed to be, an original instrument, but all such counterparts taken together shall constitute one and the same Agreement.

Kindly execute and return one copy of this letter which will constitute our Agreement with respect to the subject matter of this letter.

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.

By: _____

Confirmed and agreed to
this ____ day of _____, 200_.

By: _____

Name

Title:

EXHIBIT J

FORM OF INSTRUCTION LETTER

[Required fields to be provided by Buyer]

_____, 2006

_____, as [Servicer/Subservicer]

Attention: _____

Re: Master Repurchase Agreement, dated as of December 30, by and among Greenwich Capital Financial Products, Inc., (“Buyer”), New York Mortgage Funding, LLC, The New York Mortgage Company, LLC and New York Mortgage Trust, Inc. (each, and jointly and severally, the “Seller”)

Ladies and Gentlemen:

Pursuant to the Master Repurchase Agreement, dated as of January 5, 2006 (the “Repurchase Agreement”), between the Buyer and the Seller, you are hereby notified that: (i) the undersigned Seller has sold to the Buyer the assets described on Schedule 1 hereto (the “Eligible Assets”), (ii) each of the Eligible Assets is subject to a security interest in favor of the Buyer, and (iii) effective as of the delivery of this letter to the Servicer, unless otherwise notified by the Buyer in writing, any payments or distributions made with respect to such Eligible Assets shall be remitted immediately by the Servicer in accordance with the Buyer’s wiring instructions provided below:

Account No.: [_____]
ABA No.: [_____]
Reference: [_____]

The Subservicer also acknowledges its consent to terminate such Servicing Agreement upon notification by the Buyer of an occurrence of an Event of Default.

Please acknowledge receipt of this instruction letter by signing in the signature block below and forwarding an executed copy to the Buyer promptly upon receipt. Any notices to the Buyer should be delivered to the following address: _____ Attention: _____, Telephone: _____, Facsimile: _____.

Very truly yours,

[SELLER]

By: _____

Name:

Title:

ACKNOWLEDGED :

_____, as [Servicer]

By:

Name:

Title:

Telephone:

Facsimile:

EXHIBIT K

THIRD PARTY UNDERWRITING GUIDELINES

PRIME

Agency (FNMA/FHLMC)

<http://www.allregs.com/>

Chase Correspondent (03) :

<http://www.chaseb2b.com/content/portal/body/Correspondent/OnLineGuidesFrame.html>

Ohio Savings (04)

https://www2.gemstoneohio.com/MtgMktg/products/matrix/group/ohio_matrix.pdf

Thornburg (05)

<http://www.thornburgmortgage.com/PDFs/SELLERS%20GUIDE%20October%202005.pdf>

Citimortgage (10)

<https://correspondent.citimortgage.com/Correspondent/GetManual.do>

Aurora (11)

<https://www.alservices.com/Conduit/UI/SSL/SellersGuide/TOC.aspx>

Wells Fargo (12)

<https://ilnet.wellsfargo.com/ildocs/guidelines/lendersalliance/index.jsp>

Astoria Federal (15)

https://www.astoriamortgage.com/policies_procedures/index.jsp

Countrywide (33)

<https://cld.countrywide.com/cld/>

Indymac (43)

<https://new-e-mits.indymacb2b.com/eMITS/Frames.asp>

CSFB (49)

<https://www.csfbconnect.com/UWGuidelines.asp>

Bayview Financial (51) - mixed use/mult-family

http://www.silverhillfinancial.com/client_learning.jsp

FHA

<http://www.hud.gov>

Connecticut Bond - CHFA

<http://www.chfa.org>

Delaware Bond - DSHA

http://www2.state.de.us/dsha/research_frame.htm

New Hampshire Bond - NHHFA

<http://www.nhhfa.org/>

Pennsylvania Bond - PHFA

<http://www.phfa.org/>

Rhode Island Bond

<http://www.rihousing.com/>

SUB-PRIME

Countrywide Sub-prime (S-1)

<https://cld.countrywide.com/cld/>

New Century (S-4)

<https://www.newcentury.com/sellersGuide/index.jsp>

WMC (S-5)

<https://www.wmcdirect.com/default.asp>

Deutsche Bank (S-6)

<https://clg.db.com/pages/corrlend/home.html>

Impac Sub-prime (S-9)

<http://www.impacfundingcorp.com/SellerGuide2003/sellersguide.asp>

Novastar (S-11)

http://www.novastaris.com/manuals/netbranch_manuals.asp

Option One (S-12)

http://oomc.com/acquisitions/acquisitions_uwpolicies.asp

Decision One (S-13)

https://www.d1online.com/content/d1_corr_guidelines.pdf

ALT-A BULK INVESTORS

Impac (9)

Citigroup (10A)

Nomura (16)

Indymac (43)

Bear Stearns (44)

Wintergroup (45)

UBS Warburg (46)

Greenwich Capital (47)

CSFB (49)

Countrywide Securities (52)

US Bank (54)

Greenpoint Correspondent (55)

Lehman Brothers Sec (56)

RFC (58)

WAMU Securities (59)

Merrill Lynch (60)

Goldman Sachs (62)

Morgan Stanley (63)
WMC (S-5)
Deutsche Bank (S-6)
Option One (S-12)
Wells Fargo Sub-prime (12SP)
BB&T
FNMA
JP Morgan
Opteum Funding
Smith Barney
Wachovia
Bank of America
Sovereign Securities
CDC
C-Bass

AMENDED AND RESTATED CUSTODIAL AGREEMENT

By and Among

THE NEW YORK MORTGAGE COMPANY, LLC
as a Seller

NEW YORK MORTGAGE FUNDING, LLC

as a Seller

NEW YORK MORTGAGE TRUST, INC.

as a Seller

LASALLE BANK, NATIONAL ASSOCIATION

as Custodian and Disbursement Agent

and

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.

as Buyer

Dated as of January 5, 2006

TABLE OF CONTENTS

	<u>Page</u>
Section 1. Definitions.	1
Section 2. Delivery of Mortgage File.	6
Section 3. Mortgage Loan Transmission; Exception Report; Trust Receipt.	7
Section 4. Obligations of the Custodian.	10
Section 5. Release of Mortgage Loans.	11
Section 6. Fees and Expenses of Custodian.	13
Section 7. Removal or Resignation of Custodian.	13
Section 8. Examination of Mortgage Files.	14
Section 9. Insurance of Custodian.	14
Section 10. Representations and Warranties.	14
Section 11. Statements.	15
Section 12. No Adverse Interest of Custodian.	15
Section 13. Indemnification of Custodian.	15
Section 14. Concerning the Custodian.	16
Section 15. Term of Custodial Agreement.	17
Section 16. Notices.	17
Section 17. Governing Law.	17
Section 18. Authorized Representatives.	17
Section 19. Amendment.	17
Section 20. Cumulative Rights.	18
Section 21. Binding Upon Successors.	18
Section 22. Entire Agreement; Severability.	18
Section 23. Execution In Counterparts.	18
Section 24. Tax Reports.	18
Section 25. Assignment by the Buyer.	18
Section 26. Transmission of Mortgage Files.	19

AMENDED AND RESTATED CUSTODIAL AGREEMENT

AMENDED AND RESTATED CUSTODIAL AGREEMENT (this “Custodial Agreement”) dated as of January 5, 2006, made by and among:

- (i) THE NEW YORK MORTGAGE COMPANY, LLC, a New York limited liability company (“NYMC”);
- (ii) NEW YORK MORTGAGE FUNDING, LLC, a Delaware limited liability company (“NYMF”);
- (iii) NEW YORK MORTGAGE TRUST, INC., a Maryland corporation (“NYMT”), each of NYMC, NYMF and NYMT, a “Seller” and jointly and severally, the “Seller” or the “Sellers”);
- (iv) LASALLE BANK, NATIONAL ASSOCIATION, as custodian for the Buyer (in such capacity, the “Custodian”) and as disbursement agent for the Buyer (in such capacity, the “Disbursement Agent”); and
- (v) GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation (the “Buyer”).

RECITALS

The Sellers and the Buyer are parties to the Master Repurchase Agreement, dated as of the date hereof (as amended, supplemented or otherwise modified and in effect from time to time, the “Master Repurchase Agreement”), pursuant to which the Buyer has agreed, subject to the terms and conditions of the Master Repurchase Agreement, to enter into Transactions (as defined therein) for the purchase and sale of Purchased Loans (as defined therein). This Amended and Restated Custodial Agreement shall replace that certain Custodial Agreement, dated as of May 1, 2004 among NYMC, the Custodian and the Buyer.

It is a condition precedent to the effectiveness of the Master Repurchase Agreement that the parties hereto execute and deliver this Custodial Agreement to provide for the appointment of the Custodian as custodian hereunder. Accordingly, the parties hereto agree as follows:

Section 1. Definitions.

Unless otherwise defined herein, terms defined in the Master Repurchase Agreement shall have their respective assigned meanings when used herein, and the following terms shall have the following meanings:

“Acceptable Attorney” shall mean any attorney-at-law to which the Custodian has sent an Attorney’s Bailee Letter, except for an attorney whom the Buyer has notified the Custodian and the Sellers in writing that such attorney is not reasonably satisfactory to the Buyer.

“AM Funded Wet Loan” shall mean Wet Loans that will be funded before 12:00 p.m. (New York City time) on any Business Day.

“ Approved Purchaser ” shall mean any third party purchaser of a Mortgage Loan, except for any person whom the Buyer has notified the Custodian and the Sellers in writing that such person is not reasonably satisfactory to the Buyer.

“ Approved Title Insurance Company ” shall mean a title insurance company approved by the Buyer in its sole discretion, provided on a list delivered to the Custodian by the Buyer. The Custodian shall have no obligation to verify that a title insurance company is an Approved Title Insurance Company.

“ Assignment of Mortgage ” shall mean with respect to any Mortgage, an assignment of the Mortgage, notice of transfer or equivalent instrument in recordable form, reflecting the assignment and pledge of the Mortgage.

“ Attorney’s Bailee Letter ” shall mean a letter substantially in the form of Annex 12 hereto.

“ Authorized Representative ” shall have the meaning specified in Section 18 hereof.

“ Business Day ” shall mean any day other than (i) a Saturday or Sunday, (ii) a day on which the New York Stock Exchange, the Federal Reserve Bank of New York, the Custodian or banking and savings and loan institutions in the State of New York, Connecticut or California or the City of New York or the city or state in which the Custodian’s offices are located are closed, or (iii) a day on which trading in securities on the New York Stock Exchange or any other major securities exchange in the United States is not conducted.

“ Cooperative Loan ” shall mean a Mortgage Loan that is secured by a first lien on and perfected security interest in Cooperative Shares and the related Proprietary Lease granting exclusive rights to occupy the related Cooperative Unit in the building owned by the related Cooperative Corporation.

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

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

“ Cooperative Unit ” shall mean, with respect to a Cooperative Loan, a specific unit in a Cooperative Project.

“ Custodial Delivery Failure ” shall have the meaning specified in Section 13 hereof.

“ Custodian Loan Transmission ” shall mean in the case of each Mortgage Loan, a computer-readable transmission in the form attached hereto as Annex 17. The Custodian shall incorporate all current data provided by the Seller to the Custodian into the Custodian Loan Transmission.

“ Dry Loan ” shall mean a first Mortgage Loan which is underwritten in accordance with the Underwriting Guidelines and as to which the related Mortgage File contains all required Mortgage Loan Documents.

“ Electronic Agent ” shall have the meaning assigned to such term in Section 2 of the Electronic Tracking Agreement.

“ Electronic Tracking Agreement ” shall mean the Electronic Tracking Agreement, dated as of the date hereof, among the Sellers, the Buyer, the Electronic Agent and MERS, as the same shall be amended, supplemented or otherwise modified from time to time.

“ Escrow Letter ” shall mean, with respect to any Wet Loan that becomes subject to a Transaction pursuant to the Master Repurchase Agreement before the end of the applicable rescission period, an escrow agreement or letter which is fully assignable to the Buyer, stating that in the event of a Rescission or if for any other reason such Wet Loan fails to fund on a given day, the party conducting the closing is holding all funds which would have been disbursed on behalf of the Mortgagor as agent for and for the benefit of the Buyer and such funds shall be returned to the Disbursement Agent not later than one Business Day after the date of Rescission or other failure of the Loan to fund on a given day.

“ Event of Default ” shall have the meaning provided in Section 18 of the Master Repurchase Agreement.

“ Exception ” shall mean, with respect to any Mortgage Loan, (a) any Exception identified on Annex 13 hereto or as otherwise reasonably determined by the Buyer; or (b) with respect to which a Responsible Officer of the Custodian receives written notice or has actual knowledge of a lien or security interest in favor of a Person other than the Buyer with respect to such Mortgage Loan.

“ Exception Report ” means a list, in a format mutually acceptable to the Buyer, the Custodian and the Sellers, of Mortgage Loans delivered by the Custodian to the Buyer and the Sellers in an electronic format as provided in Section 3 hereof, reflecting the Mortgage Loans held by the Custodian for the benefit of the Buyer, which includes codes as described in Annex 13 indicating any Exceptions with respect to each Mortgage Loan listed thereon. Each Exception Report shall set forth (a) the Mortgage Loans being purchased by the Buyer on any applicable Purchase Date as well as the Mortgage Loans previously purchased by the Buyer and held by the Custodian hereunder, which such Mortgage Loans shall be listed separately from those purchased on the current Purchase Date, and (b) all Exceptions with respect thereto, with any updates thereto from the time last delivered.

“ Insured Closing Letter ” shall mean, with respect to any Wet Loan, a letter of indemnification from an Approved Title Insurance Company, in any jurisdiction where insured closing letters are permitted under applicable law and regulation, addressed to the related Seller, which is fully assignable to the Buyer, with coverage that is customarily acceptable to Persons engaged in the origination of mortgage loans, identifying the Settlement Agent covered thereby, which may be in the form of a blanket letter.

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

“ MERS Designated Mortgage Loan ” shall mean any Mortgage Loan as to which the related Mortgage or Assignment of Mortgage has been recorded in the name of MERS, as agent for the holder from time to time of the Mortgage Note and which is identified as a MERS Mortgage Loan on the related Mortgage Loan Transmission.

“ MERS Identification Number ” shall mean the eighteen digit number permanently assigned to each MERS Mortgage Loan.

“ Mortgage ” shall mean the mortgage, deed of trust or other instrument, which creates a first or second lien on the fee simple or leasehold estate in such real property.

“ Mortgage File ” shall mean, as to each Mortgage Loan, those documents listed in Section 2(a) of this Custodial Agreement that are delivered to the Custodian or which at any time come into the possession of the Custodian.

“ Mortgage Loan ” shall mean a mortgage loan or a Cooperative Loan which the Custodian has been instructed to hold for the Buyer pursuant to this Custodial Agreement, and which Mortgage Loan includes, without limitation, (i) a Mortgage Note, the related Mortgage and all other Mortgage Loan Documents and (ii) all right, title and interest of the related Seller in and to the Mortgaged Property (or, with respect to a Cooperative Loan, the Cooperative Shares and the related Proprietary Lease) covered by such Mortgage.

“ Mortgage Loan Documents ” shall mean, with respect to a Mortgage Loan, the documents comprising the Mortgage File for such Mortgage Loan.

“ Mortgage Loan Transmission ” shall mean a computer-readable transmission in a standardized text format delivered by the related Seller to the Buyer and the Custodian incorporating the fields identified on Annex 1 or as otherwise mutually agreed upon by the Buyer, the Seller and the Custodian.

“ Mortgage Note ” shall mean the original executed promissory note or other evidence of the indebtedness of a Mortgagor with respect to a Mortgage Loan.

“ Mortgaged Property ” means the real property (including all improvements, buildings, fixtures, building equipment and personal property affixed thereto and all additions, alterations and replacements made at any time with respect to the foregoing) and all other collateral securing repayment of the debt evidenced by a Mortgage Note.

“ Mortgagor ” means the obligor on a Mortgage Note.

“ Notice of Sale and Request for Release ” shall mean a notice to the Custodian and the Buyer in the form of Annex 3 hereto that certain of the Mortgage Loans are being sold and specifying the date of such sale and the amount of the Repurchase Price being paid off with the proceeds of such sale and requesting that certain documents with respect to such Mortgage Loans be delivered to the related third party purchaser.

“ Officer’s Certificate ” shall mean a certificate signed by a Responsible Officer of the Person delivering such certificate and delivered as required by this Custodial Agreement.

“ Opinion of Counsel ” shall mean a written opinion letter of counsel in form and substance reasonably acceptable to the party receiving such opinion letter.

“ PM Funded Wet Loans ” shall mean Wet Loans that will be funded after 12:00 p.m. (New York City time) but on or prior to 4:30 p.m. (New York City time) on any Business Day.

“ Program Documents ” shall have the meaning assigned thereto in the Master Repurchase Agreement.

“ Proprietary Lease ” shall mean the lease on a Cooperative Unit evidencing the possessory interest of the owner of the Cooperative Shares in such Cooperative Unit.

“ Purchase Advice ” shall mean the written notice provided by the related Seller to the Buyer that the Buyer will be receiving a wire transfer on such date.

“Purchase Date” means the date on which a Transaction is entered into pursuant to the Master Repurchase Agreement.

“Repurchase Price” shall have the meaning assigned thereto in the Master Repurchase Agreement.

“Rescission” shall mean the right of a Mortgagor to rescind the related Mortgage Note and related documents pursuant to applicable law and regulation.

“Responsible Officer” shall mean, as to any Person, the chief executive officer or, with respect to financial matters, the chief financial officer of such Person; provided, that in the event any such officer is unavailable at any time he or she is required to take any action hereunder, Responsible Officer shall mean any officer authorized to act on such officer’s behalf as demonstrated by a certificate of corporate resolution. With respect to the Custodian, Responsible Officer shall mean any managing director, director, associate, principal, vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Custodian customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Review Procedures” shall have the meaning specified in Section 3(a) hereof.

“Settlement Agent” shall mean, with respect to any Wet Loan, the Person specified in the Notice of Borrowing (which may be a title company, escrow company or attorney in accordance with local law and practice in the jurisdiction where the related Wet Loan is being originated and which is not listed as an Unapproved Settlement Agent on Annex 15 attached hereto as revised from time to time by the Buyer) to which the proceeds of the related Advance are to be distributed by the Custodian in accordance with the instructions of the related Seller provided in the applicable Mortgage Loan Transmission.

“Transaction” shall have the meaning assigned thereto in the Master Repurchase Agreement.

“Transaction Notice” means a written request of a Seller to enter into a Transaction, in the form attached to the Master Repurchase Agreement which is delivered to Buyer and Custodian.

“Transmittal Letter” shall mean a letter substantially in the form of Annex 11 hereto.

“Trust Receipt” shall mean the trust receipt in the form annexed hereto as Annex 2 delivered to the Buyer by the Custodian covering the Mortgage Loans subject to this Custodial Agreement from time to time.

“Wet Loan” shall mean a wet-funded first or second lien Mortgage Loan which is acceptable to the Buyer and does not contain all the required Mortgage Loan documents specified in Section 2(a) in the related Mortgage File, which has the following characteristics:

- (a) the proceeds thereof have been funded by wire transfer or cashier’s check, cleared check or draft or other form of immediately available funds to the Settlement Agent or funding Buyer for such Wet Loan;
- (b) such Wet Loan has closed on the disbursement date and become a valid first lien securing actual indebtedness by funding to the order of the Mortgagor thereunder;

- (c) the proceeds thereof have not been returned to the Buyer or its agent from the Settlement Agent for such Wet Loan;
- (d) no Seller has learned that such Wet Loan will not be closed and funded to the order of the Mortgagor;
- (e) upon recordation such Mortgage Loan will constitute a first or second lien on the premises described therein;
- (f) the related Seller has obtained an Escrow Letter and an Insured Closing Letter for such Wet Loan; and
- (g) any applicable Rescission period has passed and such Wet Loan is not subject to any right of Rescission.

Section 2. Delivery of Mortgage File.

(a) The Sellers shall from time to time deliver Mortgage Files to the Custodian to be held hereunder, which shall be reviewed by the Custodian as provided in Section 3. With respect to each Transaction:

(i) in the case of Dry Loans that are to be Purchased by the Buyer in a Transaction, the Sellers shall deliver (1) written notice, in the form of a Transaction Notice, to the Buyer and the Custodian with respect to such Dry Loans no later than 5:00 p.m. (New York City time) two (2) Business Days prior to the requested Purchase Date, (2) the related Mortgage Loan Transmission to the Buyer and the Custodian no later than 3:00 p.m. (New York City time) on the requested Purchase Date, and (3) the items set forth on Annex 16 hereto pertaining to such Dry Loans to the Custodian not later than 5:00 p.m. (New York City time) two (2) Business Days prior to the requested Purchase Date;

(ii) in the case of AM Funded Wet Loans, with respect to such Wet Loans which are to be purchased by the Buyer in a Transaction, the Seller shall deliver (1) written notice, in the form of a Transaction Notice together with the related Mortgage Loan Transmission to the Buyer and the Custodian no later than 5:00 p.m. (New York City time) one (1) Business Day prior to the requested Purchase Date; and

(iii) in the case of PM Funded Wet Loans, with respect to such Wet Loans which are to be purchased by the Buyer in a Transaction, the Seller shall deliver (1) written notice, in the form of a Transaction Notice together with the related Mortgage Loan Transmission to the Buyer and the Custodian to the Custodian, with respect to such Wet Loans which are to be purchased by the Buyer in a Transaction no later than 3:00 p.m. (New York City time) on the requested Purchase Date

Notwithstanding anything herein to the contrary, in the event that more than 250 Mortgage Files are to be delivered the day prior to any Purchase Date, the Custodian shall have such additional time to complete its review of such Mortgage Files in excess of 250 as agreed between the Custodian and the related Seller. In such event, the related Seller shall deliver the Mortgage Files to the Custodian so that the Custodian shall have the time required to complete its review and issue the required Trust Receipts on the Purchase Date.

Following the Custodian's review of the items specified above, the Custodian shall deliver to the Buyer a notice of intent to Issue Trust Receipt not later than 6:00 p.m. (New York City time) on the day prior to the requested Purchase Date for any Wet Loans and not later than 12:00 noon (New York City time) on the requested Purchase Date for any Dry Loans.

(b) From time to time, the Sellers shall forward to the Custodian additional original documents or additional documents evidencing any assumption, modification, consolidation or extension of a Mortgage Loan approved by the related Seller, or other documents with respect to a Mortgage Loan, in accordance with the terms of the Master Repurchase Agreement, and upon receipt of any such other documents, the Custodian shall hold such other documents for the Buyer hereunder.

With respect to any documents which have been delivered or are being delivered to recording offices for recording and have not been returned to the related Seller in time to permit their delivery hereunder at the time required, in lieu of delivering such original documents, such Seller shall deliver to the Custodian a copy thereof certified by such Seller, originating lender, settlement agent, title company or escrow closing company as a true, correct and complete copy of the original which has been transmitted for recordation. Such Seller shall deliver such original documents to the Custodian promptly when they are received if the related Mortgage Loan is then subject to this Custodial Agreement.

(c) With respect to any Mortgage Loan, if the Custodian has identified such Mortgage Loan as having any Exception or if any Seller has knowledge of any Exception, the Sellers shall promptly and diligently notify the Buyer of any such Exception and shall promptly and diligently attempt to cure any such Exception.

Section 3. Mortgage Loan Transmission; Exception Report; Trust Receipt.

(a) If the Custodian has received a Mortgage File for a Mortgage Loan identified on the Mortgage Loan Transmission as provided in the preceding section, the Custodian shall review the documents required to be delivered pursuant to Section 2(a) above. The Custodian will deliver by electronic transmission, no later than 5:30 p.m.(New York City time) on each day to the Sellers and the Buyer separate Custodian Loan Transmissions with respect to Wet Loans and Dry Loans. The Custodian shall deliver each original Trust Receipt and Custodian Loan Transmission to JP Morgan Chase Bank at Four New York Plaza, Ground Floor, Outsourcing Department, New York, New York 10004, Attention: Jennifer John for the account of Greenwich Capital Financial Products, Inc. (telephone number (212) 623-5953) each Purchase Date, or day that mortgage files are released following any sale of the related Mortgage Loan, by overnight delivery using a nationally recognized overnight delivery service at the Seller's expense. Not later than 5:30 p.m. (New York City time) on each Purchase Date, the Custodian shall deliver copies of each Trust Receipt via facsimile to the Buyer. Separate Trust Receipts shall be delivered with respect to Wet Loans and Dry Loans Each Trust Receipt and Custodian Loan Transmission subsequently delivered by the Custodian to the Buyer shall supersede and cancel the Trust Receipt and Custodian Loan Transmission previously delivered by the Custodian to the Buyer hereunder, and shall replace the then existing Custodian Loan Transmission and the then existing Trust Receipt; provided that any Wet Trust Receipt issued shall only supersede and previously Wet Trust Receipt, and any Dry Trust Receipt shall only supersede any previously issued Dry Trust Receipt.

The delivery of each Trust Receipt and Custodian Loan Transmission to the Buyer shall be the Custodian's representation that, other than the Exceptions listed: (i) all documents in respect of such Mortgage Loan required to be delivered at such time pursuant to Section 2(a) of this Custodial Agreement, and the documents listed in Sections (i), (ii), (iii), (iv) and (v) of Annex 16 (and if actually delivered to the Custodian the documents listed at Sections (vi) - (x) of Annex 16), have been delivered and are in the possession of the Custodian as part of the Mortgage File for such Mortgage Loan; (ii) all such documents have been reviewed by the Custodian in accordance with the review procedures attached hereto as Annex 4 (the "Review Procedures") and appear on their face to be regular and to relate to such Mortgage Loan and to satisfy the requirements set forth in Section 2 of this Custodial Agreement; and (iii) each Mortgage Loan identified in such Custodian Loan Transmission is being held by the Custodian as bailee for the Buyer and/or its designees pursuant to this Custodial Agreement.

(b) In connection with any Trust Receipt and Custodian Loan Transmission delivered hereunder by the Custodian, the Custodian makes no representations as to and shall not be responsible to verify (A) the validity, legality, enforceability, due authorization, recordability, sufficiency, or genuineness of any of the documents contained in each Mortgage File or (B) the collectability, insurability, effectiveness or suitability of any such Mortgage Loan. Subject to the following sentence, the Sellers and the Buyer hereby give the Custodian notice that from and after the Purchase Date, the Buyer shall have a security interest in each Mortgage Loan identified on a Custodian Loan Transmission until such time that the Custodian receives written notice from the Buyer that the Buyer no longer has a security interest in such Mortgage Loan.

(c) With respect to Wet Loans, the delivery of the Transaction Notice and Mortgage Loan Transmission to the Custodian by the related Seller shall be deemed to constitute required documents with respect to the related Wet Loan (and shall be deemed to be a certification by such Seller that such Mortgage Loan is a Wet Loan) and the documents specified in Section 2(a)(iii) above shall not be required to be delivered with respect to such Wet Loan on the related Purchase Date. Notwithstanding the foregoing, the related Seller shall deposit with the Custodian the documents described in Section 2(a)(iii) above for such Wet Loan as soon as possible and, in any event, within seven (7) Business Days after the date the Advance is made with respect to such Wet Loan. The Custodian shall notify the Buyer within one (1) Business Day via its daily reports of the failure by the Seller to deliver any document by the time provided in the previous sentence. Upon deposit of such documents with Custodian, Custodian shall review such documents in accordance with the Review Procedures, shall promptly notify Buyer if such documents do not comply with the requirements thereof and shall indicate on its records that Custodian maintains possession of such documents for Buyer hereunder. The Sellers hereby represent, warrant and covenant to Buyer and Custodian that the Sellers and any person or entity acting on behalf of the Sellers that has possession of any of the documents described in Section 2(a) above for such Wet Loan prior to the deposit thereof with Custodian will hold such documents in trust for Buyer.

(d) The Disbursement Agent shall establish and maintain a disbursement account (the "Disbursement Account") for and on behalf of the Buyer entitled "Greenwich Capital Financial Products, Inc., Account Number 722258.1 for Wet Loans." All amounts remitted on account of Advances made by the Buyer to the Seller, which the Seller requests the Buyer to remit to the Disbursement Agent (which shall be remitted to in care of Rita Lopez, LaSalle Bank, National Association, 135 South LaSalle Street, Suite 1625, Chicago, Illinois, 60603), shall be remitted no later than 9:30 a.m. (eastern time) with respect to the AM Funded Wet Loans and no later than 1:30 p.m. (eastern time) with respect to PM Funded Wet Loans, and shall be deposited in such Disbursement Account by the Disbursement Agent upon receipt. The Buyer shall not be required to remit any funds to the Disbursement Account, unless and until all conditions precedent set forth in the Master Repurchase Agreement have been satisfied. All related fees and expenses for the Disbursement Account shall be borne by the Seller. Upon request, the Disbursement Agent shall provide the Seller, or the Buyer, with the federal wire reference number for a particular payment made by the Disbursement Agent out of the Disbursement Account. The Disbursement Account shall be maintained for the sole benefit of the Buyer and the Disbursement Agent shall take direction as to the control of the Disbursement Account solely for the benefit of the Buyer. Neither the Seller nor any other person claiming on behalf of or through the Seller shall have any right or authority, whether express or implied, to close or make use of, or, except as expressly provided in the following sentence, withdraw any funds from, the Disbursement Account. The Buyer hereby authorizes the Disbursement Agent for purposes hereof, that unless the Disbursement Agent shall receive notice in writing from the Buyer to the contrary prior to disbursement of such funds, to disburse all funds received from the Buyer which are deposited to the Disbursement Account as directed by the Seller in its Mortgage Loan Transmission. To the extent that such notice not to disburse funds is received by the Disbursement Agent, any such funds in the Disbursement Account shall be promptly returned to the Buyer. Funds retained in the Disbursement Account shall remain uninvested and the Disbursement Agent shall not be liable for interest on such funds. The Disbursement Agent shall reconcile the Disbursement Account on a daily basis. The Disbursement Agent shall use reasonable efforts to identify all funds received in connection with the Rescission of any Mortgage Loan.

The Seller hereby represents that it shall be solely responsible for assuring that the information provided in the Mortgage Loan Transmission is correct.

(e) 3. On each Purchase Date, the Disbursement Agent will disburse funds in the Disbursement Account to the Settlement Agents in accordance with the Wire Instruction Data in the Mortgage Loan Transmission by 10:30 a.m. (eastern time) with respect to AM Funded Wet Loans or by 4:30 p.m. (eastern time) with respect to PM Funded Wet Loans, provided, that (A) sufficient funds exist in the Disbursement Account; (B) The Disbursement Agent shall not knowingly disburse funds to the Seller as payee, unless otherwise authorized by the Buyer in writing to the Disbursement Agent; and (C) if a conflict exists between the instructions of the Buyer and the instructions of the Seller, the Disbursement Agent shall follow the Buyer's instructions. The Disbursement Agent shall have no duty to verify or review any wire instructions (other than as necessary to send such wire) given to it hereunder.

(ii) If any funds disbursed on any date in accordance with clause (i) of this Section 3(e) are returned to the Disbursement Account (A) the Disbursement Agent shall release such funds from the Disbursement Account in accordance with Section 3(f), and (B) the Buyer shall, upon receipt of such amounts, apply the same to the prepayment of the Purchase Price relating to such Mortgage Loan or Mortgage Loans. The Seller shall instruct each Settlement Agent regarding funds disbursed to such Settlement Agent in accordance with the terms of the Master Repurchase Agreement. The Disbursement Agent shall provide to the Seller and Buyer not later than 2:00 p.m. (eastern time), on each Business Day a report of all Rescission amounts credited to the Disbursement Account by 2:00 p.m. (eastern time) on such Business Day.

(f) Unless otherwise instructed by the Buyer in writing, before the close of business on each Business Day, the Disbursement Agent shall withdraw all collected amounts as of 5:30 p.m. (eastern time) then standing to the credit of the Disbursement Account related to Rescissions or other unfunded Mortgage Loans and forward such amounts to the following account maintained by the Buyer: JP Morgan Chase Bank, New York, for Greenwich Capital Financial Products, Inc., ABA # 021-000-021, Account # 140-0-95961, Attn: Mike Harris/New York Mortgage. The Buyer hereby agrees to wire to the Seller on such Business Day all amounts received by the Buyer from the Disbursement Account on such Business Day pursuant to this Section 3(f) which are not required to be paid to the Buyer in accordance with the Master Repurchase Agreement. The Seller will be obligated to cover any shortfalls related to the Disbursement Account if the Buyer's requirement to pay the Purchase Price will not be sufficient to cover disbursements to the Settlement Agent due to a Rescission or other reason the Mortgage Loan expected to be funded with such funds did not close. In addition, in connection with any Wet Loan, the Seller shall be required to deposit in the Disbursement Account prior to the closing of such Mortgage Loan an amount equal to the excess of (i) the amount required to be remitted in connection with the closing of such Mortgage Loan over (ii) the amount to be paid as the Purchase Price by the Buyer pursuant to the Master Repurchase Agreement with respect to such Mortgage Loan.

(g) In connection with the funding of any Wet Loans, the Seller shall establish an Operating Account (“the Operating Account”) with the Disbursement Agent to be designated “New York Mortgage Operating Account, maintained by LaSalle Bank, National Association, in trust for New York Mortgage, Account Number 722257.1”. With respect to any Wet Loan to be funded in the morning on any Business Day (an “AM Funded Wet Loan”), the Seller by delivery of the Mortgage Loan Transmission indicating thereon which Mortgage Loans are AM Funded Wet Loans requests that the Disbursement Agent, and the Disbursement Agent shall, transfer from the Operating Account to the Disbursement Account by 9:30 a.m. (eastern time) on the day of closing for such AM Funded Wet Loan all of the funds necessary to close such AM Funded Wet Loan to the extent of the balance of all funds in the Operating Account. With respect to any Wet Loan to be funded in the afternoon on any Business Day (a “PM Funded Wet Loan”), the Seller by delivery of the Mortgage Loan Transmission indicating thereon which Mortgage Loans are PM Funded Wet Loans requests that the Disbursement Agent, and the Disbursement Agent shall, transfer from the Operating Account to the Disbursement Account by 4:30 p.m. (eastern time) on the day of closing for such PM Funded Wet Loan, to the extent of the balance of funds in the Operating Account, all of the funds necessary to close such PM Funded Wet Loan. Funds retained in the Operating Account shall remain uninvested and the Disbursement Agent shall not be liable for interest on such funds.

Section 4. Obligations of the Custodian .

(a) The Custodian shall maintain continuous custody of all items constituting the Mortgage Files in secure facilities in accordance with customary standards for such custody and shall reflect in its records the interest of the Buyer therein. Each Mortgage Note (and Assignment of Mortgage) shall be maintained in fire resistant facilities.

(b) With respect to the documents constituting each Mortgage File, the Custodian shall (i) act exclusively as the bailee of, and custodian for, the Buyer, (ii) hold all documents constituting such Mortgage File received by it for the exclusive use and benefit of the Buyer, and (iii) make disposition thereof only in accordance with the terms of this Custodial Agreement or with written instructions furnished by the Buyer; provided, however, that in the event of a conflict between the terms of this Custodial Agreement and the written instructions of the Buyer, the Buyer’s written instructions shall control.

(c) In the event that (i) the Buyer, the Seller or the Custodian shall be served by a third party with any type of levy, attachment, writ or court order with respect to any Mortgage File or any document included within a Mortgage File or (ii) a third party shall institute any court proceeding by which any Mortgage File or a document included within a Mortgage File shall be required to be delivered otherwise than in accordance with the provisions of this Custodial Agreement, the party receiving such service shall promptly deliver or cause to be delivered to the other parties to this Custodial Agreement copies of all court papers, orders, documents and other materials concerning such proceedings. The Custodian shall, to the extent permitted by law or any court order continue to hold and maintain all the Mortgage Files that are the subject of such proceedings pending a final, nonappealable order of a court of competent jurisdiction permitting or directing disposition thereof. Upon final determination of such court, the Custodian shall dispose of such Mortgage File or any document included within such Mortgage File as directed by the Buyer which shall give a direction consistent with such determination. Expenses of the Custodian (including reasonable attorneys’ fees and related expenses) incurred as a result of such proceedings shall be borne by the Seller.

(d) The Buyer hereby acknowledges that the Custodian shall not be responsible for the validity of the Buyer’s ownership interest or the validity and perfection of the Buyer’s security interest in the Purchased Loans under the Master Repurchase Agreement, other than the Custodian’s obligation to take possession of Mortgage Loans as set forth in Section 2 hereof.

(e) During the term of this Custodial Agreement, if the Custodian discovers any nonconformity with the review criteria in Annex 4 with respect to any Mortgage File, the Custodian shall, by means of the Exception Report, give written specification of such nonconformity to the Buyer and the Seller.

Section 5. Release of Mortgage Loans .

(a) From time to time until the Custodian is otherwise notified in writing by an Authorized Representative of the Buyer, which notice shall be given by the Buyer only following the occurrence of an Event of Default, the Custodian is hereby authorized upon receipt of written request of the Seller to release Mortgage Files relating to Mortgage Loans in the possession of the Custodian to the Seller, or its designee, for the purpose of servicing or correcting documentary deficiencies relating thereto against a request for release of Mortgage Files and receipt (a “Request for Release and Receipt”) executed by the Seller in the form of Annex 5 hereto, and an electronic request in the form of Attachment 1 to Annex 5, which Request for Release and Receipt must also be executed by the Buyer in the event that more than one hundred (100) Mortgage Files would be released following such requested release. The Custodian shall promptly notify the Buyer of the occurrence of each such release of Mortgage Files and shall keep track of each such release of Mortgage Files. The Buyer hereby agrees to respond to a Request for Release and Receipt, via facsimile, no later than one (1) Business Day after the Buyer’s receipt thereof. The Seller or its designee shall return to the Custodian each Mortgage File previously released by the Custodian within ten (10) calendar days after receipt thereof other than for any Mortgage Loan which has been paid in full by the related Mortgagor or any Mortgage Loan as to which the related Mortgage File has been released pursuant to Section 5(c) to an Acceptable Attorney pursuant to an Attorney’s Bailee Letter. The Seller hereby further represents and warrants to the Buyer that any such request by the Seller for release of Mortgage Loans shall be solely for the purposes set forth in the Request for Release and Receipt and that the Seller has requested such release in compliance with all terms and conditions of such release set forth in the Master Repurchase Agreement.

(b) 4. From time to time until otherwise notified in writing by the Buyer, which notice shall be given by the Buyer only following the occurrence of an Event of Default, the Custodian is hereby authorized upon receipt of written request of the Seller at least two (2) Business Days prior to the date of the anticipated sale, to release Mortgage Files in the possession of the Custodian to a third-party purchaser (subject to the written consent of the Buyer if such third party purchaser is not an Approved Purchaser) for the purpose of resale thereof against a Notice of Sale and Request for Release executed by the Seller and the Buyer (in its discretion) in the form of Annex 3 hereto. On such Notice of Sale and Request for Release, the Seller shall indicate the Mortgage Loans to be sold, such information to be provided in electronic medium acceptable to the Seller and the Custodian, the approximate amount of sale proceeds anticipated to be received, the date of such anticipated sale, the name and address of the third-party purchaser, whether the shipment is made pursuant to the sale of the Mortgage Loans to a third party or pursuant to the formation of a mortgage pool supporting a mortgage-backed or asset-backed security (an “MBS”), and the preferred method and date of delivery.

(ii) Any transmittal of Mortgage Files for Mortgage Loans in the possession of the Custodian in connection with the sale thereof to a third-party purchaser will be under cover of a transmittal letter substantially in the form attached hereto as Annex 11 duly completed by the Custodian and executed by the Custodian. Promptly upon receipt by Buyer of the full amount of the takeout proceeds (constituting not less than the “Payoff Amount”) into the account set forth in such transmittal letter, the Buyer shall notify the Custodian thereof in writing by 3:00 p.m. (eastern time) for proceeds received no later than 1:00 p.m. (eastern time) on such day. Any Payoff Amount sent by a third-party purchaser of Mortgage Loans shall be sent to the account designated by the Buyer. Any excess proceeds received by the Buyer shall be remitted to the Seller in accordance with the terms of the Master Repurchase Agreement.

(c) 5. From time to time until otherwise notified in writing by the Buyer, which notice shall be given by the Buyer only following the occurrence of an Event of Default, and as appropriate for the foreclosure of any of the Mortgage Loans, the Custodian is hereby authorized, upon receipt of a Request for Release and Receipt from the Seller to send to an Acceptable Attorney copies or originals of the Mortgage Files listed in the Request for Release and Receipt. The Custodian shall retain copies of all Mortgage Files forwarded to an Acceptable Attorney pursuant to the preceding sentence. The Custodian may destroy any such copies retained upon the earliest to occur of (A) the original Mortgage File is returned to the Custodian, (B) the foreclosure with respect to such Mortgage Loan is complete, (C) the date upon which such Mortgage Loan is released from the terms of this Custodial Agreement or (D) the original Mortgage File is not returned within 180 days of release. In accordance with the terms of the Attorney's Bailee Letter, the Acceptable Attorney to whom such Mortgage Files are sent is instructed to acknowledge receipt of each such document by faxing to the Buyer and the Custodian a list of such Mortgage Files confirming that such Acceptable Attorney is holding the same as bailee of the Buyer under the applicable Attorney's Bailee Letter, for receipt as soon as possible and in any event no later than three (3) Business Days following receipt thereof by such Acceptable Attorney. The Buyer may, by written notice to the Custodian and the Seller, respectively, exclude any attorney-at-law with whom the Buyer is not reasonably satisfied, from being an Acceptable Attorney. The Custodian shall promptly notify the Buyer that it has released any Mortgage File to an Acceptable Attorney.

(ii) In accordance with each Attorney's Bailee Letter, no later than three (3) Business Days prior to the foreclosure of any Mortgage Loan, the Acceptable Attorney party thereto shall notify the Seller of the scheduled date of foreclosure of each such Mortgage Loan (the "Scheduled Foreclosure Date"), and of any subsequent changes to the Scheduled Foreclosure Date. The Seller hereby agrees in any event to promptly notify the Custodian and Buyer in writing upon completion of any foreclosure. On the date of foreclosure, such Mortgage Loan shall be deemed deleted from any Trust Receipt then outstanding.

(d) From time to time until the Custodian is otherwise notified by the Buyer, and with the prior written consent of the Buyer, the Seller may substitute for one or more Eligible Mortgage Loans constituting the Purchased Loans one or more substitute Eligible Mortgage Loans having aggregate Purchase Prices equal to or greater than the Purchase Prices of the Mortgage Loans being substituted for, or obtain the release of one or more Mortgage Loans constituting Purchased Loans hereunder; provided that, after giving effect to such substitution or release, no Margin Deficit will occur, which determination shall be made solely by the Buyer in accordance with the Master Repurchase Agreement. In connection with any such requested substitution or release, the Seller will provide notice to the Custodian and the Buyer no later than 12:00 p.m. (eastern time), on the date of such request, specifying the Mortgage Loans to be substituted for or released and the substitute Mortgage Loans to be purchased hereunder in substitution therefor, if any, and shall deliver with such notice a revised Mortgage Loan Transmission indicating any substitute Mortgage Loans. If the Custodian and Buyer have received notice in accordance with the preceding sentence, the Custodian will effect the requested substitution or release no later than 3:00 p.m. (eastern time), two (2) Business Days following the day on which such request was made after the Custodian has certified to the Buyer on such Business Day that the matters set forth in Section 3(a) hereof with respect to any substitute Mortgage Loans are true and correct. Each such substitution or release shall be deemed to be a representation and warranty by the Seller that any substitute Mortgage Loans are eligible for purchase under the Master Repurchase Agreement and that after giving effect to such substitution or release, no Margin Deficit shall occur.

(e) So long as no Event of Default has occurred and is continuing and to the extent written notice has been provided to the Custodian, the Custodian and the Buyer shall take such steps as they may reasonably be directed from time to time by the Seller in writing, which the Seller deems necessary and appropriate, to transfer promptly and deliver to the Seller any Mortgage File in the possession of the Custodian relating to any Mortgage Loan previously purchased by Buyer but which the Seller, with the written consent of the Buyer, has notified the Custodian has ceased to be subject to the terms of the Master Repurchase Agreement, or any Mortgage Loan in respect of which the Seller has paid the applicable Repurchase Price in full. The Buyer agrees to reply promptly to any such request for transfer and delivery, and if any such request is received by 12:00 p.m. (eastern time), the Buyer agrees to reply on the Business Day following the Business Day such request is received.

Section 6. Fees and Expenses of Custodian .

The Custodian shall charge such fees for its services under this Custodial Agreement as are set forth in a separate agreement between the Custodian and the Seller, the payment of which fees, together with the Custodian's expenses incurred in connection herewith, shall be solely the obligation of the Seller. The obligations of the Seller under this Section 6 shall survive the termination of this Custodial Agreement and the resignation or removal of the Custodian.

Section 7. Removal or Resignation of Custodian .

(a) The Custodian may at any time resign and terminate its obligations under this Custodial Agreement upon at least 60 days' prior written notice to the Seller and the Buyer. Promptly after receipt of notice of the Custodian's resignation, the Seller shall appoint, by written instrument, a successor custodian, subject to written approval by the Buyer (which approval shall not be unreasonably withheld). One original counterpart of such instrument of appointment shall be delivered to each of the Buyer, the Seller, the Custodian and the successor custodian. If the successor Custodian shall not have been appointed within 60 days of the Custodian's providing such notice, the Custodian may petition any court of competent jurisdiction to appoint a successor Custodian.

(b) The Buyer or the Seller, (with the consent of the Buyer, which consent shall not be unreasonably withheld), upon at least 60 days' prior written notice to the Custodian, may remove and discharge the Custodian (or any successor custodian thereafter appointed) from the performance of its obligations under this Custodial Agreement. Promptly after the giving of notice of removal of the Custodian, the Buyer shall appoint, by written instrument, a successor custodian, which appointment shall be reasonably acceptable to the Seller. One original counterpart of such instrument of appointment shall be delivered to each of the Buyer, the Seller, the Custodian and the successor custodian.

(c) In the event of any such resignation or removal, the Custodian shall promptly upon the simultaneous surrender of any outstanding Trust Receipts held by Buyer, transfer to the successor custodian, as directed in writing, all the Mortgage Files being administered under this Custodial Agreement and, if the endorsements on the Mortgage Notes and the Assignments of Mortgage have been completed in the name of the Custodian, assign the Mortgages and endorse without recourse the Mortgage Notes to the successor Custodian or as otherwise directed by the Buyer. The cost of the shipment of Mortgage Files arising out of the resignation of the Custodian shall be at the expense of the Custodian unless such resignation is due to the nonpayment of its fees and expenses hereunder, in which case such expense shall be paid by the Seller; and any cost of shipment arising out of the removal of the Custodian by the Buyer or the Seller shall be at the expense of the party requesting such removal. The Seller shall be responsible for the fees and expenses of the successor custodian and the fees and expenses for endorsing the Mortgage Notes and assigning the Mortgages to the successor custodian if required pursuant to this paragraph.

Section 8. Examination of Mortgage Files .

Upon reasonable prior notice to the Custodian (which shall be two (2) Business Days or such shorter period of time agreed to by the Custodian and the Buyer) and at the Seller's expense, the Buyer and each of its respective agents, accountants, attorneys and auditors will be permitted during normal business hours to examine the Mortgage Files, documents, records and other papers in the possession of or under the control of the Custodian relating to any or all of the Mortgage Loans.

Section 9. Insurance of Custodian .

At its own expense, the Custodian shall maintain at all times during the existence of this Custodial Agreement and keep in full force and effect fidelity insurance, theft of documents insurance, forgery insurance and errors and omissions insurance. All such insurance shall be in amounts, with standard coverage and subject to deductibles, all as is customary for insurance typically maintained by banks which act as custodian of assets substantially similar to the Purchased Loans and act in a collateral agent capacity. Upon request, the Buyer or the Seller shall be entitled to receive a certificate of the respective insurer that such insurance is in full force and effect.

Section 10. Representations and Warranties .

The Custodian represents and warrants to the Buyer that:

(a) The Custodian is (i) a national banking association duly organized, validly existing and in good standing under laws of the United States and (ii) duly qualified and in good standing and in possession of all requisite authority, power, licenses, permits and franchises in order to execute, deliver and comply with its obligations under the terms of this Custodial Agreement.

(b) The Custodian has all requisite right, power and authority to execute and deliver this Custodial Agreement and to perform all of its duties as the Custodian hereunder.

(c) The execution, delivery and performance of this Custodial Agreement have been duly authorized by all necessary corporate action on the part of the Custodian, and neither the execution and delivery of this Custodial Agreement by the Custodian in the manner contemplated herein nor the Custodian's performance of and compliance with the terms hereof will violate, contravene or create a default under any charter document or bylaw of the Custodian.

(d) Neither the execution and delivery of this Custodial Agreement by the Custodian, nor its performance of and compliance with its obligations and covenants hereunder, require the consent or approval of any governmental authority or, if such consent or approval is required, it has been obtained.

(e) This Custodial Agreement, when executed and delivered by the Custodian, will constitute valid, legal and binding obligations of the Custodian, enforceable against the Custodian in accordance with their respective terms, except as the enforcement thereof may be limited by applicable debtor relief laws and that certain equitable remedies may not be available regardless of whether enforcement is sought in equity or at law.

(f) The Custodian is not an Affiliate of the Seller.

(g) At all times the Custodian shall be a corporation or association organized and doing business under the laws of the United States of America or of any State, shall be authorized under such laws to exercise corporate trust powers, subject to supervision or examination by the United States of America or any such State, and shall have (A) a short-term, unsecured debt rated at least P-1 by Moody's Investors Service, Inc. (or such lower rating as may be acceptable to the Seller and the Buyer) and (y) a short-term deposit rating of at least A-1 from Standard & Poor's Ratings Services (or such lower rating as may be acceptable to the Seller and the Buyer).

(h) The Custodian shall at all times have a combined capital and surplus of at least \$50,000,000 as set forth in its then most recent published annual report of condition.

Section 11. Statements.

Upon the request of the Buyer or the Seller, the Custodian shall provide the Buyer or the Seller, as applicable, with a list of all the Mortgage Loans for which the Custodian holds a Mortgage File pursuant to this Custodial Agreement. Such list shall be in the form of a Custodian Loan Transmission and an Exception Report.

Section 12. No Adverse Interest of Custodian.

By execution of this Custodial Agreement, the Custodian represents and warrants that it currently holds, and during the existence of this Custodial Agreement shall hold, no adverse interest, by way of security or otherwise, in any Mortgage Loan, and hereby waives and releases any such interest which it may have in any Mortgage Loan as of the date hereof. The Mortgage Loans shall not be subject to any security interest, lien or right to set-off by Custodian or any third party claiming through Custodian, and Custodian shall not pledge, encumber, hypothecate, transfer, dispose of, or otherwise grant any third party interest in, the Mortgage Loans.

Section 13. Indemnification of Custodian.

The Seller agrees to reimburse, indemnify and hold the Custodian and its directors, officers, agents and employees harmless against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, or out-of-pocket expenses of any kind or nature whatsoever, including reasonable attorney's fees, that may be imposed on, incurred by, or asserted against it or them in any way relating to or arising out of this Custodial Agreement or any action taken or not taken by it or them hereunder unless such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, or out-of-pocket expenses were imposed on, incurred by or asserted against the Custodian because of the breach by the Custodian of its obligations hereunder, or caused by the negligence, lack of good faith or willful misconduct on the part of the Custodian or any of its directors, officers, agents or employees. The foregoing indemnification shall survive any resignation or removal of the Custodian or the termination or assignment of this Custodial Agreement.

In the event that the Custodian fails to produce a Mortgage Note, Assignment of Mortgage or any other document related to a Mortgage Loan that was in its possession pursuant to Section 2 within two (2) Business Days after written request therefor by the Buyer or the Seller in accordance with the terms and conditions of this Custodial Agreement; provided that (i) Custodian previously delivered to the Buyer a Trust Receipt, Custodian Loan Transmission and an Exception Report which did not list such document as an Exception on the related Purchase Date; (ii) such document is not outstanding pursuant to a Request for Release and Receipt in the form annexed hereto as Annex 5; and (iii) such document was held by the Custodian on behalf of the Seller or the Buyer, as applicable (a "Custodial Delivery Failure"), then the Custodian shall (a) with respect to any missing Mortgage Note, promptly deliver to the Buyer or the Seller, upon request, a Lost Note Affidavit in the form of Annex 9 hereto and (b) with respect to any missing document related to such Mortgage Loan, including but not limited to a missing Mortgage Note, indemnify the Seller and Buyer in accordance with the succeeding paragraph of this Section 13. Notwithstanding the foregoing, in the event that the Custodian fails to produce a Mortgage Note with respect to a Mortgage Loan requested pursuant to Section 5(b) hereof which was not otherwise released by the Custodian pursuant to the terms of this Custodial Agreement, the Custodian shall then promptly (but no later than two (2) Business Days following such request) provide the Buyer or the Seller, as applicable, with a Lost Note Affidavit. In the event that such original Mortgage Note is subsequently found and delivered to the Buyer or the Seller, as applicable, such party shall return the Lost Note Affidavit to the Custodian.

The Custodian agrees to indemnify and hold the Buyer and Seller, and their respective designees harmless against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, or out-of-pocket expenses, including reasonable attorney's fees, that may be imposed on, incurred by, or asserted against it or them in any way relating to or arising out of a Custodial Delivery Failure or the Custodian's negligence, lack of good faith or misconduct or any breach of the conditions, representations or warranties contained herein. The foregoing indemnification shall survive any termination or assignment of this Custodial Agreement.

Section 14. Concerning the Custodian.

In the absence of bad faith on the part of the Custodian, the Custodian may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any request, instruction, certificate, opinion or other document furnished to the Custodian, reasonably believed by the Custodian to be genuine and to have been signed or presented by the proper party or parties and conforming to the requirements of this Custodial Agreement; but in the case of any Mortgage Loan Document or other request, instruction, document or certificate which by any provision hereof is specifically required to be furnished to the Custodian, the Custodian shall be under a duty to examine the same in accordance with the requirements of this Custodial Agreement.

The Custodian undertakes to perform such duties and only such duties as are specifically set forth in this Custodial Agreement. The Custodian shall not have any duties or responsibilities except those expressly set forth in this Custodial Agreement.

The Custodian shall not be liable for any error of judgment made in good faith by an officer or officers of the Custodian, unless it shall be conclusively determined by a court of competent jurisdiction that the Custodian was negligent in ascertaining the pertinent facts.

The Custodian shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with any direction of the Seller or the Buyer given under this Custodial Agreement.

None of the provisions of this Custodial Agreement shall require the Custodian to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

The Custodian may consult with counsel and the written advice or any written opinion of counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or opinion of counsel.

Any entity into which the Custodian may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Custodian shall be a party, or any entity succeeding to the business of the Custodian shall be the successor of the Custodian hereunder without the execution or filing of any paper with any parties hereto or any further act on the part of any of the parties hereto except where an instrument or transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

In order to comply with its duties under the U.S.A. Patriot Act, the Custodian shall obtain and verify certain information and documentation from the other parties hereto, including, but not limited to, such party's name, address, and other identifying information.

Section 15. Term of Custodial Agreement.

Promptly after written notice from the Buyer of the termination of the Master Repurchase Agreement and payment in full of all amounts owing to the Buyer thereunder, the Custodian shall deliver all documents remaining in the Mortgage Files to the Seller, and this Custodial Agreement shall thereupon terminate.

Section 16. Notices.

All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given when received by the recipient party at the address shown on its signature page hereto, or at such other addresses as may hereafter be furnished to each of the other parties by like notice. Any such demand, notice or communication hereunder shall be deemed to have been received on the date delivered to or received at the premises of the addressee. Any demand, notice or communication hereunder shall be (i) sent by telecopy, (ii) delivered in person, or (iii) transmitted by a recognized private (overnight) courier service. The Custodian's office is located at the address set forth on its signature page hereto, and each party hereto agrees to notify each other party if its address should change.

Section 17. Governing Law.

This Custodial Agreement shall be construed in accordance with the laws of the State of New York, and the obligations, rights, and remedies of the parties hereunder shall be determined in accordance with such laws without regard to the conflict of laws doctrine applied in such state.

Section 18. Authorized Representatives.

Each individual designated as an authorized representative of the Buyer or its successors or assigns, the Seller and the Custodian, respectively (an "Authorized Representative"), is authorized to give and receive notices, requests and instructions and to deliver certificates and documents in connection with this Custodial Agreement on behalf of the Buyer, the Seller and the Custodian, as the case may be, and the specimen signature for each such Authorized Representative, initially authorized hereunder, is set forth on Annexes 6, 7 and 8 hereof, respectively. From time to time, the Buyer, the Seller or the Custodian or their respective successors or permitted assigns may, by delivering to the others a revised annex, change the information previously given pursuant to this Section 18, but each of the parties hereto shall be entitled to rely conclusively on the then current annex until receipt of a superseding annex.

Section 19. Amendment.

This Custodial Agreement may be amended from time to time by written agreement signed by the Seller, the Buyer and the Custodian.

Section 20. Cumulative Rights.

The rights, powers and remedies of the Custodian and the Buyer under this Custodial Agreement shall be in addition to all rights, powers and remedies given to the Custodian and the Buyer by virtue of any statute or rule of law, the Master Repurchase Agreement or any other agreement, all of which rights, powers and remedies shall be cumulative and may be exercised successively or concurrently without impairing the Buyer's ownership or security interest in the Purchased Loans.

Section 21. Binding Upon Successors.

All rights of the Custodian, the Seller and the Buyer under this Custodial Agreement shall inure to the benefit of the Custodian, the Seller and the Buyer and their successors and permitted assigns.

Section 22. Entire Agreement; Severability.

This Custodial Agreement and the other Program Documents contain the entire agreement with respect to the Purchased Loans among the Custodian, the Buyer and the Seller. If any of the provisions of this Custodial Agreement shall be held invalid or unenforceable, this Custodial Agreement shall be construed as if not containing such provisions, and the rights and obligations of the parties hereto shall be construed and enforced accordingly.

Section 23. Execution In Counterparts.

This Custodial Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

Section 24. Tax Reports.

The Custodian shall not be responsible for the preparation or filing of any reports or returns relating to federal, state or local income taxes with respect to this Custodial Agreement, other than in respect of the Custodian's compensation or for reimbursement of expenses.

Section 25. Assignment by the Buyer.

The Buyer shall have free and unrestricted use of the Mortgage Loans and may engage in financing, repurchase, purchase and sale, sale, or similar transactions with the Mortgage Loans and otherwise pledge, repledge, transfer, hypothecate or rehypothecate the Mortgage Loans and all rights of the Buyer under the Master Repurchase Agreement (and this Custodial Agreement) to any assignee designated by the Buyer (each, an "Assignee"). The Seller hereby irrevocably consents to any such assignment. Upon receipt of written notice to the Custodian of any such assignment in the form attached hereto as Annex 10, the Custodian shall mark its records to reflect the pledge or assignment of the Mortgage Loans by the Buyer to the Assignee. The Custodian's records shall reflect the pledge or assignment of the Mortgage Loans by the Buyer to the Assignee until such time as the Custodian receives written instructions from the Buyer with consent from the Assignee that the Mortgage Loans are no longer pledged or assigned by the Buyer to the Assignee, at which time the Custodian shall change its records to reflect the release of the pledge or assignment of the Mortgage Loans, and that the Custodian is holding the Mortgage Loans, as custodian for, and for the benefit of, the Buyer.

If the Buyer has notified the Custodian in writing of such assignment or pledge by delivery to the Custodian of a written notice in the form of Annex 10 hereto, then, upon delivery of notice in the form of Annex 14 by Assignee to the Custodian of the Buyer's default, Assignee may, subject to any limitations in any agreement between Assignee and the Buyer, (i) require Custodian to act with respect to the related Mortgage Loans solely in the capacity of custodian for, and bailee of, Assignee, but nevertheless subject to and only in accordance with the terms of this Custodial Agreement, (ii) require Custodian to hold such Mortgage Loans for the exclusive use and benefit of Assignee, and (iii) assume the rights of the Buyer under this Agreement to furnish instructions to the Custodian as to the disposition of such Mortgage Loans and such rights shall be exercisable solely by Assignee. In addition, within three (3) Business Days of receipt of such notice to the Custodian in the form of Annex 14 and receipt by the Custodian of the Trust Receipt from the Assignee, the Custodian shall deliver, in accordance with the written instructions of the Assignee, a Trust Receipt issued in the name of the Assignee and to the place indicated in any such written direction from the Assignee. The Custodian shall assume that any assignment from the Buyer to Assignee is subject to no limitations that are not expressly set forth in this Custodial Agreement. Until such time as the Custodian receives notice in the form of Annex 14 from the Assignee that there exists an event of default with respect to a pledge or assignment of its interest in the Mortgage Loans and Mortgage Files, the Custodian shall take directions solely from Buyer.

Section 26. Transmission of Mortgage Files .

Prior to any shipment of any Mortgage Files, or other loan documents hereunder, the Seller shall deliver to the Custodian written instructions as to the method of shipment and shipper(s) the Custodian is to utilize in connection with the transmission of Mortgage Files or other loan documents in the performance of the Custodian's duties hereunder. The Seller shall arrange for the provision of such services at their sole cost and expense (or, at the Custodian's option, reimburse the Custodian for all costs and expenses incurred by the Custodian consistent with such instructions) and will maintain such insurance against loss or damage to mortgage files or other loan documents as the Seller deems appropriate. Without limiting the generality of the provisions of Section 13 above, it is expressly agreed that in no event shall the Custodian have any liability for any losses or damages to any person, including without limitation, the Seller, arising out of actions of the Custodian consistent with the instructions of the Seller. In the event the Custodian does not receive such written instructions, the Custodian shall be authorized and shall be indemnified as provided herein to utilize a nationally recognized courier service.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Custodial Agreement was duly executed by the parties hereto as of the day and year first above written.

THE NEW YORK MORTGAGE COMPANY, LLC

By: /s/ Joseph V. Fierro

Name: Joseph V. Fierro

Title: Chief Operating Officer

Address for Notices :

1301 Avenue of the Americas, 7th Floor

New York, New York 10019

Attention: Steven B. Schnall, CEO

Telecopier No.: (212) 634-6420

Telephone No.: (212) 634-9449

NEW YORK MORTGAGE FUNDING, LLC

By: /s/ Joseph V. Fierro

Name: Joseph V. Fierro

Title: Chief Operating Officer

Address for Notices :

1301 Avenue of the Americas, 7th Floor

New York, New York 10019

Attention: Steven B. Schnall, CEO

Telecopier No.: (212) 634-6420

Telephone No.: (212) 634-9449

NEW YORK MORTGAGE TRUST

By: /s/ David A. Akre

Name: David A. Akre

Title: Vice Chairman/Co-Chief Executive Officer

Address for Notices :

1301 Avenue of the Americas, 7th Floor

New York, New York 10019

Attention: David Akre, CEO

Telecopier No.: (212) 655-6269

Telephone No.: (212) 634-2338

LASALLE BANK NATIONAL ASSOCIATION, as Custodian

By: /s/ Mark J. Jerva

Name: Mark J. Jerva

Title: Vice President

Address for Notices :

2571 Busse Road, Suite 200-Dock 49

Elk Grove Village, Illinois, 60007

Attention: _____

Telecopier No.: (____) ____-____

Telephone No.: (____) ____-____

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.

By: /s/ Anthony Palmisano
Name: Anthony Palmisano
Title: Managing Director

Address for Notices :

600 Steamboat Road
Greenwich, Connecticut 06830
Attention: Joseph Bartolotta
Telecopier No.: (203) 618-2148/2149
Telephone No.: (203) 625-6675

With a copy to:

Attention: General Counsel
Telecopier No.: (203) 618-2132
Telephone No.: (203) 625-2700

LASALLE BANK NATIONAL ASSOCIATION, as Disbursement Agent

By: _____

Name: _____

Title: _____

Address for Notices :

2571 Busse Road, Suite 200-Dock 49

Elk Grove Village, Illinois, 60007

Attention: _____

Telecopier No.: (____) ____-____

Telephone No.: (____) ____-____

REQUIRED FIELDS FOR MORTGAGE LOAN TRANSMISSION

(SELLER TO CUSTODIAN WET OR DRY IN CSV OR EXCEL FORMAT)

(Fixed-width ASCII text file) (Total Length = 460)

LaSalle Field Header	LaSalle Description	LaSalle Char Length	
ADDRESS	Property Address	60	
ALT_ID	Alternate ID	13	
ARMACAP	Arm Annual Cap	5	
ARMADJ	ARM Adjust Date	8	
ARMCONV	ARM Convert Flag	1	
ARMFLOOR	ARM Floor Rate	6	
ARMINDEX	ARM Index	6	
ARMLCAP	ARM Loan Cap	5	
ARMLOOKBACK	ARM Look back	4	
ARMMARGIN	ARM Margin	5	
BORR1FIRST	Borrower 1 First Name	30	
BORR1MID	Borrower 1 Middle Name	30	
borrower	Borrower 1 Last Name	60	
BORR2FIRST	Borrower 2 first Name	30	
BORR2MID	Borrower 2 middle Name	30	
BORR2LAST	Borrower 2 last Name	30	
ARMROUND	ARM Round	7	
CASENUM	Case number	13	
CITY	Property City	60	
CLOSED	Note Date	8	MM/DD/YYYY'
COLL_KEY	Collateral ID	13	
CTRLNUM	Control Num	7	
CUSTOMER	Customer Code	4	Fixed value of '1007
FIRSTDUE	First Payment Date	8	MM/DD/YYYY'
GROUP	Group	15	
INVEST_KEY	Investor ID	13	
IS MOM	If loan is a Mers Originated Mortgage then value = 1, else value = 0	1	
LNAMOUNT	Note Amount	14	
MATURITY	Maturity date	8	MM/DD/YYYY'
MERSMIN	MERS Mortgage Identification Number	18	
POOL_KEY	Pool Number	13	
SERVICER	Servicer Code	10	
STATE	Property state	2	
TRUSTNUM	Trust Number	40	

ZIP	Property Zip code	10
PI	P&I	9
RATE	INTEREST RATE	6

Annex 1-1

GCFP Customer Code: _____

[WET LOAN][DRY LOAN] TRUST RECEIPT

Overnight Courier Tracking No. _____

of Loans: _____

Original Quantity \$ _____

Product Type _____

Greenwich Capital Financial Products, Inc.

600 Steamboat Road

Greenwich, Connecticut 06830

Attn: _____

Re: Amended and Restated Custodial Agreement, dated as of January 5, 2006 (the “Custodial Agreement”), among The New York Mortgage Company, LLC, New York Mortgage Funding, LLC and New York Mortgage Trust, Inc., jointly and severally as Sellers, LaSalle Bank, National Association, as Custodian, and Greenwich Capital Financial Products, Inc., as Buyer.

Ladies and Gentlemen:

In accordance with the provisions of Section 3 of the above-referenced Custodial Agreement (capitalized terms not otherwise defined herein having the meanings ascribed to them in the Custodial Agreement), the undersigned, as the Custodian, hereby certifies as to each Mortgage Loan described in the attached Custodian Loan Transmission all matters (subject to the Exceptions listed therein) set forth in Section of the Custodial Agreement, subject to the limitation set forth in Section 3(b) of the Custodial Agreement.

The delivery of this Trust Receipt evidences that (i) the Custodian has reviewed all documents required to be delivered in respect of each Mortgage Loan listed herein pursuant to Section 2(a)(i), (ii), and (iii) of this Custodial Agreement and the documents listed in Sections (i), (ii), (iii), (iv) and (v) of Annex 16 (and if actually delivered to the Custodian the documents listed in Sections (vi) - (ix) of Annex 16) and such documents other than the Exceptions listed herein are in the possession of the Custodian as part of the Mortgage File for such Mortgage Loan, (ii) the Custodian is holding each Mortgage Loan identified on the Custodian Loan Transmission attached hereto, pursuant to the Custodial Agreement, as the bailee of and custodian for the Buyer and (iii) such documents have been reviewed by the Custodian and appear on their face to be regular and to relate to such Mortgage Loan and satisfy the requirements set forth in Section 3(a) of the Custodial Agreement and the Review Procedures.

The Custodian makes no representations as to, and shall not be responsible to verify, (i) the validity, legality, enforceability, due authorization, recordability, sufficiency, or genuineness of any of the documents contained in each Mortgage File or (ii) the collectability, insurability, effectiveness or suitability of any such Mortgage Loan.

On each date the Custodian delivers to the Buyer a Trust Receipt, it shall supersede the Trust Receipt, previously delivered by the Custodian to the Buyer hereunder. The most recently delivered Trust Receipt, shall control and be binding upon the parties hereto.

LASALLE BANK NATIONAL ASSOCIATION, as Custodian

By: _____

Name: _____

Title: _____

FORM OF NOTICE OF SALE AND REQUEST FOR RELEASE

DATE: _____, ____

The undersigned, _____ (the “Seller”), hereby provides notice of the proposed sale of the below referenced mortgage loans to _____ (the “Approved Purchaser”). Such Mortgage Loans have previously been delivered to LASALLE BANK, NATIONAL ASSOCIATION, acting as agent, bailee and custodian (in such capacity “Custodian”) for the exclusive benefit of the GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., (the “Buyer”) pursuant to the Custodial Agreement dated as of January 5, 2006 made by and among The New York Mortgage Company, LLC, New York Mortgage Funding, LLC and New York Mortgage Trust, Inc. (each, a “Seller” and collectively, the “Seller”), Custodian and the Buyer. The closing date for such sale is _____ and the anticipated purchase proceeds to be paid to the Buyer directly is _____ (if amount is zero, remaining Purchased Loans are sufficient to protect Buyer and shall not result in a Margin Deficit).

The Seller requests release from the Custodian of the following described documentation for the identified Mortgage Loans, possession of which shall be delivered to the Approved Purchaser in connection with the sale thereof.

<u>Mortgagor Name</u>	<u>Loan Number</u>	<u>Note Amount</u>	<u>Loan Document Delivered</u>
-----------------------	--------------------	--------------------	------------------------------------

Please send the referenced documentation to:
[NAME OF APPROVED PURCHASER]
[ADDRESS]
[TELEPHONE]
[ATTENTION:]

Please deliver documents to the Approved Purchaser via _____, accompanied by a transmittal letter in the form of Annex 10.

By:
Name:
Title:

Acknowledged and Consented to:
GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.

By: _____
Name:
Title:
Date: _____

Capitalized terms not otherwise defined herein are defined in that certain Master Repurchase Agreement (the “Repurchase Agreement”), dated as of January 5, 2006, among the Sellers and the Buyer.

By:
Name:
Title:

REVIEW PROCEDURES

This Annex sets forth the Custodian's review procedures for each item listed below delivered by the Seller pursuant to the Custodial Agreement (the "Agreement") to which this Annex is attached. Capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Agreement.

1. The Mortgage Note and the Mortgage each appear to bear an original signature or signatures purporting to be the signature or signatures of the Person or Persons named as the maker and Mortgagor or grantor, or in the case of copies of the Mortgage permitted under Section 2(b) of the Agreement, that such copies bear a reproduction of such signature.
2. The amount of the Mortgage Note is the same as the amount specified on the related Mortgage.
3. The original mortgagee is the same as the payee on the Mortgage Note.
4. The Mortgage contains a legal description other than address, city and state.
5. The notary section (acknowledgment) is present and attached to the related Mortgage and is signed.
6. Neither the original Mortgage Note, nor the copy of the Mortgage delivered pursuant to the Agreement, nor the original Assignment of Mortgage contain any alterations which appear irregular on their face, or if altered, such alterations have the initials of the person(s) named as the Mortgagor.
7. The Mortgage Note is endorsed in blank by the original payor or the last endorsee.
8. Each original Assignment of Mortgage and any intervening assignment of mortgage, if applicable, appears to bear the original signature of the named mortgagee or beneficiary including any subsequent assignors (and any other necessary party), as applicable, or in the case of copies permitted under Section 2 (b) of the Agreement, that such copies appear to bear a reproduction of such signature or signatures and such copies have been certified by an officer of the Seller, a title company or escrow closing company as true, complete and correct copies of any originals, and the intervening assignments of mortgage evidence a complete chain of assignment and transfer of the related Mortgage from the originating Person to the Seller or, in the case of a MERS Designated Mortgage Loan to MERS.
9. The date of each intervening assignment is on or after the date of the related Mortgage and/or the immediately preceding assignment, as the case may be.
10. The notary section (acknowledgment) is present and attached to each intervening assignment and is signed.
11. Based upon a review of the Mortgage Note, the Mortgage Loan number, the Mortgagor's name, the address of the Mortgaged Property, the original amount of the Mortgage Note, [the original mortgage interest rate, the maturity date and any other fields as mutually agreed upon] as set forth in the Mortgage Loan Transmission delivered by the Seller to the Custodian are correct.

12. The Mortgage File contains the original policy of title insurance (or a commitment for title insurance, if the policy is being held by the title insurance company pending recordation of the Mortgage) or attorney's opinion of title; provided, however, that no such policy shall be delivered in connection with any second lien Mortgage Loan with an original principal balance not in excess of \$50,000.

In the case of Wet Loans, the review procedures shall be as follows:

1. To the extent any items listed in Annex 16 are available, the procedures set forth above.
2. To the extent the items listed in Annex 16 are not available, the original Transaction Notice with a loan listing attached has been received and matches the facsimile copy previously delivered.

REQUEST FOR RELEASE AND RECEIPT

Date: _____, ____

The undersigned, [Seller] (the “Seller”), acknowledges receipt from LaSalle Bank National Association acting as bailee of, and custodian for (in such capacity, the “Custodian”) the exclusive benefit of GREENWICH CAPITAL FINANCIAL PRODUCTS, INC. (the “Buyer”) (capitalized terms not otherwise defined herein are defined in that certain Amended and Restated Custodial Agreement, dated as of January 5, 2006 (the “Custodial Agreement”) or if not defined in the Custodial Agreement, then in that certain Master Repurchase Agreement dated as of January 5, 2006 between the Seller and the Buyer (the “Master Repurchase Agreement”), of the following described documentation for the identified Mortgage Loan, possession of which is entrusted to the Seller solely for the purpose referenced below:

Mortgagor Name	Loan Number	Note Amount	Mtg. Loan Document
----------------	-------------	-------------	--------------------

Reason for Requesting File (check one)

- 1. Mortgage Loan Paid in Full.
- 2. Correction of Document Deficiencies.
- 3. Mortgage Required for Servicing.

- 4. Foreclosure.
- 5. Other [Describe].

If item 2, 3, 4 or 5 is checked, it is hereby acknowledged that a security interest pursuant to the Uniform Commercial Code in the Purchased Loans hereinabove described and in the proceeds of said Purchased Loans has been granted to the Buyer pursuant to the Master Repurchase Agreement.

If item 2, 3, 4 or 5 is checked, in consideration of the aforesaid delivery by the Custodian, the Seller hereby agrees to hold said Purchased Loans in trust for the Buyer as provided under and in accordance with all provisions of the Custodial Agreement and to return said Purchased Loans to the Custodian no later than the close of business on the tenth day following the date hereof or, if such day is not a Business Day, on the immediately succeeding Business Day.

Please deliver the requested file to [ADDRESS], Attention: _____, via overnight courier.

By: _____
Name:
Title:

Acknowledged and Consented to:

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.

By: _____
Name:
Title:
Date: _____

Documents returned to Custodian :

By: _____
Name:
Title:
Date: _____

Attachment 1 to Request for Release and Receipt

Format of Electronic Release Request for Custodian (form and electronic signatures stored with custodian per separate agreement)

Field Header	Description	Data Type/Length
customer	Constant value of " 1120"	char(4)
poolnum	TBD	char(13)
coll_key	Unique Loan Number	char(20)
loc_code	Need list of approved investor address so a codes can be created	char(6)
rel_code	1= Paid in Full, 2= Foreclosure, 4= Other Liquidation, 5 = Non-Liquidation, 10 = Shipped to Private Investor	char(2)
notation	name of person requesting file@company name	char(254)
reqstr_sig	Value LaSalle will provide for you once set up in our system.	

AUTHORIZED REPRESENTATIVES OF BUYER

Name	Specimen Signature
Brett Kibbe	_____
Joseph Bartolotta	_____
David Katze	_____
Kathleen O'Connor	_____

AUTHORIZED REPRESENTATIVES OF SELLER

Name

Specimen Signature

AUTHORIZED REPRESENTATIVES OF CUSTODIAN

Name

Specimen Signature

FORM OF LOST NOTE AFFIDAVIT

I, as _____ (title) (hereinafter called “ Deponent ”) of LaSalle Bank National Association (the “ Custodian ”), am authorized to make this Lost Note Affidavit (this “Affidavit”) on behalf of the Custodian. In connection with the administration of the Mortgage Loans held by the Custodian on behalf of Greenwich Capital Financial Products, Inc. (the “ Buyer ”), Deponent being duly sworn, deposes and says that:

1. Custodian’s address is:

2. Custodian previously delivered to the Buyer a Custodian Loan Transmission and an Exception Report with respect to that certain Mortgage Note made by ___ in an original principal balance of \$___, secured by a Mortgage on a property located at ____, which did not indicate such Mortgage Note is missing;

3. Such Mortgage Note was assigned or sold to the Buyer by _____ pursuant to the terms and provisions of a Master Repurchase Agreement dated and effective as of January 5, 2006;

4. Such Mortgage Note is not outstanding pursuant to a Request for Release of Documents;

5. Aforesaid Mortgage Note (hereinafter called the “ Original ”) has been lost;

6. Deponent has made or has caused to be made diligent search for the Original and has been unable to find or recover same;

7. The Custodian was the Custodian of the Original at the time of loss;

8. Deponent agrees that, if said Original should ever come into Custodian’s possession, custody or power, Custodian will immediately and without consideration surrender the Original to the Buyer;

9. Attached hereto is a true and correct copy of (i) the Mortgage Note, endorsed to “ _____, as Custodian” by the Mortgagee, as provided by _____ or its designee and (ii) the Mortgage which secures the Mortgage Note, which Mortgage Note is recorded at _____;

10. Deponent hereby agrees that the Custodian (a) shall indemnify and hold harmless the [Buyer][Seller], its successors, and assigns, against any loss, liability or damage, including reasonable attorney’s fees, resulting from the unavailability of any Originals, including but not limited to any loss, liability or damage arising from (i) any false statement contained in this Affidavit, (ii) any claim of any party that it has already purchased a mortgage loan evidenced by the Originals or any interest in such mortgage loan, (iii) any claim of any Seller with respect to the existence of terms of a Mortgage Loan evidenced by the Originals, (iv) the issuance of new instrument in lieu thereof and (v) any claim whether or not based upon or arising from honoring or refusing to honor the Original when presented by anyone (items (i) through (iv) above are hereinafter referred to as the “ Losses ”); and

11. This Affidavit is intended to be relied on by the Buyer, its successors, and assigns and the Custodian represents and warrants that it has the authority to perform its obligations under this Affidavit.

EXECUTED THIS ____ day of _____, _____, on behalf of the Custodian by:

Signature

Typed Name

On this _____ day of _____, _____, before me appeared _____, to me personally know, who being duly sworn did say that she/he is the _____ of _____, and that said Lost Note Affidavit was signed and sealed on behalf of such corporation and said _____ acknowledged this instrument to be the free act and deed of said corporation.

Notary Public in and for the

State of _____.

My Commission expires: _____.

NOTICE OF ASSIGNMENT

To: _____
From: _____
Date: _____

You are hereby notified that as of [date] the undersigned has assigned all of its right, title and interest in and to the Mortgage Loans identified in the schedule attached hereto to [Assignee's name and address]. You are hereby instructed to hold such Mortgage Loans pursuant to the terms of the Amended and Restated Custodial Agreement, dated as of January 5, 2006 (the "Custodial Agreement"), among The New York Mortgage Company, LLC, New York Mortgage Funding, LLC and New York Mortgage Trust, Inc. (the "Seller"), La Salle Bank National Association (the "Custodian") and Greenwich Capital Financial Products, Inc. (the "Buyer"), for the sole and exclusive benefit of [name of Assignee] subject to the terms of the Custodial Agreement by which [name of Assignee] hereby agrees to be bound.

When you have received written instructions from the Buyer with the Assignee's consent thereon that the Mortgage Loans are no longer assigned by the Buyer to the Assignee, you shall change your records to reflect the release of the pledge of the Mortgage Loans and that you are holding the Mortgage Loans as custodian for, and for the benefit of, the Buyer.

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.

By:
Name:
Title:

Date:

[NAME OF ASSIGNEE]

By:
Name:
Title:

Date:

(THIRD PARTY) TRANSMITTAL LETTER

[CUSTODIAN LETTERHEAD]

[Approved Purchaser]

Re: _____

Ladies and Gentlemen:

Attached please find those Mortgage Loans listed separately on the attached schedule, which Mortgage Loans are owned by _____ and are being delivered to you for purchase.

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in that certain Amended and Restated Custodial Agreement dated as of January 5, 2006, by and among La Salle Bank National Association (the "Custodian"), The New York Mortgage Company, New York Mortgage Funding, LLC and New York Mortgage Trust, Inc.. as Seller (the "Seller"), and Greenwich Capital Financial Products, Inc., as Buyer (the "Buyer"), and if not defined in the Custodial Agreement, then in that certain Master Repurchase Agreement (the "Master Repurchase Agreement"), dated as of January 5, 2006, between the Seller and the Buyer.

The Mortgage Loans comprise a portion of the "Purchased Loans." Each of the Mortgage Loans is subject to an ownership and/or security interest in favor of the Buyer, which security interest shall be automatically released upon remittance of the purchase price for such Mortgage Loan (the "Payoff Amount") by wire transfer to the following account:

WIRE INSTRUCTIONS:

[Bank Name:	JPMorgan ChaseBank
City, State:	New York, NY
ABA #:	021-000-021
Account #:	1400-95961
Account	Name: GCFP
Attention:	Asset-Backed Ops/New York Mortgage]

Pending the purchase of each Mortgage Loan and until the Payoff Amount is received, the aforesaid ownership and/or security interest therein will remain in full force and effect, and you shall hold possession of such Purchased Loans and the documentation evidencing same as custodian, agent and bailee for and on behalf of the Buyer. In the event that any Mortgage Loan is unacceptable for purchase, return the rejected item directly to the Custodian at its address set forth below. In no event shall any Mortgage Loan be returned to, or sales proceeds remitted to, any of the Seller. The Mortgage Loan must be so returned or Payoff Amount remitted in full no later than ten (10) days from the date hereof. If you are unable to comply with the above instructions, please so advise the undersigned Custodian immediately.

NOTE: BY ACCEPTING THE MORTGAGE LOANS DELIVERED TO YOU WITH THIS LETTER, YOU CONSENT TO BE THE CUSTODIAN, AGENT AND BAILEE FOR THE BUYER ON THE TERMS DESCRIBED IN THIS LETTER. THE CUSTODIAN REQUESTS THAT YOU ACKNOWLEDGE RECEIPT OF THE ENCLOSED MORTGAGE LOANS AND THIS LETTER BY SIGNING AND RETURNING THE ENCLOSED COPY OF THIS LETTER TO THE CUSTODIAN; HOWEVER, YOUR FAILURE TO DO SO DOES NOT NULLIFY SUCH CONSENT.

Very truly yours,

as Custodian

By:

Name:

Title:

Address: _____

RECEIPT ACKNOWLEDGED :

[APPROVED PURCHASER]

By _____

Name:

Title:

Date: _____

[**ATTORNEY'S BAILEE LETTER**]

[Letterhead of Seller]

Name of Attorney
[Address]

Custodian : La Salle Bank, National Association

Attn: _____

Facsimile: _____

Telephone: _____

Buyer : Greenwich Capital Financial
Products, Inc.
600 Steamboat Road
Greenwich, Connecticut 06830
Attn: Joseph Bartolotta
Telecopier No.: 203-618-2148/2149
Telephone No.: 203-625-6675

Seller : The New York Mortgage Company
New York Mortgage Funding, LLC
New York Mortgage Trust, Inc.
1301 Avenue of the Americas, 7th Floor
New York, New York 10019
Facsimile: _____
Telephone: _____

Dear Sir or Madam:

From time to time, we, _____ (the "Seller"), will send to you (or have sent to you) mortgage loans for which you have agreed to commence and prosecute a foreclosure action. In connection with such foreclosure activities, [copies of] ¹ one or more of the documents evidencing or otherwise relating to such mortgage loans ("Documents") will be delivered to you.

Greenwich Capital Financial Products, Inc. (the "Buyer"), has financed the sale to us or origination of such mortgage loans, and with such sale or origination we granted an ownership and/or security interest in the Documents referred to below and the mortgage loans to which such Documents relate to the Buyer. LaSalle Bank, National Association (the "Custodian") is acting as custodian for the Buyer in connection with the Documents.

Whenever we send you Documents to be covered by this letter agreement, we will send such Documents to you under a transmittal letter identifying the specific documents delivered, and the mortgage loan(s) to which they relate, with a space at the end of the letter for you to sign and to acknowledge your receipt of such Documents. Upon your receipt of any such Documents, you hereby agree to fax to the Buyer and the Custodian, no later than three (3) Business Days after your receipt thereof, our transmittal letter, signed in the acknowledgment space by you, pursuant to which you (i) acknowledge receipt of the Documents listed in the transmittal letter, and (ii) acknowledge that with respect to such listed documents you are acting as bailee of the Buyer in accordance with the terms of this Attorney's Bailee Letter.

¹ For Acceptable Attorneys to whom copies of the Documents are sent.

By signing this letter agreement below where indicated, (a) you agree that on and after the date hereof until you are otherwise notified by the Buyer or the Custodian, any Documents delivered to you as described above will be held by you as bailee for the Buyer, (b) you certify that, as of the date of your receipt of any Documents, you have not received notice of any interest of any other person or entity in such Documents or the related mortgage loans, (c) you agree that you will commence and diligently prosecute foreclosure proceedings with respect to the mortgage loan to which any such Documents relate and (d) you certify that if either you or your law firm has any security interest in the Documents or the mortgage loan to which those Documents relate you agree to waive any interest you or your firm may acquire therein at any time, whether arising pursuant to law or otherwise or to refuse delivery of such Documents and return them immediately to the Custodian.

The Seller and the Buyer hereby irrevocably instruct you that any Documents in your possession are to be held by you as bailee for the Buyer, as provided herein until they are returned to the Custodian at the address noted above together with a copy of this letter agreement; provided that if the Buyer or the Custodian notifies you that the Buyer's interest in any of above-referenced mortgage loans has been released or did not attach (the "Release Notice"), from the date of such Release Notice you will hold the Documents relating to such mortgage loan (and no others) as bailee for the Seller, in which case you will follow the Seller's instructions regarding such Documents, and such Documents shall be released to the Seller at the address noted above, or its designee, upon conclusion of the foreclosure action, instead of returning them to the Custodian; and provided further that prior to the date of any Release Notice, notwithstanding anything herein or elsewhere to the contrary, if you receive instructions from the Buyer or the Custodian which do not comport with instructions you may have received from the Seller, including, without limitation, instructions to deliver the Documents to the Custodian, the Buyer or any other person or entity, you shall abide by the instructions of the Custodian or Buyer.

You agree to immediately give telephonic notice (followed by written notice) to the Custodian if you receive notice or any inquiry from any other person or entity of or with respect to any interest in the Documents or the related mortgage loan and you agree that you shall immediately notify each such person in writing, with a copy to the Custodian, of the prior interest of the Buyer therein.

This letter agreement supersedes any letter agreement or other agreement or arrangement that may exist between you and the Seller. Notwithstanding any contrary understanding with you, the Seller or any other person or entity, or any instructions to you from the Seller, the Seller or any other person or entity, you shall abide by the terms of this letter. No deviation in performance of the terms of any previous letter agreement between you and any of the undersigned shall alter any of your duties or responsibilities as set forth herein.

Because time is of the essence, please promptly sign and date the enclosed copy of this letter agreement and return it via overnight delivery service to the Custodian at the above address and via telecopier, send a copy of this executed letter agreement to the Seller. It is important that the Custodian receive a copy of this letter agreement executed by you. Thank you for your cooperation in assisting us with this project.

NOTE: BY ACCEPTING THE MORTGAGE LOANS DELIVERED TO YOU WITH THIS LETTER, YOU CONSENT TO BE THE CUSTODIAN, AGENT AND BAILEE FOR THE BUYER ON THE TERMS DESCRIBED IN THIS LETTER. THE CUSTODIAN REQUESTS THAT YOU ACKNOWLEDGE RECEIPT OF THE ENCLOSED MORTGAGE LOANS AND THIS LETTER BY SIGNING AND RETURNING THE ENCLOSED COPY OF THIS LETTER TO THE CUSTODIAN; HOWEVER, YOUR FAILURE TO DO SO DOES NOT NULLIFY SUCH CONSENT.

Very truly yours,

_____, Seller

By _____

Name: _____

Title: _____

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., Buyer

By _____

Name: _____

Title: _____

ACKNOWLEDGED AND AGREED:

By: _____

Print Name: _____

Date: _____

[Letterhead of _____]

_____, _____, _____

Name of Attorney

[Address]

Re: Mortgagor:
 Address of Property:
 Loan Number:

Dear _____:

We refer to that certain letter (the “Attorney’s Bailee Letter”), dated _____, _____, from us to you and signed by us and by Greenwich Capital Financial Products, Inc., as buyer (the “Buyer”), describing the terms under which you agreed to hold certain mortgage loan documents to be sent to you from time to time under the Attorney’s Bailee Letter.

The following documents evidencing or otherwise relating to the above-referenced mortgage loans (collectively, the “Documents”) are being sent to you under cover of this letter for the purpose of commencement and prosecution of a foreclosure action:

[LIST ONLY THOSE DOCUMENTS THAT ARE BEING SENT]

- (i) The [original] [copy of the] Mortgage Note.
- (ii) The [original] [copy] of the guarantee executed in connection with the Mortgage Note.
- (iii) The [original] [copy of the] Mortgage with evidence of recording thereon, or a certified copy thereof.
- (iv) The [originals] [copies] of all assumption, modification, consolidation or extension agreements (if any) with evidence of recording thereon, or certified copies thereof.
- (v) An [original] [copy of the] Assignment of Mortgage to “_____, as Custodian”.
- (vi) The [originals] [copies] of [identify any particular] intervening assignments of mortgage with evidence of recording thereon, or certified copies thereof.
- (vii) The [original] [copy of the] [attorney’s opinion of title and abstract of title] or [the original mortgagee title insurance policy], [or if the original mortgagee title insurance policy has not been issued, the irrevocable commitment to issue the mortgagee title insurance policy [as marked by the title company or its authorized agent]], [or the preliminary title report for appropriate jurisdictions].
- (viii) The [original] [copy] of any security agreement, chattel mortgage or equivalent document executed in connection with the Mortgage Loan.
- (ix) The [original] [copy of the] power of attorney or other authorizing instrument [with evidence of recording thereon].
- (x) [Identify any other documents which may be sent].

Please sign this letter in the space provided below to indicate your acknowledgment of receipt of the documents listed above with respect to the mortgage loan(s) identified above, and to confirm that you will hold such documents as bailee for the Buyer under and in accordance with the terms of the Attorney’s Bailee Letter. As required by the Attorney’s Bailee Letter, please fax to the Buyer and the Custodian (with a copy to us), a copy of this letter signed by you, not later than three (3) business days after your receipt of this letter. We appreciate your cooperation.

Sincerely yours,

By:

Name:

Title:

ACKNOWLEDGMENT:

I acknowledge receipt of the Documents as listed above in this letter and of notice of the ownership and/or security interests in such documents described in the Attorney's Bailee Letter referred to above. I confirm the certifications made by me in the Attorney's Bailee Letter with respect to such documents and agree to act as bailee for the Buyer with respect to such documents on the terms set forth in the Attorney's Bailee Letter and to comply in all other respects with the terms of the Attorney's Bailee Letter.

Print Name:

Date:

EXCEPTION CODES

Question Code	Question Description
0021	TYPED NAME AND/OR TITLE IS MISSING OR INCORRECT
0201	DATE IS MISSING OR INCORRECT
0202	FIRST ADJUST DATE IS MISSING OR INCORRECT
0203	AMOUNT IS INCORRECT
0204	MORTGAGE MARGIN IS MISSING OR INCORRECT
0205	ARM INDEX IS MISSING OR INCORRECT
0206	ARM ANNUAL CAP IS MISSING OR INCORRECT
0207	ARM LIFE CAP IS MISSING OR INCORRECT
0208	ARM FLOOR IS MISSING OR INCORRECT
0209	I/O PERIOD FROM I/O ADDENDUM IS MISSING OR INCORRECT
0210	I/O PYMT FROM I/O ADDENDUM IS MISSING OR INCORRECT
0211	PENALTY PD FROM PREPYMT ADDENDUM IS MISSING OR INCORRECT
0212	LATE CHARGE (DAY&%) AS "DAYS/%" IS MISSING OR INCORRECT
0213	ARM ADJ DATE IS MISSING OR INCORRECT
0214	INITIAL CAP IS MISSING OR INCORRECT
0215	ARM LOOKBACK IS MISSING OR INCORRECT
0216	ARM ROUND PERCENTAGE IS MISSING OR INCORRECT
0217	PREPAYMENT NOTE ADDENDUM IS MISSING
0218	INTEREST ONLY ADDENDUM IS MISSING
0219	COMPLETE DATA NOT RECEIVED
0409	PROPERTY ADDRESS IS MISSING OR INCORRECT
0410	ZIP CODE IS INCORRECT
0411	MISC. INFORMATION
0700	SIGNATURE IS MISSING OR INCORRECT
0702	DOCUMENT IS MISSING
0703	BAILEE LETTER IS MISSING
0804	LENDER NAME IS MISSING OR INCORRECT
1000	STOCK POWER NOT EXECUTED IN BLANK
1604	ASSIGNEE IS MISSING OR DOES NOT AGREE WITH NOTE ENDORSEMENT
1605	ASSIGNOR IS MISSING OR DOES NOT AGREE WITH NOTE ENDORSEMENT
1608	REC. INFORMATION OR LEGAL DESC. IS MISSING OR DOES NOT AGREE
1613	ORIGINAL MORTGAGE AMOUNT IS MISSING OR INCORRECT
1614	MIN NUMBER IS MISSING ON MORTGAGE OR DEED OF TRUST
1615	MERS REGISTRATION NOT VERIFIED
1616	COPY OF RECORDED DOCUMENT IN FILE
1617	MIN NUMBER IS INCORRECT
1619	ORIGINAL IN FILE BUT NOT RECORDED
2309	NOTARY INFORMATION IS MISSING OR INCORRECT
2517	CORPORATE SEAL IS MISSING
2706	LOAN AMOUNT- ALPHA AND NUMERIC ARE MISSING OR DO NOT AGREE
2709	INTEREST RATE- ALPHA AND NUMERIC ARE MISSING OR DO NOT AGREE
3114	CASE NUMBER IS INCORRECT
3115	RIDER(S) REFERENCED HEREIN NOT ATTACHED
3303	INTEREST RATE IS MISSING OR INCORRECT
3307	MONTHLY P&I IS MISSING OR INCORRECT
3310	CANCELLED ENDORSEMENT NOT INITIALED
3311	ENDORSEMENT(S) IS NOT SIGNED
3312	ENDORSEMENT(S) IS MISSING OR INCORRECT



3313	ENDORSEMENT(S) IS INCOMPLETE
3314	ENDORSEMENT TO TRUSTEE IS MISSING
3316	ENDORSEMENT LENDER NAME IS MISSING OR INCORRECT
3317	TYPING CORRECTIONS NOT INITIALED BY BORROWERS
3319	EXTRA ENDORSEMENT SHOULD BE CANCELLED
3406	DATE OF FIRST PAYMENT IS INCORRECT
3407	MATURITY DATE IS INCORRECT
3510	COPY ONLY IN FILE
3511	IMAGE ONLY
4182	LEGAL DESCRIPTION IS MISSING
4301	ASSIGNMENT IS NOT IN RECORDABLE FORM
4901	TITLE COMMITMENT OR PRELIMINARY REPORT IN FILE
4906	SCHEDULE A MTG. DESCRIPTION HAS INCORRECT MORTGAGE AMOUNT
4907	SCHEDULE A MTG DESCRIPTION HAS INCORRECT DATE OF MORTGAGE
4911	SCHEDULE A MTG DESCRIPTION HAS INCORRECT RECORDING DATE
4920	INSURED AMOUNT DOES NOT MATCH ORIGINAL AMOUNT ON MORTGAGE
4921	AGENT SIGNATURE MISSING ON TPOL
5307	CERTIFIED COPY OF DOCUMENT IN FILE
5339	OPEN ENDORSEMENT IS MISSING
5344	ENDORSEMENT(S) IS A COPY
5345	ENDORSEMENT(S) IS ILLEGIBLE
5348	DOCUMENT INCOMPLETE OR PAGES MISSING
5352	2 ORIGINAL NOTES IN FILE
5359	INVALID ENDORSEMENT CHAIN
5367	BORROWER'S SIGNATURE ILLEGIBLE
5368	FHA/VA PROOF OF INSURANCE SCREEN PRINT IN FILE
5369	LNA NOT IN PROPER FORM
6000	DOCUMENT FIELD IS MISSING OR INCORRECT
FINL	FINAL PACKAGE RECEIVED, REVIEWED AND REJECTED

[NOTICE BY ASSIGNEE TO CUSTODIAN OF THE BUYER'S DEFAULT]

[Custodian]
[Address]

Re: Default by Buyer

Ladies and Gentlemen:

Notice is hereby given that Greenwich Capital Financial Products, Inc. (the "Buyer") has materially defaulted in its obligations under an agreement between Assignee and the Buyer relating to the financing by Assignee of the Buyer's payment of the Purchase Price with respect to the Mortgage Loans described on Schedule 1 hereto. Assignee hereby (i) directs that Custodian act with respect to the related mortgage files solely in the capacity of custodian for, and bailee of, Assignee, (ii) directs that Custodian hold such mortgage files for the exclusive use and benefit of Assignee and (iii) assumes the rights of the Buyer to furnish instructions to Custodian as to the disposition of such mortgage files and such rights shall be exercisable solely by Assignee.

Please acknowledge the foregoing by signing below and returning a copy of this notice to us at [address].

Very truly yours,

[ASSIGNEE]

By:
Name:
Title:

RECEIPT ACKNOWLEDGED:

By:
Name:
Title:

cc: Greenwich Capital Financial Products, Inc.

LIST OF UNAPPROVED SETTLEMENT AGENTS

[TO BE PROVIDED BY THE BUYER]

Annex 15-1

MORTGAGE FILE SUBMISSION PACKAGE

With respect to each Mortgage Loan being offered by the Seller for pledge to the Buyer, pursuant to the Master Repurchase Agreement, such Seller shall deliver and release to Custodian the following documents:

(i) The original Mortgage Note bearing all intervening endorsements from the originator to the Seller endorsed, "Pay to the order of _____, without recourse" and signed in the name of the Seller by an authorized officer of the Seller; (if applicable), the original assumption agreement, together with the original of any surety agreement or guaranty agreement relating to the Mortgage Note or any such assumption agreement, and if the Mortgage Note has been signed by a third party on behalf of the Mortgagor, the original power of attorney or other instrument that authorized and empowered such Entity to sign or a copy of such power of attorney together with an officer's certificate from the Seller (or a certificate from the county recorder's office or the Settlement Agent) certifying that such copy presents a true and correct reproduction of the original and that such original has been duly recorded or delivered for recordation in the appropriate records of the jurisdiction in which the related Mortgaged Property is located;

(ii) A Mortgage meeting one of the following requirements:

(A) The original Mortgage bearing evidence that the Mortgage has been duly recorded in the records of the jurisdiction in which the Mortgaged Property is located; or

(B) A copy of the Mortgage together with either (i) an officer's certificate of the Seller, Settlement Agent, title company or escrow closing company (which may be a blanket officer's certificate of the Seller covering all such Mortgage Loans), or (ii) a certificate from the county recorder's office, certifying that such copy represents a true and correct reproduction of the original or (iii) a stamped certificate from the related title company or Settlement Agent certifying that such copy represents a true and correct reproduction of the original, in such case that such original has been duly recorded or delivered for recordation in the appropriate records of the jurisdiction in which the Mortgaged Property is located;

(iii) If the Seller did not originate the Mortgage Loan, all original intervening assignments duly executed and acknowledged and in recordable form, evidencing the chain of mortgage assignments from the originator of the Mortgage Loan to the Seller, or in the case of a MERS Designated Mortgage Loan to MERS, and/or a copy of each such intervening mortgage assignment, together with either (i) an officer's certificate, (ii) a certificate from the recorder's office, certifying that such copy represents a true and correct reproduction of the original, or (iii) a stamped certificate from the related title company, Settlement Agent or escrow closing company certifying that such copy represents a true and correct reproduction of the original, in such case that such original has been duly recorded or delivered for recordation in the appropriate records of the jurisdiction in which the Mortgaged Property is located;

(iv) Except with respect to a MERS Designated Mortgage Loan, a copy of the Assignment of Mortgage to “_____”, together with either (i) an officer's certificate of the Seller or Settlement Agent (which may be a blanket officer's certificate of the Seller covering all such Mortgage Loans), or (ii) a certificate from the county recorder's office, certifying that such copy represents a true and correct reproduction of the original or (iii) a stamped certificate from the related title company or Settlement Agent certifying that such copy represents a true and correct reproduction of the original, in such case that such original has been duly recorded or delivered for recordation in the appropriate records of the jurisdiction in which the Mortgaged Property is located in recordable form signed in the name of the Seller by an authorized officer; provided, however that no such Assignment of Mortgage shall be required to be delivered or recorded if the related Mortgage names the Custodian, as mortgagee (or as beneficiary if the related Mortgage is a deed of Trust or similar instrument) and such Mortgage specifies that the Custodian assumes no duties, responsibilities or liabilities as an originator or Buyer in respect of such Mortgage;

(v) the original policy of title insurance (or a commitment for title insurance, if the policy is being held by the title insurance company pending recordation of the Mortgage) or attorney’s opinion of title; provided, however, that no such policy shall be delivered in connection with any second lien Mortgage Loan with an original principal balance not in excess of \$50,000;

(vi) the original of the guarantee executed in connection with the Mortgage Note (if _____ any);

(vii) the original of any security agreement, chattel mortgage or equivalent document _____ executed in connection with the Mortgage Loan;

(viii) the certificate of primary mortgage guaranty insurance, if any, issued with _____ respect to such Mortgage Loan; and

(ix) the original power of attorney, if any.

CUSTODIAN LOAN TRANSMISSION

Loan#	OPB	Wet Dry Status	Custodian
123456	\$100,000.00	Dry	LaSalle

Years ended December 31,

(\$000)	<u>2005</u>	<u>2004</u>	<u>2003</u>	<u>2002</u>	<u>2001</u>
Earnings:					
Pretax income (loss) from continuing operations	(13,889)	3,688	13,726	3,750	1,881
Fixed Charges	60,104	16,012	3,266	1,673	1,289
Distributed income of equity investees	17,268	7,605	21,565	1,589	790
Total Earnings	<u>63,483</u>	<u>27,305</u>	<u>38,557</u>	<u>7,012</u>	<u>3,960</u>
Fixed Charges:					
Interest Expense	60,104	16,012	3,266	1,673	1,289
Amortized premiums & discounts related to indebtedness	-	-	-	-	-
Capitalized expenses related to indebtedness	-	-	-	-	-
Capitalized Interest	-	-	-	-	-
Preference security dividends	-	-	-	-	-
Total Fixed Charges	<u>60,104</u>	<u>16,012</u>	<u>3,266</u>	<u>1,673</u>	<u>1,289</u>
Ratio of earnings to fixed charges	<u>1.06</u>	<u>1.71</u>	<u>11.81</u>	<u>4.19</u>	<u>3.07</u>
Preference security dividends	-	-	-	-	-
Ratio of earnings to fixed charges and preference security dividends	<u>1.06</u>	<u>1.71</u>	<u>11.81</u>	<u>4.19</u>	<u>3.07</u>

	6 months ended June 30, 2005	3 months ended March 31, 2005	2004	2003	2002	2001	2000
Fixed Charges:							
+ Interest Expense	-	11,689,738	16,012,518	3,266,438	1,673,108	1,288,780	476,000
+ Capitalized Interest	-	-	-	-	-	-	-
+ Amortized premiums & discounts related to indebtedness	40,417	6,736	-	-	-	-	-
+ Capitalized expenses related to indebtedness	-	808,342	-	-	-	-	-
+ Interest within rent expense	-	-	-	-	-	-	-
+ Preference security dividends	-	-	-	-	-	-	-
Total Fixed Charges	<u>40,417</u>	<u>12,504,816</u>	<u>16,012,518</u>	<u>3,266,438</u>	<u>1,673,108</u>	<u>1,288,780</u>	<u>476,000</u>
Earnings:							
+ Pretax income from continuing operations	-	(2,727,560)	3,687,571	13,726,076	3,750,279	1,881,318	526,750
+ Fixed Charges	40,417	12,504,816	16,012,518	3,266,438	1,673,108	1,288,780	476,000
+ Amortization of capitalized interest	-	-	-	-	-	-	-
+ Distributed income of equity investees	-	4,347,467	7,605,093	21,564,956	1,588,765	790,352	42,030
+ Pre-tax losses of equity investees	-	-	-	-	-	-	-
- Interest capitalized	-	-	-	-	-	-	-
- Preference security dividends of consolidated subsidiaries	-	-	-	-	-	-	-
- Minority interest in pre-tax income of subs...	-	-	-	-	-	-	-
Total Earnings	<u>40,417</u>	<u>14,124,723</u>	<u>27,305,182</u>	<u>38,557,470</u>	<u>7,012,152</u>	<u>3,960,450</u>	<u>1,044,780</u>
Ratio of Earnings to Fixed Charges	1.00	1.13	1.71	11.80	4.19	3.07	2.19

If ratio is less than 1, disclose dollar
amount of deficiency

- - - - - - - -

List of Significant Subsidiaries

<u>Name</u>	<u>State of Incorporation</u>	<u>Names under which it does Business</u>
The New York Mortgage Company, LLC	New York	MortgageLine.com, Princeton Mortgage Consultants
New York Mortgage Trust 2005-1	Delaware	n/a
New York Mortgage Trust 2005-2	Delaware	n/a
New York Mortgage Trust 2005-3	Delaware	n/a
New York Mortgage Funding, LLC	Delaware	n/a

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement No. 333-127400 of New York Mortgage Trust, Inc. on Form S-3/A and Registration Statements No. 333-117524 and No. 333-117228 of New York Mortgage Trust, Inc. on Form S-8 of our reports dated March 15, 2006, relating to the consolidated financial statements of New York Mortgage Trust, Inc. and to management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting, appearing in the Annual Report on Form 10-K of New York Mortgage Trust, Inc. for the year ended December 31, 2005.

/s/ Deloitte & Touche LLP

New York, New York
March 15, 2006

**CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Steven B. Schnall, certify that:

1. I have reviewed this annual report on Form 10-K of New York Mortgage Trust, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on our evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Steven B. Schnall

Steven B. Schnall
Chairman, President, and Co-Chief Executive Officer
(Principal Executive Officer)

Date: March 16, 2006

**CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, David A. Akre, certify that:

1. I have reviewed this annual report on Form 10-K of New York Mortgage Trust, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on our evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ David A. Akre

David A. Akre
Co-Chief Executive Officer
(Principal Executive Officer)

Date: March 16, 2006

**CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Michael I. Wirth, certify that:

1. I have reviewed this annual report on Form 10-K of New York Mortgage Trust, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on our evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Michael I. Wirth

Michael I. Wirth
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

Date: March 16, 2006

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the New York Mortgage Trust, Inc. Annual Report on Form 10-K for the period ended December 31, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of New York Mortgage Trust, Inc.

/s/ Steven B. Schnall

Steven B. Schnall
Co-Chief Executive Officer
(Principal Executive Officer)

Date: March 16, 2006

/s/ David A. Akre

David A. Akre
Co-Chief Executive Officer
(Principal Executive Officer)

Date: March 16, 2006

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the New York Mortgage Trust, Inc. Annual Report on Form 10-K for the period ended December 31, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of New York Mortgage Trust, Inc.

/s/ Michael I. Wirth

Michael I. Wirth
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

Date: March 16, 2006
